

APPRAISING MANUAL VOLUME II  
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## L I C E N C E D E P A R T M E N T

### 3.01 INTRODUCTION :

The Customs Act,1962, provides the power to prohibit the Importation or Exportation of the goods under Section 11. The import and export of goods is governed by the Export/ Import (Ex-Im) policy issued by the Ministry of Commerce for five years period, and the notifications issued under the policy from time to time. No Licence is required for the import and export of the goods other than those mentioned in the negative list of import and export policy respectively. The import and export of goods which are covered under negative list requires valid Licence issued by the concerned authorities. The licences are also issued to enable the importers and exporters to avail of the benefits granted under various schemes, such as duty free import of raw materials (D.E.E.C. Scheme), concessional rate of duty for capital goods (E.P.C.G. Scheme) etc. The Licence department in the custom house functions with a view to keep the records of the import licences, screening of licences and checking the validity of the licences issued by the Ministry of Commerce. These licences are issued to the importers and exporters as per the export and import policy in force. The main objectives for issuing the licences are to promote export trade, to conserve foreign exchange for maintaining balance of payment, and to control and regulate import and export of commodities to safeguard interest of the public and domestic industry. The export and import policy is issued under section 3 of the Foreign trade (development and regulation) Act, 1992.

### 3.02 MAIN FUNCTIONS OF THE LICENCE DEPARTMENT :

The main functions of the Licence department in the Custom House are :

1. Registration Of Licences And CCP's ; And Release Advices Issued by other Custom Houses.
2. Issue of Release Advices To other Custom Houses.
3. Scrutiny Of Licences and C.C.P. (Custom Clearance Permit) and Verification of Their Authenticity from the Bulletin and Specimen Signatures of The Signatories on The Licences.

4. Recording Debits/Credits, Allowed by The Concerned Authorities, In The Relevant Ledgers, and also Endorsing Amendments in The Licences Permitted By The Authorised Persons.

5. Maintenance Of Alert Notices, ITC Public Notices And Circulars Etc. And Circulation Thereof.

6. Verifying The Exchange Rate Applicable, Calculating The Duty Amount And Typing The Same With Pin-Point Typewriter On The Bill Of Entry.

### 3.03 WORKING OF THE LICENCE SECTION :

The Licence section works under the overall supervision of an Assistant Collector of Customs who is assisted by Appraiser, Examiner and ministerial staff. The bill of entry after assessment by the group is sent to the Licence section, only when clearance of the goods is to be allowed against a Licence. When bill of entry is received in the Licence section, a Licence 'inward', thoka no. and date is put on the Licence column of the bill of entry. This indicates the receipt of bill of entry in the Licence section. The bill of entry with import Licence is sent to the ledger clerk. Each clerk maintains a ledger alphabetically based on the name of Licence holder. The Licence clerk scrutinises the Licence and if it happens to be the first import then he opens a new account and records the particulars in the register, and index also. The ledger clerk maintains the debit/credit on the basis of debit sheet attached to the import Licence. The ledger clerk endorses the Licence accordingly and also the Licence column of the bill of entry. Then he forwards the bill of entry with the Licence & ledger to the audit clerk. The audit clerk puts the endorsement on the debit sheet attached to the Licence against the relevant entry and also on the Licence column of the bill of entry.

The bill of entry is then forwarded to the computer section for recording the data.

The bill of entry is finally sent to the comptist for calculation of the duty and pin-point typewriting.

3.04 ISSUE & RECEIPT OF R.A. (RELEASE ADVICE) : The licences issued by the licencing authorities are required to be registered at only one custom house and are therefore, valid only at the port of registration. When the goods are imported at any place other than the port of registration of the Licence, then the goods can be cleared against release advice issued by the custom house where the Licence is registered. The R.A. is issued on the basis of application made by importer/CHA enclosing copy of the bill of lading, invoice, original Licence etc. The appraiser in the Licence section scrutinizes the import Licence and the documents produced and prepares a release advice for the particular custom

house. After A.C.(Lic) approves the R.A., Appraiser signs it whose signatures are circulated to all the ports. The R.A.'s received from the other custom houses in sealed cover is registered and is put up to the group for acceptance on production of the relevant bill of entry. The release advice is debited following the same procedure as is followed for Licence. After the completion of bill of entry, the release advice (R.A.'s) is retained in the Licence section.

3.04a With effect from 3.4.95, in view of Ministry's circular no.12/95 customs dated 20.2.95 issued from f.no.605/14/95-dbk, R.A.'s in respect of import licences issued under the DEEC scheme are issued from DEEC group. Procedure for issue of R.A.'s. is the same as is followed in respect of licences other than those under the DEEC scheme.

### 3.05 VERIFICATION OF THE AUTHENTICITY OF THE LICENCES ISSUED :

The licences issued by the Min. of Commerce are published in the fortnightly bulletin which contains the details of the licences issued. The Licence department verifies the authenticity of the licences from the particulars published in the bulletin. Sometimes, these bulletins are received late therefore, the licences in such cases are verified on the basis of specimen signatures of the issuing authority. The licences received in the Licence department are accepted only after this verification is done.

### 3.06 CLEARANCE THROUGH LICENCE : It is important to know different Types of

licences and their validity vis a vis implications in allowing the clearance of the goods benefit of exemption notifications, if any. All goods except those that are permissible under open general Licence (other than negative list items), or are otherwise exempted from the restrictions under the foreign trade (development and regulation) act 1992, require valid Licence at the time of customs clearance. The basic purpose of the Licence is therefore, (1) to enable the clearance of the goods for import or export which are otherwise regulated by the Ex-Im policy.

(2) To enable the importer/exporter to avail of the benefits provided under exemption notifications and the policy. Each category of Licence has specific provisions and limitations. The Assessing officers refer to the policy applicable for the category of Licence submitted and examine the Licence in all respects before allowing clearance of goods against the Licence.

### 3.07 GENERAL INSTRUCTIONS REGARDING - OFFICE PROCEDURES :

#### 3.07(a) MAINTENANCE OF REGISTERS FOR REGISTRATION OF IMPORTS UNDER IMPORT LICENCE/ C.C.P. :

The Licence clerk attached to the central Licence section, sea port, airport or post office will maintain registers for registration of imports by

sea/air/post, as the case may be. He will also enter the details of Licence presented for such imports together with the balance available for each Licence. He will also maintain separate records for each Licence regarding description of restricted and/or non-permissible item allowed and draw balances every time when such items are cleared.

#### 3.07(b) ENDORSEMENT REGARDING LICENCE AUDIT ON BILL OF ENTRY :

The audit clerk attached to the section initials on the original as well as on the duplicate copy of bill of entry in token of having audited them for Licence purposes.

#### 3.07(c) DISPOSAL OF FULLY-UTILIZED LICENCE :

The Licence registration clerk enters the details of clearance in the register, and stamps the Licence "canceled" or "fully utilized" on the face of such licences with rubber stamp. After the Licence has been endorsed 'canceled' or 'fully utilized' by appraisers or assessing officers and duly checked by audit clerk the same is put up with the register to the supervisory ministerial officer of the group for checking. Thereafter, the bill of entry with the licences is released to the parties. The Licence audit clerk check the above details and affixes his initials. on request, fully Utilised licences will be returned to the parties after punching them to show full utilization such fully utilized licences which are lying in the customs houses are also returned to the parties on request made by them, otherwise, these licences are destroyed after 3 months of the date of issue of notice to the parties.

#### FACE VALUE RESTRICTIONS ON LISTED INDIVIDUAL ITEMS :

#### 3.07(d) DRAWING OF THE BALANCE ON THE IMPORT LICENCE HAVING

When a Licence having value or quantity restrictions for different items is debited, separate balance for each item is struck on the reverse of the Licence as well as on the columns in the attached chart which indicates the face value or quantity limits of different categories of goods. Similar columns are made in the Licence registers.

#### 3.07(e) PROVISIONAL DEBIT OF LICENCE LEDGER IN RESPECT OF CLEARANCE AGAINST

#### I.T.C. BOND :

When clearance is permitted against I.T.C. Bond it is be ensured that provisional debit is raised in the Licence maintained by the Licence section against the respective Licence number so that the licensee is not able to utilize the said Licence value for making subsequent imports.

#### 3.07(f) MAINTENANCE OF ALERT NOTICE REGISTERS :

From time to time alert notices are issued by the licensing authority against import licences already issued for taking action and /or debarring/ canceling importation against the particular Licence/ licensee. The central Licence section maintains an alert notice register and enters particulars of all such alert notices before the debit is raised and Licence registration stamp is endorsed, the central licensing section checks each Licence with the alert notice register so that no alert notice escapes the attention of the custom house.

### 3.07(g) RECOMMENDATORY LETTER-MAINTENANCE OF RECORD IN THE REGISTER :

On the receipt of the recommendatory letters in the custom house, the clerk working in the Licence section enters them in a register separately for each office and check the correctness before dispatching the same to the concerned group. Any discrepancy noted is brought to the notice of the Asstt. Collector.

### 3.08 ADJUDICATION-OFFICE PROCEDURE :

When it is proposed to initiate adjudication proceedings, it is necessary to issue a show cause notice to the importer. A show cause notice is invariably issued in all cases except where the person concerned has given a written request for waiver of show cause notice and an endorsement in writing that he is aware of the contravention and offences & the charges framed against him. In other cases, the draft show cause notice should be prepared in the pres-cried form and put up for A.C.'s approval. It should be issued under his signature and sent by registered post with A/D, a copy should also be endorsed to the clearing agent, if any. In cases where the person concerned refuses to receive the cover containing the show cause notice or the cover is returned undelivered, the same may be kept in file, however efforts should be made to serve the notice personally through local staff, if possible. Where the service of the notice is still not possible, a copy of the same must be displayed on the "notice board" of the custom house.

### 3.08(a) ENTRY OF SHOW CAUSE NOTICE IN PENALTY REGISTER :

The date of issue of show cause notice and other particulars should be entered in the penalty register by the concerned clerk.

### 3.08(b) ENDORSEMENT OF PREVIOUS OFFENCES :

The Licence section should endorse the previous offences of the same importer before Assessing officer puts up the case before the Adjudicating

officer.

**3.08(c) ENTRY OF THE PARTICULARS OF PENAL ACTION IN PENALTY REGISTERED PREVIOUS OFFENCE REGISTER :**

After the adjudication is over the penalty clerk will enter, in the penalty register and in the previous offence register, the particulars of the penal action taken.

**3.08(d) IMPRESSION OF PENALTY STAMP AND PIN-POINTING OF FINES/PENALTY ON THE BILL OF ENTRY :**

The penalty clerk will also endorse the penalty stamp on each copy of the B/E and fill in relevant columns indicating the file no.. The fine/penalty amount should also be endorsed by the pin-point type writer on the B/E.

**3.08(e) ENTRY OF THE PENALTY IN REGISTER WITH REALISATION PARTICULARS :**

As soon as the fine/penalty is paid by the importer the clerk will enter in the penalty register, the realization particulars.

**3.09 ISSUE OF ORDER-IN-ORIGINAL :** In each case where the adjudication is over an order-in-original should be issued by the same adjudicating officer who has adjudicated the case. It should be ensured that the charges of the department, the argument of the party and findings of the adjudicating authority are discussed in detail in the order-in-original. The delay in issuing the order-in-original should be avoided and as far as possible it should be issued within a week.

**3.10 ACTIONS FOR CUSTODY WHERE THE GOODS ARE NOT REDEEMED :**

If the duty or fine is not paid by the party one copy of the confiscation order will in such cases be endorsed to the traffic manager (port trust) with the request that the goods should be taken charge of on behalf of the customs Deptt. These are not to be sold by auction without prior intimation to the customs house and copy to the Asstt. Collector (docks)

**3.11 PRECAUTIONS FOR NOTING OF SECOND B/E FOR GOODS UNDER PENAL**

**ACTION :** The Import department in all cases where a request is made for re-noting a bill of entry, take an endorsement from I.T.C. penalty clerk to the effect that no penal action is pending in respect of the bill of entry originally noted.

### 3.12 DUTIES OF APPRAISER WORKING IN LICENCE DEPTT. :

The following points should be carefully observed while accepting the Licence for the purpose of releasing the goods for import or export:

[1] It is important to understand the provisions of the foreign trade (development and regulation) Act 1992; Import- Export control order, 1955, as amended from time to time; The Ex-Im policy and Handbook of procedures published periodically. Various public notices and general licencing instructions issued by the office of the D.G.F.T. should also be studied carefully for implementation of the policy.

Any anomalies observed, while implementing the act or the policy, should be brought to the notice of the higher authorities and written orders should be obtained for releasing the goods. If approved by the higher authorities, an I.T.C. Bond can be accepted for allowing clearance of the goods provisionally pending clarification, if any, sought for.

[2] The Assessing officer should refer to the policy applicable and should examine the provisions and conditions before allowing the release of the goods against the Licence submitted.

[3] The Assessing officer should scrutinise the Licence with reference to the prescribed column of the bill of entry and the declaration of the goods. In case of any doubt about the description of the goods and value etc., 1st check examination order may be given with the approval of the Asstt. Collector. Before accepting the Licence/C.C.P. or release order, it should be verified that security seal and the signature of the licencing authority concerned is duly impressed upon the Licence/C.C.P. etc. And the same is verified from the Licence section of the custom house where the Licence is registered. The licencing authorities usually append the list of the items allowed with quantity and value restrictions, the same should be carefully scrutinised and goods should be released after duly debiting and endorsing the same on the Licence or the debit sheet attached. The debit sheet should be serially numbered and endorsed on the Licence it should indicate the correct balance of each item.

[4] Under the new policy every Importer/ Exporter must have Importer/ Exporter code number hence before allowing the release of goods under O.G.L. or Import/ Export Licence, the Assessing officer should check the 'code number' as declared on the bill of entry and other documents.

[5] If the goods imported/exported are not covered under OGL or the Licence submitted, the Import/ Export of such goods is considered as unauthorised, in such cases adjudication proceedings should be initiated promptly against the offending goods and the Importer/ Exporter concerned, it is

important to get the goods examined on 1st check before initiating adjudication proceedings.

[6] The Assessing Officer should also observe the following points while debiting the Import/ Export licences :

(i) The CIF value of the goods imported should be debited in the Licence. If any commission is paid to local agent then the same shall also be added to the CIF value for debiting in the Licence.

(ii) In the case of import made by air, the amount of freight shall be debited to the extent of 20% of the value of import, however in the case of import made through air India/Indian airlines, the amount of freight paid in Indian currency, shall not be debited.

(iii) The amount of interest payable on the deferred payment shall not be included in the debit value, CIF value as per the invoice shall only be debited.

(iv) The CIF value of the goods for the purpose of debiting the Licence shall be calculated at the exchange rate mentioned on the Licence. In other cases the exchange rate applicable shall be as in force on the date of presentation of the B/E under section 14 of the customs Act, 62.

(v) In case of enhancement of the assessable value such as for determining the correct value under section 14 of the customs act; valuation of the second-hand goods; cases where special relationship exists among the importer and supplier; valuation of the ball-bearing etc.; the CIF value of the goods may be enhanced for the purpose of levying the customs duty. In all cases where there are no malafides, and no extra remittance of foreign exchange is established, the CIF value of the goods as per the invoice shall be accepted for debiting the Licence.

(vi) In respect of damaged/pilfered goods no recredit of the Licence is allowed. However, in respect of the short-landed goods subject to production of the evidence that the goods are short landed and no remittance of foreign exchange had been made for the goods not landed, adjustment/ credit in the Licence may be allowed.

(vii) In cases where there is shortfall in the Licence value on account of the fluctuation of exchange rate between the date of remittance and date of valuation of the goods for custom valuation purpose, such shortfall may be condoned by the customs authorities, i.e. Asstt. Collector of Customs subject to verification and laid down procedure in the handbook of the procedures.

[7] The Assessing Officer should check the following points while accepting the Licence for the release of goods :

(i) In addition to the conditions specified in the Licence, the Licence is also governed by the conditions of the import control order, 1955 as amended under clause 5.

(ii) Unless otherwise specified, the Licence shall be valid for for the goods imported as on the date of issue and shall be valid for the period for which the Licence is specified. The Licence shall be governed by the provision of the import policy during which the Licence is issued, including amendments if any issued upto the date of issue. The Licence issued is also subject to the provisions and conditions, if any, specified subsequently by the licencing authority.

(iii) The relevant date for accepting the Licence for the import goods is the date of Bill of lading, or Date of crossing the border in the case of land-locked countries. The import Licence may be accepted by the customs authorities in case, where it is proved that firm order has been placed on the supplier for the supply of the goods during the validity period of the Licence, the period beyond the validity can be condoned by the customs authorities.

(iv) The Assessing Officer should check if any post-importation condition is imposed by the licencing authorities, such as execution of bond/guarantee. All such conditions should be complied with at the time of assessment.

(v) Unless it is clearly specified in the Licence, including O.G.L., Only new/ prime goods are allowed for import. Second hand goods are allowed only as per the specific provisions of the export and import policy

(vi) The Assessing Officer should verify the letter of authority, if any, in favour of the importer who holds non-transferable Licence and transfer letter in case of transferable Licence in accordance with the provisions of the handbook of procedures.

[8] In a case where an importer is unable to produce the import Licence on arrival of the goods; either because the Licence has been sent to the licensing authorities for amendments or revalidation etc., or otherwise not readily available; clearance may be permitted on execution of a bond/guarantee by the importer subject to scrutiny of the description of the goods and validity of Licence and after obtaining approval from the Asst. Collector to that effect.

## # INTERNAL AUDIT DEPARTMENT

### 4.01 Introduction :

The audit department comprises of two sections

1. Post audit
2. Concurrent audit

1. Post auditing is carried out with a view to verify the correctness of the classification, valuation, rate of exchange, rate of duty and arithmetical calculation of duty for home consumption & bond B/E. after clearance of the goods.

2. Concurrent auditing is carried out for home consumption & into bond B/E immediately after the same has been assessed under section 17 or section 18(1) of the C.A.1962.,but before payment of the duty with a view to check the correctness of classification, valuation, rate of duty, rate of exchange & I.T.C. Angle of the importation.

#### 4.02 CONCURRENT AUDITING OF BILLS OF ENTRY :

After assessment of Bill of entry by the Group Appraiser, the same are submitted to the Appraisers of Concurrent Audit. The Appraisers posted in concurrent audit have to re-check whether the assessment done by the Group Appraisers is in order. He should check the following:-

1. Whether the value shown in the invoice is correctly taken in the bill of entry and whether the value is FOB, C&F, CIF etc.
2. In case the value is FOB, whether freight and insurance amount is correctly taken as per freight and insurance memo.
3. Whether the exchange rate applied is correct.
4. Whether the goods are classified correctly under the custom tariff heading & central excise tariff heading.
5. Whether the benefit of notifications if any, is given correctly.
6. Whether correct rate of duty has been applied.
7. Whether the goods are in the Negative list or are covered under Licence or are permitted to be imported freely.
8. Whether the procedures prescribed by various Standing Orders have been complied with.
9. Whether any loading of value as decided by SVB is done for value.
10. Whether the quantity declared in the B/E is as per invoice and correct.
11. Whether assessable value and rate of duty has been certified in words.
12. In case of consignment of chemicals especially brand name chemicals whether the goods have been tested and are covered by valid T.R.

Note:- In case of suspected under valuation retrieval of data of valuation may be taken from the computer for cross verification.

In the case of home consumption B/E's/e where final entry has been granted and there is no objection from audit point of view, the same will be

concurrently audited, by AO(ca) & he will endorse the B/E by putting the stamp "concurrently audited" and sign below it.

#### 4.02(a) CONCURRENT AUDIT OF PRIOR ENTRY BILLS OF ENTRY :

1. "Prior entry" & provisionally assessed B/E's/e shall also be concurrently audited by the AO(concurrent audit) exactly as per procedure prescribed above except that the B/E will be stamped as "to be finally audited".

2. The Cash Deptt. shall not accept the payment of duty in the case of "prior entry" B/E's/e until the same are finally audited after re-checking the rates of duty with reference to date of final entry certified by Import dept.

3. The CHA's/importers, after getting the date of entry inward from the Import Deptt. shall indicate the same in relevant column of B/E and present the same to the concerned group clerk. The said group clerk shall forward the B/E to the C.A. attached to the Group. The C.A. shall audit such B/E after verifying changes in rate of duty, if any have come into effect on the date of final entry. In case there are changes in the rate of duty on the date of final entry the same shall be brought to the notice of the concerned group appraiser, who shall re-assess the B/E accordingly. If the re-assessment so done is correct the concurrent audit AO Will endorse with stamp "finally audited" & sign. The B/E will then go to A.C. for signature. The CHA/importer, will then pay the duty as reflected in the bill of entry.

Where the assessable value of individual bill of entry exceeds Rs.10 lakhs it should be sent to the Asstt. Collector incharge of concurrent audit for his scrutiny and signature. High value B/E's/e where doubts or disputes may arise should be put to Addl.collector/Dy.collector (audit).

#### 4.02(b) CONCURRENT AUDIT APPRAISER NOT IN AGREEMENT WITH THE ASSESSMENT MADE BY THE GROUP - PROCEDURE REGARDING :

In respect of any particular B/E's, if the Appraiser (concurrent audit) finds that classification, valuation, rate of exchange or rate of duty are not correct and that the importation is in contravention of the import trade control regulations, he should record the same on separate note sheet and submit it to the Asstt.Collectors (concurrent audit). If the A.C.(audit) agrees with the objections raised by the appraiser (CA) he may add his own observations/comments and forward the same to the Asstt.Collector of the concerned group. If the A.C. (Audit) does not agree with the objections raised by the Appraiser, he may overrule the same and order the B/E's to be passed in audit or else submit the same to the

Additional collector/Dy.collector (Audit), should it be necessary. All

such bill of entry where the objections are finally resolved and the bills of entry are passed in the Audit, shall be stamped "finally audited" & signed. The bills of entry where there is no objection shall also be stamped & signed as above by the C.A. After audit and shall be returned to the clerk in the terminal room who shall keep a record of such bills of entry.

The clerk in the computer center shall forward these bills of entry to the respective groups through a transit book after affixing a stamp on the right hand top corner of the bills of entry indicating "data entered".

#### 4.03 POST AUDITING OF BILLS OF ENTRY :

The following types of bills of entry are audited in the Audit department.

##### (a) NON-BONDED GOODS :

- (1) Home consumption bill of entry.
- (2) Government stores bills of entry.

##### (b) BONDED GOODS:

- (1) Into bond bills of entry.
- (2) Ex-bond (out of bond) bills of entry. (provisionally assessed bills of entry become ripe for post audit only from the date on which they are finally assessed)

NOTE : All bills of entry which are post audited should reach the C.R.A.D. Within two months from the date of payment of duty.

#### 4.04 DETAILS OF AUDIT CHECKS ON BILLS OF ENTRY :

The Internal audit department should check the following in connection with post audit of the aforesaid bills of entry.

##### 4.04(a) IN THE CASE OF BILLS OF ENTRY OF DUTIABLE GOODS :

(a) That the original copy of the bill of entry noted in the Import department under section

46 of the customs act 1962, bears the serial number and date stamp, and that it is duly noted by the noter with his initials.

(b) That the bill of entry has been passed by the Appraiser and is countersigned by the Assistant collector, when so required.

(c) That the first two columns of the bill of entry have been properly filled in and the total number of packages, cases, crates etc. Duly certified in words by the Import department.

(d) That all the declarations and copy of the invoice required to be attached to the original bill of entry are properly pasted with the same.

(e) That the description of the goods given in the bill of entry tallies with that of the invoice pasted to it.

(f) That the correct classification under the CTH and CET are mentioned along with the respective R.I.T.C. code number.

(g) That correction and overwriting if any have been duly attested by the proper officer.

(h) That duty has been levied at the correct rate as applicable under the respective customs and central excise tariff act. That the duty paid has been correctly calculated and entered in the bill of entry in words and figures.

(i) That the correct rate of exchange has been applied.

(j) That when the goods are passed on tariff value or where the goods are subjected to a specific rate of duty, the unit of quantity or weight, as the case may be, is recorded in words as well as in figures.

(k) That in the case of goods assessed to duty on the basis of invoice under section 14(1) (a) of the customs act 1962, the invoice value include freight and insurance also and that the same are indicated in the bill of entry.

(l) That the value has been calculated with reference to the rate of exchange as is in force on the date on which the B/E is presented under Section 46 of Customs Act 1962.

(m) That the benefit of exemption notification, if any, has been correctly claimed by the importer and the group appraiser has given the benefit of notification only after having properly ascertained that the conditions prescribed in the notification have been fully complied with.

(n) In respect of chemical consignment especially under brand name, whether the goods have been tested and they are covered by valid T.R.

#### 4.04(b) IN CASE OF PROVISIONAL DUTY BILLS OF ENTRY :

Provisionally Assessed bills of entry become ripe for post-audit after the same have been finally assessed as per the orders of the competent adjudicating authority and from the date on which the duty finally assessed has been adjusted with the duty provisionally levied.

#### 4.04(c) IN THE CASE OF FREE BILLS OF ENTRY :

(a) That the goods are assessable to `nil' rate of duty, under either the tariff or the provisions of section 20 of the customs act, 1962. Or any notification issued under the section 25 of the customs act, 1962.

(b) That the goods are subjected to proper examination and all documents required are produced and found correct.

(c) That all relevant documents have been checked.

4.04(d) IN CASE OF BILLS OF ENTRY FOR GOVERNMENT STORES :

(a) That a pink bill of entry has been filed and all relevant certificates, invoices and other related documents have been produced to substantiate that the imported goods are government stores.

(b) That all documents required as in case of dutiable bill of entry have been checked.

4.04(e) IN THE CASE OF EX-BOND BILLS OF ENTRY :

(a) That in the case of part clearance of the goods the assessable value, the quantity or number of the goods to be cleared on ex-bond B/E have been correctly calculated with reference to original customs attested invoice.

(b) That the same description of the goods as shown in the into-bond B/E is also reflected in the ex-bond B/E.

(c) That classification and valuation are the same as those approved in the into-bond bill of entry which has been assessed under section 17 and that duty has been levied at the rate as applicable on the date of actual removal of the goods from the bonded warehouse.

(d) Ex-bond B/E should be accompanied by a copy of attested into bond B/E.

4.05 POST AUDIT OBJECTIONS AND HOW TO DEAL WITH THEM :

At the time of post auditing bills of entry, if it is found that duty has been short levied due to the following reasons :

(a) Wrong classification of goods and hence applying wrong rate of duty, resulting in short levy.

(b) Mistakes in arithmetical calculation of assessable value and amount of duty and/ or misdeclaration or under valuation.

(c) Benefit of exemption notification wrongly extended, even when the benefit of the notification was not due.

(d) Application of wrong exchange rate.

(e) Change in classification and the consequent changes in rate of duty on the basis of chemical testing done. In such cases specific objection should be raised and audit point of view regarding correct classification, valuation, rate of duty and the resultant short levy etc. Should be expressly indicated. The file should then be sent to the concerned group or department for further action to issue demand notice and to decide the case after considering the importers written and oral submissions.

4.06 THE TIME PERIOD FOR ISSUING THE LESS CHARGE DEMAND NOTICE UNDER THE PROVISIONS OF SEC.28 OF C.A.1962, FROM THE RELEVANT DATE - REG.:

"Relevant date" means :

(a) In a case where duty is not levied the date on which the proper officer makes an order for the clearance of the goods.

(b) In case where duty is provisionally assessed under Sec. 18 the date of adjustment of the duty, after the final assessment thereof.

(c) In case where the duty has been erroneously refunded, the date of refund

(d) In any other case, the date of payment of duty.

However, in the case of Import made by any individual for his personal use or by Government, or by any Educational, Research or Charitable institution or Hospitals, the time period will be within one year from the relevant date. Further if the duty was not levied, short-levied, or erroneously refunded, by reason of collusion, or any willful mis-statement or suppression of facts by the Importer/Exporter or his agent then the time limit would be five years from the relevant date. In such case the notice under section 28 should be issued by collector of customs. Hence it is imperative that all audit objection should be dealt with, within six months from the relevant date not only by the audit department but also by the C.R.A. So that there is no loss of revenue.

NOTE: In case of proved negligence on the part of either the Group Appraiser or the Audit Appraiser the concerned officer's explanation should be called for and the objection categorised.

4.07 PROCEDURE TO REALISE SHORT-LEVY OR NON-LEVY :

When it is discovered that any duty has not been levied, or has been short-levied, or erroneously refunded, Sub Section (i) of Sec. 28 of the Customs Act 1962 prescribes that a notice should be served on the importers or the persons chargeable with the duty asking them to show cause why the amount due should not be paid. Ordinarily a period of 15 days should be allowed in the notice as at present. Such notice should be issued within six (6) months or one year as the case may be from the " relevant date" as defined under sub-section (3) of section 28 of the customs act, 1962. A proforma of the notice is enclosed (annexure 'a')

(2) It should be borne in mind that under the proviso to

Sub-Section (i) of Section 28 of the Customs act, 1962 that where any duty has not been levied, short-levied or erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the agent or employee of the importer, the notice of demand may be made within five (5) years from the relevant date.

(3) After considering the representation if any made and after hearing the party, a formal order (annexure 'b') should be communicated to them by the A.C.. "determining" the amount of duty and asking them to pay it within a further period of 15 days. The order should indicate the appellate course open to the party if they are aggrieved by the Assistant collector's decisions.

Annexure 'A'

No..... By regd. Post a/d.

From:

the Asstt. Collector of customs in charge of Group/Department

To:

.....

Custom house

.....

Dated the

Sir/Gentlemen.

Subject:- .....Cases/ Packages ex.

S.S.....B/E no.....

Dated.....IGM. No.....

Dated.....parcel/packet no.....

Dated.....contents.....

Senders.....

Whereas it appears that customs duty amounting to Rs.....(Rupees.....) which was not levied/short levied/erroneously refunded in respect of the above consignment is due from you as indicate below:-

As provided for under section 28(i) of the customs act. 1962, you are hereby directed to show cause to the undersigned/assistant collector of customs, group/department as to why you should not pay the amount which was not levied/short levied/erroneously refunded as specified above within 15 days from the date of this notice.

Any representation against this notice with necessary documentary evidence in support of the correctness of your stand should be made

within the above specified period. You are also requested to state if you would like to be heard in person in this regard if no reply is received within the period as aforesaid or if you fail to appear for personal hearing on respective date as intimated to you, the case will be decided on the basis of evidence on record without further reference to you in this regard.

Assistant Collector of Customs

Copy forwarded to:-

M/s

(Clearing agents)for information and necessary action.

The original notice has been served on the importer without prejudice to the liability of m/s..... who are deemed to be the owners of the goods as contemplated in section 147 of the customs Act,1962 by virtue of having acted as importer's agent in respect of aforementioned goods.

Assistant collector of customs

Annexure 'b'

Order confirming demand by regd. Post a/d.  
No..... Appraising  
department/group custom  
house dated  
the.....  
To:  
Mr./Messrs.....  
.....  
.....  
sub.....cases/packages  
ex.s.s..... B.E. No.....DT.....  
contents.....

1. A notice under section 28, sub-section (i) of the customs act 1962 for duty demand amounting to Rs..... was issued under this office memo of even number dated.....in respect of the above consignment. the importers have neither put forth any plea nor have they produced any documentary evidence in their written reply no.....dated..... the importers have put forth the following plea:-

.....  
.....  
.....

2. And have produced the following documents:-

.....  
.....

3. They did not ask for a personal hearing/they were also heard in person and submitted that..... I have duly taken into account the above pleas and consider that the duty originally demanded is correct/ that the correct duty recoverable is as indicated below :-

.....  
4. The demand is now confirmed to the above extent under sub-section (2) of section 28 of the customs act, 1962, and if the importers fail to fulfill the obligations in terms of this decision within 15 days hereof, it will be enforced in due course as provided for in section 142, sub-section i, clause (a) and clause (b) of the said act.

An appeal against this order lies to the Appellate Collector of Customs, within three months from the date of receipt of this order, as prescribed under section 128 of the said act and it should bear a court fee stamp of fifty paise. The amount of duty as stated above shall also be deposited with the custom house as required by section 129 of the said act before the appeal is entertained.

Assistant Collector of Customs.

Copy forwarded for information to the Customs

House Agent) M/s.....their attention is invited to their liability under Section 147 of the said act which provides for the recovery of the above mentioned amount if the above party fails to fulfill the obligations.

Assistant Collector of Customs

Note (i) : Mode of communication of demand notice:

The Central Board of Revenue has decided that the demand for less charge should be sent to the consignees with a copy to the respective clearing agent so that it may facilitate the later to pursue matters with their consignee principals. It should be clearly stated in the copy sent to the clearing agents that the original has been sent to the importers but this is without prejudice to the liability of the clearing agents in law to meet the demand. (Board's letter no. 52/3/52-cus. I dated 22.10.52

Note (iii) Prompt issue of demand : When the Directorate of Inspection Customs & Central Excise) in its correspondence with the custom house raises doubts about an assessment, demands for short collections under section 39 of the sea customs act (now section 28, customs act, 1962) should be issued promptly in order to obviate any loss of revenue on account of time bar. (c.b.r. Letter no.69(169)-cus. I/50 dated 29.8.50)

**4.07(a) ISSUE OF NOTICES FOR ADHOC DEMANDS-PROCEDURE REGARDING :**

Reference is invited to the earlier provisions relating to the procedure for issuing demand notices for realization of short-levy or non-levy

under Section 28-of the Customs Act, 1962. Since it is not legally permissible to charge more duty, though justified on merits, than what has been initially asked for in the demand notice, it has been decided that, for the purpose of raising a demand for short-levy, ad-hoc demand notice should be issued under Section 28 of the Customs Act 1962, and at the time of issuing the Ad-hoc demand notice the officer concerned should make the best estimate of the amount of duty short-levied/non- levied, correct amount of duty to be realised should be determined only after giving due consideration to the representation etc. If any, made by the person concerned. (c.b.e & c.f. no 369/3/74-cus i dated 23-10-75.).

**4.07(B) APPLICABILITY OF SECTION 28 OF THE CUSTOMS ACT, 1962.  
IN CASE OF SHORT PAYMENT OF DUTY :**

The Board had occasion to examine a case where the appellant's solicitor had put forth a contention that Section 28 of the Customs Act, 1962 will be applicable only in cases where duty was short levied and not in cases of short payment of duty accepted by the Custom House. the substance of the argument is that Section 28 can apply only if the assessment falls short of the amount correctly leviable under the act. Ministry of Law, who were consulted in the matter have advised that this distinction between `short levy' and `short payment' is neither relevant nor tenable. Hence cases where the Custom House accepts through mistake payment of duty which falls short of the amount actually assessed, will also be cases of duty short levied within the meaning of Section 28 of the Customs Act, 1962. (C.B.E & C., New Delhi, LR. No 2/1/65-CUS VI dated 9-7-65)

**4.07(C) EXTRA DUTY ON ACCOUNT OF EXTRA DEBITS RAISED  
BY OVERSEAS BUYER :**

The Board desires that in all cases where extra duty becomes leviable on account of extra debits raised by overseas suppliers, it should be ensured that the recovery is effected expeditiously. The original bills of entry should be traced and put up expeditiously. On no account should the realization of extra duty be delayed when the extra duty can be recovered. on the note sheet on the basis of the importers copy of the bills of entry after verification with the particulars in the Licence register, and after fresh debits are raised in the Licence, the duty realisation being later on but without delay endorse on the original bill of entry. The appraising group will also examine the I.T.C aspect before extra duty is recovered. (Ref: Board's letter F.no 55/7/65-CUS IV DT 1-4-65)

**4.07(D) CUSTOMS LOSS OF REVENUE DUE TO NON-ISSUE OF DEMANDS  
WITHIN THE  
PRESCRIBED TIME-LIMIT-INSTRUCTIONS REGARDING :**

The Public Account committee (1981-82) in its 99th report has expressed great concern about the loss of revenue to the public exchequer due to non-issue of demands within the prescribed time limit. The committee has desired that reasons for these lapses should be analysed and appropriate measures to avoid such loss of revenue by eliminating the avoidable delays and short comings in the functioning of the department should be taken. The committee has also emphasised the need for finalising the assessments promptly and conducting the checks and audit of the assessment unit regularly. Although the committee's report relates to the central excise. It would "mutatis mutandis" have application to customs as well because the element of time-bar is equally relevant to customs cases also.

4.07(e) THE MAIN REASONS FOR DEMANDS GETTING TIME-BARRED ARE REPORTED TO BE AS UNDER :

- (a) Objections;
- (b) Non-detection of irregularities in time;
- (c) Delay in raising the demands by the concerned department.
- (d) Failure of the concerned officers/audit to detect the short levy in time.

All concerned Asstt. Collectors are, therefore, required to ensure that prompt action for raising demand is taken so that they do not become time-barred. In particular, the following remedial measures should be adopted for this purpose:-

(i) Immediately on receipt of objection from the C.R.A.D, demand-cum-show cause notice should be issued without any loss of time, even if, the concerned officer does not agree with the audit's point of view. If the department does not agree with the audit objection and the deptt's stand is ultimately accepted by the C.R.A.D., such demand-cum-show cause notice may be withdrawn on settlement of the audit objection. Till settlement of the audit objection, either the demand should be raised periodically or the assessments made provisional, so that duty demand does not become time-barred for any period.

(ii) In respect of audit objection raised by the internal audit Deptt., The demand-cum-show cause notice should be issued immediately if the objection is, prima facie, acceptable. where the Asstt. Collector does not agree with the internal audit deptt's point of view, he should promptly refer the matter to the collector who will take a final view within one month of the issue of the audit objection and indicate his views to the concerned Asstt. Collector and D.C./A.C. (Audit) for taking immediate necessary following action.

(iii) On transfer of the Asstt. Collector of the group or unit, the report of taking over and handing over charge should clearly indicate details of pending provisional assessment on account of audit objection. The officer taking over the charge should thus assume the responsibility of finalising these matters early and raising the demands within the prescribed time limit.

(iv) In case of proved negligence on the part of an officer resulting in revenue loss due to time-bar, appropriate disciplinary action should be initiated against such officer. (C.B.E. & C. Letter F.no. 210/28/81-CX-6 dated 10-3-83 Circular No. 5/83-CX-6)

#### 4.08 CLOSING OF ENTRIES IN DEMAND, PENALTY AND BOND REGISTERS INSTRUCTIONS REGARDING :

It has been observed that registers relating to demand notices under Section 28 of the Customs Act, I.T.C. bonds and guarantees for end-use certificates, provisional assessment, penalty and fine etc. are not being properly maintained in accordance with the instructions contained in the central manuals of the Deptt. All concerned should ensure that the entries in the above registers are properly maintained. Where entries in the said register are made regarding recovery of duty, fine and penalty etc. From the parties the entries must be closed under the signature of a gazetted officer concerned only. The entries in respect of the items where the amount of demand or bond is Rs. 5000/- and above should be closed by the Asstt. Collectors concerned. The registers should also be inspected by the Asstt. Collector once in a month. These registers should also be got checked up by the auditors of the internal audit department. The above instructions should strictly be followed by all concerned. (Ref : M(CUS)'s D.O. Letter Dy., No. 2875-M (CUS) 74 Dt.24-6-74)

Sec.28 of the Customs Act, 1962. Demand notices under-issue of reg. to avoid the possibility of the party pleading later on that the demands were not received in time, the board desires that such notices be issued by registered post, acknowledgment due or by hand delivery under proper receipt. (Board's f.no. 39/31/59 CUS IV dated 5-11-1959)

#### 4.09 NOTICE FOR PAYMENT OF SHORT LEVY ETC. - SERVICE OF CLARIFICATION REGARDING :

Under Section 153 of the Customs Act, 1962 notice issued under this act can be served by tendering it or sending it by registered post to the person for whom it is intended or to his agent and if it cannot be served in that manner, by affixing it on the notice board of the custom house. Section 153, in so far as it provides for service of notice by registered post has to be read

with Section 27 of the General Clauses Act 1897. Under that Section where any act authorises or requires any document to be served by post, then unless a different intention appears, the service is deemed to be effected by appropriately addressing, pre-paying and posting by registered post a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The contrary proof has to be given by the addressee to show that the service was not effected on him at the time at which the letter could have been delivered in the ordinary course of post. But subject to this contrary proof, when the notice is sent by registered post in the manner prescribed in Section 27 the presumption of service arises only on the expiration of the time at which a letter would be delivered in the ordinary course of post. The registered letter containing the notice must be put in the course of transmission so as to be delivered to the addressee in the ordinary course of postal transmission before the actual expiration of the period of six months.

It is considered that the period of six months provided in Section 28 of the Customs Act. 1962 is a sufficiently long time. the Custom House must gear up its machinery (IAD and Appraising departments) so that short-levy notices are issued in time, in the manner provided for by the law. (Boards' F.No. 55/34/65-CUS, IV, Dated 31-5-1965).

## FINALISATION OF DEMANDS

Demands issued for short levy of duty as a result of audit objections, errors in assessment etc., Should be finalised within six months from the date of issue of the demands. Cases which could not be finalised within this period should be reviewed by the Assistant collector who after examining the reasons for non-finalisation, adopt a suitable remedial measures. (G.I.M.F. No.25/5/59-CUS (CRC) dated 10th September 1959 with REF. TO F. 16/3/59. CUS (RCC))

### 4.10 PROMPT FINALISATION OF TIME-BARRED DEMAND CASES - PROCEDURE REG.:

(1) The question of duration for time-barred cases, where voluntary payment was not forthcoming despite persuasive action came up for Board's observation in 1970 and it was instructed under Board's D.O. Letter F.no. 8/32/70-CUS. VI dated 6-10-70 that "cases where parties have been asked to make voluntary payments should, as far as possible, be settled within the same financial year and should not be allowed to remain pending in the next financial years so as to figure as arrears. If payments are not made at the request of the custom house and the parties cannot be persuaded to pay, it would be better to review the cases and close them in time".

(2) The Ministry reiterated the above instructions in the year 1978, when it noticed that some of the Custom House/Collectorates were apparently not following the Board's instructions of 1970. and continued to show in arrears, various voluntary payment demands for a number of years. Reference may be made to the ministry's F.no. 512/25/77-CUS VI Dated 18-2-78. from Para 2 it is evident that the instructions contained in Board's letter D.O. No. 8/32/70-CUS VI DT. 6-10-70 are not being followed carefully. It is therefore, requested that every efforts be made to close this V.P. notices in accordance with the Board's letter cited above.

(3) In view of Board's instructions reproduced at paras (1) & (2) the concerned sections in the Custom House dealing with voluntary payment notices are hereby directed that after issue of voluntary payment notices serious follow up action should be taken and regular reminders be issued to the parties concerned making voluntary payments (under signature of concerned A.Cs) so that, as far as possible the payments are received and the cases are closed within the same financial year.

(4) The voluntary payment registers maintained for the purpose should be put up to the respective A.Cs once in a month for issuing suitable instructions.

(5) If despite all sincere efforts on part of the department the parties cannot be persuaded to make payments within the same financial year, then the cases should be put up to the competent authority for a review by the end of the financial year and action should be taken to close them in time, so that the cases should not, as far as possible remain pending in the next financial year to figure as arrears, for cases where request for voluntary payment is made only in the closing part of a financial year, the amount should normally be carried over to the next financial year for pursuing the case with the party, unless the payment is made earlier.

(6) The above instructions should be scrupulously followed so that there may not be any deviation from the Board's instructions reproduced at Para 1 and the figures of arrears of customs revenue are not unnecessarily inflated. (S.O.(GI)-59/79/(CAL) issued on the basis of F.no. 512/25/77- CUS. VI Dated 18.2.78)

#### 4.11 LESS CHARGE DEMANDS ENFORCEMENT'S ETC. - PROCEDURE TO BE OBSERVED :

The notice issued for less charge under Section 28(1) of the Customs Act, 1962 stipulates that the demand should be paid within 15 days from the date of demand and that any representation oral or in writing against the demand with necessary documentary evidence should be produced within the said period. Therefore, in terms of the 'notice' if no reply

is received within 15 days and if the case is clear, the order of confirmation should be issued without any further delay. In other cases where the issue cannot be decided without perusal of documents, a reminder may be issued giving another 15 days time and the case should be finalised after the expiry of the extended period. The order of confirmation of demand under Section 28(2) also stipulates that the amount should be paid within a fortnight from the date of receipt of the letter failing which action will be taken under provisions of Section 142(1) of the Customs Act, 1962. In case where the importers or exporters fail to pay the amount within the stipulated period it should be brought to the notice of the Asstt. Collector who should consider taking action under Section 142 (1) of the Customs Act, 1962, promptly if an appeal has not been made already and there are no other circumstances warranting deferment of action under Section 142(1) of the Customs Act, 1962.

The less charge files must be scrutinised every month and report should be given to the Assistant Collector concerned in respect of cases where the finalization was not done within the stipulated time giving reasons. All the officers concerned, including supervisory officers both in the Appraising(Main) and the groups, should ensure compliance with these instructions.

#### 4.11(A) ISSUE OF LESS CHARGE DEMANDS IN THE CASE OF CONDITIONAL EXEMPTIONS-INSTRUCTIONS REGARDING :

The Customs Act, 1962 provides for the issue of a show cause notice in the first instance which may be followed by demand notice after considering the presentation, if any, made by the person to whom the show cause notice is issued. This Section does not apply in the case of conditional exemptions, where exemptions, from customs duty is given subject to the condition that the importer will furnish proof regarding the end use of the imported article. (C.B.R. Letter No. 17/15/60. CUS-I Dated 6.5.63).

#### 4.12 ASSESSMENT/REFUND OF CUSTOMS DUTY - MISTAKES IN CALCULATION INSTRUCTIONS REGARDING :

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In the Audit Report (Civil) on revenue receipts, X6 1963, instances have been reported where short levies/excess refund occurred due to mistakes in calculation, and the amounts involved had to be subsequently recovered. The amounts involved were large and the Board is concerned that such mistakes should have escaped undetected until they were noticed and reported to the Custom house by the Central revenue audit in some cases. Duty calculations are required to be checked by accounts and/or the Internal Audit department; refund orders are in particular, subjected to pre-audit. If these departments are careful particularly where large amounts are involved, such mistakes could be largely

avoided. The Board desires that all concerned should be impressed with the need for exercising utmost care so that such mistakes do not recur. (C.B.R. Letter No. 55/48/63 CUS-IV Dated 8-8-63 CVII/210/63)

#### 4.13 AUDIT OBJECTIONS INVOLVING LARGE AMOUNTS AS LESS CHARGE :

When as a result of Audit objection, a less charge demand has to be issued, the mistake must be brought to the personal notice of the Assistant Collector in charge of the department concerned, who would satisfy himself that the mistake is not malafide. as a matter of fact, all cases of suspected malafide, irrespective of the amount involved, should be invariably brought to the notice of the Assistant collector concerned by the internal Audit department. (C.B.R. Letter F.NO. 55/1/63-CUS.IV of 12.2.62)

#### 4.14 RECOVERY OF SHORT-LEVY OR NON-LEVY-RECOVERY OF EXTRA DUTY NOT EXCEEDING RS.25/- WAIVING OF :

When an Examining Appraiser finds goods in excess or mis-described but the amount of extra duty involved clearly does not exceed Rs. 25/- in any consignment, he should not detain the consignment or take any other action beyond noting the duplicate bill of entry for extra duty, which will not be demanded. he will forward it to the Internal Audit Department under receipt, to record the amount formally noted for extra duty. Similarly, no demand will be made for extra duty when the same is discovered at the time of audit or an adjustment after Weighment etc. when the amount does not exceed Rs.25/-, but the case should be passed on to the Internal Audit Department to record the amount as formally noted. The order does not apply to an omission (whether inadvertent or otherwise) to declare articles present in a shortage but different from those declared e.g. as omission to declare advertising matter in a package of general merchandise. In such cases, the duty can not be remitted but the consignment may be passed and the extra duty recovered under Section 39 of the Sea Customs Act (now Section 28 of the Customs Act,1962). (G.I.M.F.(DR) Lr.No. 39/117/36/CUS.IV Dated 10.11.56 & F.No. 22/3/57-CUS.IV Dated 21.2.57)

#### 4.15 RECOVERY OF DUTY AND/OR PENALTY - PROCEDURE REGARDING :

Where (i) any duty demanded from any person (including firm) or (ii) any penalty payable by any person (including firm) or (iii) where the terms of any bond or guarantee executed by the importers provide that any amount due under such instrument may be recovered in the manner laid down in Section 142(1) of the act, and if the amount is not paid, the following procedure should be adopted for recovery of the amount. the Group or Section concerned will in the first instance verify that no appeal has been preferred against the relevant order and after expiry of the appeal period within 10 days thereof, issue a notice to the importer or person concerned in the Proforma "A" annexed and send

intimation to all the departments of the Custom House (including other Groups) A.R.S. and the Cash & Accounts department in the Proforma 'B' annexed. The Groups, Sections or Departments receiving such notices should enter the details in a separate register, alphabetically maintained, for Proforma 'B' should be sent to other Custom Houses as well for necessary action.

When the amount specified in the notice is realized by any Group, Section or Department an intimation should be immediately sent to the issuing Group, who will take immediate steps to withdraw the notice and inform other Groups, Sections or Departments to this effect. Steps should also be taken immediately to withdraw the notice issued to the other parties like Clearing Agents etc. If the amount is paid by the importers. In such cases, if the amount is rendered direct to the treasury, the Cash/Accounts department should inform the issuing Group about the collections.

The Assistant Collector of the Group issuing the notice will see to it that such cases are entered in a separate register and closely watch the finalisation of each case. A report regarding the outstanding cases should be submitted by the ministerial staff to A.C.A. of the Group by the first week of every month with recommendations as to whether any of the cases should be referred to the District Collector in terms of clause (c) of the Sub-section (1) of Section 142 of the Customs Act, 1962. This procedure should however be followed as a last resort after properly verifying on the expiry of one month from the date of issue of the notice from all Sections, Groups or Departments concerned and other Custom Houses that the amount has not been realised. If the amount is realised/paid by the party after the notice to the District Collector is sent, the District Collector should be informed about such payment. A.R.S. will maintain an alphabetical list of persons/ firms on the basis of the intimation received from various Groups.

If refund is payable to any such person/firm, the A.R.S. before issue of the refund order, will obtain orders of the Asstt. Collector. Refund Section/Group A.C. concerned to adjust the amount due to Custom House against the amount of refund payable to the person/firm. The same procedure will apply "mutatis mutandis" in respect of adjustment of such dues against refunds payable by other departments to the same person/firm. The section concerned which issued the notice originally will be informed immediately after adjustment of the amount. Any goods belonging to the person/firm and passing through or under the control of any department of the Custom House should be sold in terms of Section 150 of the Customs Act, 1962 and the amount specified in the notice should be recovered from sale proceeds thereof. Copies of notices received from other Custom Houses should be arranged to be made out immediately by the S.A. (in the Appraising Department) and distributed to all other Groups, Sections and Departments. The subsequent action on such notices should be taken by the Groups, Sections or Departments concerned in the same way as if these notices have been issued by this Custom House.

PROFORMAS 'A' AND 'B' ARE ANNEXED BELOW:

PROFORMA 'A'

NOTICE OF RECOVERY U/S 142(1) OF THE CUSTOMS ACT, 1962

To,

Sir/Gentlemen,

Subject:.....

.....

Whereas you have failed to pay the sum of  
Rs.....demanded from you as customs duty/imposed on you as  
penalty under this Office Memo. No.....dated...../ as per  
stipulation in the bond/guarantee executed by you  
on.....Please take notice, that the amount will be recovered  
from any money payable to you by the custom house or other custom houses or from  
the sale proceeds of any goods belonging to you which are under the control of  
this custom house or other custom houses as provided under section 142 of the  
customs act, 1962, this is without prejudice to any other action that may be  
taken for recovery of the amount under the customs act, 1962 or under any other  
law for the time being in force in the Republic of India.

Yours faithfully,

Asstt. Collector of Customs for

(Appraisement)

PROFORMA 'B'

Appraising Department.

Memo.no.....Dated.....

Re.....

Shri/M/s.....has/have failed to pay the sum of  
Rs.....demanded as customs duty/imposed as personal penalty under this  
office memo. No.....dated..... as per stipulation in the bond/  
guarantee executed by him/ them on.....

A copy of the notice issued to the said..... under section  
142 of the customs act, 1962 is enclosed. You are requested to deduct the  
amount specified in the notice from any money payable by the customs house to

the said.....any goods belonging to the said person/firm passing through the custom house and under your control may be sold under the provision of section 150 of the customs act, 1962 and the amount stated in the enclosed notice may be deducted from the sale proceeds thereof. An intimation may kindly be sent to the undersigned as soon as the amount is realised. if the amount cannot be realised within a month a report may kindly be sent to the undersigned for taking further action in the matter.

ASSTT. COLLECTOR FOR APPRAISEMENT.

CUSTOM HOUSE,  
.....DT.....  
COPY FORWARDED TO  
.....(ALL DEPARTMENTS)  
.....(OTHER CUSTOM HOUSES).....

4.16 P.A.C. - ARREARS OF CUSTOMS REVENUE :

In point no. 125 arising out of Para 15 of the report of the Comptroller and Auditor General, the PAC enquired whether it had been examined in the cases of arrears that the parties were entitled to refunds or drawback or return of security etc. From which the amounts could be recovered. In reply certain Custom Houses have stated that in some cases this aspect was examined while in other cases it could not be examined. It is, therefore, requested that this aspect should invariably be examined and necessary action should taken under Section 142(1)(a) of the Customs Act, 1962. (F.No.512/10/74-CUS.VI Central Board of Excise & Customs, New Delhi, the 10th October 1974)

4.17 CLARIFICATION ON SECTION 142(1)(C) OF THE CUSTOMS ACT, 1962 :

Where any duty demanded or any penalty payable under the customs act is not paid and cannot be recovered from the person (including firm) in the manner provided under Section 142(1)(a) or (b) of the Customs Act,1962, a certificate signed by the Asstt. Collector concerned in the form appended may be sent to the Collector of the district in which such person owns any property, or resides or carries on business.

While preparing the certificate particulars, relating to property, residence and business of the person or firm should be furnished, as far as available, for information of the District Collector.

APPENDIX

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FORMS OF CERTIFICATE UNDER SECTION 142(1)(C) OF THE CUSTOMS ACT, 1962.

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FROM  
THE ASSISTANT COLLECTOR OF CUSTOMS,  
APPRAISEMENT, CUSTOM HOUSE,  
BOMBAY.  
TO

.....  
.....  
.....

Subject: Realisation of customs duty/penalty imposed on.....under the provisions of section 142(1)(c) of the customs act, 1962 (act I.ii of 1962).

Pursuant to section 142(1)(c) of the customs act 1962) i,.....Assistant collector of customs do hereby certify that a sum of rs.....has been demanded from and is payable by .....(by way of duty, penalty)under the said act and has not been paid and cannot be recovered from the said..... in the manner provided in section 142(1)(a) or (b), the said.....owns property/resides/carries on business (specify particulars of the property owned by the individual or the place or residence or the business carried on by him/the firm)in your district.

I am, therefore, to request you to kindly take early steps to realise the amount as an arrears of land revenue in accordance with the provisions of section 142(1)(c) of the customs act, 1962.

On realisation the sum may please be credited to the head of account "I-Customs-Sea Customs- Import duty/miscellaneous-penalties etc."

Yours faithfully,

Asstt. Collector of Customs

for Appraisement.

Custom House.....

Dated the.....

4.17(A) SECTION 142(1)(B) OF THE CUSTOMS ACT,1962- INTERPRETATION OF TRANSFER OF PROPERTY IN GOODS DETAINED UNDER THE SECTION :

The Government of India have ruled that the provisions of the last paragraph of Sec.39 of the Sea Custom Act,(now Section 142(1)(b) of the Customs Act) cannot be circumvented by the importer by disposal of the goods subsequent to their importation. As the importer is the owner of the goods at the time of import the goods become liable to the statutory liability of being detained under the last Para. of Sec. 39 S.C.A. (now Section 142(1)(b) of the Customs Act). The subsequent transferee took the goods from the importer subject to all equities and liabilities on the principle of "covest emptor" meaning that a purchaser cannot have better title than his vendor. (Extract of Letter C.C.I.M.F.(D.R.) M.NO.49/9/55-CUS.1, Dated 3-12-54)

#### 4.18 TIME BARRED CLAIMS :

(A) The request addressed to the importer should make it clear that it is not a 'demand' under Section 39 of the Sea Customs Act, (now Section 28 of the Customs Act, 1962) but that payment if made voluntarily, would be accepted.

(B) Requests should be issued only in cases where the amount involved is Rs.50/- or over and such letters should be issued only after orders of the Asstt. Collector in charge of a department, personally have been taken.

(C) The Board has decided that the same procedure as is followed in requesting voluntary payment of time- barred claims for short-levied duty in the case of the importations made on private account, can be adopted in the case of government stores even with greater justification as the government departments approach the Government of India for ex-gratia refunds in many cases which are time-barred under Section 40, of the Sea Customs Act(now Section 27 Customs Act' 62). Accordingly when such a request is made the importing government department should be acquainted with the position to enable it to make voluntary payment making it clear that the request is not a demand under Section 39, Sea Customs Act, (now Section 28 of the Customs Act '62) but that payment if made voluntarily would be accepted. (Ref. C.B.R. Lr. No. 39(138)CUS. IV/53 DT. 20-1-54)

(D) The Asstt. Collector will in any case where the circumstances suggest extreme carelessness and grave dereliction of duty, bring it to the notice of the Collector for such action as the latter may consider necessary. (C.B.R.LR.NO. 22/6/57-CUS.IV Dated 21.2.57)

#### 4.18(A) TIME-BARRED SHORT-LEVIES-SET OFF AGAINST AMOUNT REFUNDABLE :

Setting off amounts due to the importer under entirely different transactions towards the duty omitted to be recovered under Section 28 Customs Act, has no legal justification. According to Ministry of Law,the proper remedy is to file a suit and to get the amounts due to the government from the

importer, attached by a court either before judgment in circumstances or in execution of the decree that may be passed in the case. (C.B.E.& C. LR. F.No. 38/7/63-CUS.IV DT. 4-3-1964 File C.7/982/62-AP)

#### 4.19 RECOVERY OF SHORT-LEVIES HIT BY TIME-BAR CLASSIFICATION REG.:

The Judgment of the Bombay High Court in the case of M/S Pai, Asstt. Collector of Customs and other vs. Warna Sahakari Sakhar Karkhana Ltd. (Appeal No. 71 of 1963-MISC. Petition 407 of 1962) has been carefully considered in consultation with the Ministry of Law and the Solicitor General of India and the Board are advised that under Section 39 of the Sea Customs Act, 1878, (now SEA 28 of the Customs Act, 1962) a notice of demand issued within three months from the relevant date as defined in Sub-section (2) thereof is a condition precedent to the recovery and payment of the duty short-levied under Section 39. If this condition is not satisfied then there is no remedy available under the said act for the recovery of such short-levies. The Sea Customs Act. 1878 was a complete code regarding the levy, assessment and recovery of customs duties. It is a settled rule of law that where the statute creates a right not existing under common law, and provides a special remedy for the enforcement of such right, that remedy alone can be followed and any other remedy under the common law would not be available. If regard is also had to Section 40 (now Sec.27 C.A. 62) which is part of the scheme in which Section 39 occurs. It would be difficult to maintain even a suit as Section 40 prevents the person who has paid duty from claiming refund of charges erroneously levied or paid unless he claims it within three months. Thus there is a parity of treatment under Section 39 and 40 which suggests that even a suit for the recovery of the difference would not lie. In view of what has been stated above and in view of the further change in the law providing for a period of five years for demanding short-levy under Section 28 of the Customs Act,1962 the Board have accepted the position set out in the above mentioned judgment. (CBE & C.F. NO./112/62-CUS. Dated 15-11-1967).

#### 4.20 AUDIT OBJECTIONS-HOW TO DEAL WITH AUDIT-CENTRAL EXCISE RECEIPTS AND REFUNDS AUDIT OF BY COMPTROLLER AND AUDITOR GENERAL OF INDIA AND RECOMMENDATIONS OF P.A.C.-INSTRUCTION- REGARDING. :

The intention is that in the case of objections which do not relate to notification or orders issued by the Board or the Government of India, demand should be raised forthwith by the Collectors unless they have reasons to feel that the objections are prima facie untenable. Where they are convinced that the objection should be resisted, they should take up the matter suitably with the audit authorities and if the Accountant General concerned does not veer round to their view point, the matter should be reported to the board for decision. But, all this process must be completed in time so that demands if any, to be raised,

do not get time-barred. However, if the audit objection relates to a notification or order issued by the board or the Government of India a reference should invariably be made to the Board immediately.

#### 4.20(A) PROMPT SETTLEMENT OF C.R.A OBJECTION :

In their hundred and tenth report (1969-70) the public accounts committee expressed their displeasure on the delays in settling and uneasiness in regard to the casual manner of dealing with the C.R.A. objections. The board, therefore, desires that all the C.R.A. objections having a financial bearing should be attended to very promptly. A reply on merit and not merely a provisional reply should be sent to all the C.R.A. objections positively within 2 months of the receipt of their objections and the objections should be settled positively within three months. If no settlement is possible because of any reference made by the C.R.A. or otherwise, the matter may be reported to the collector immediately thereafter. The Board intends to keep a watch over the implementation of the above instructions and a statement in the enclosed proforma should be forwarded to the under secretary concerned by name. The above instructions of the Board should be meticulously followed by all the depts. Concerned. (Ref. F.No. 20/37/70-CUS 1 Dt.10-11-70 From C.B.E.& C New Delhi)

#### 4.21 I.A.D/C.R.A.D. OBJECTION TO AVOID DEMANDS BECOMING TIME BARRED - INSTRUCTION REGARDING :

##### REGULAR OBJECTIONS :

Wherever it appears that there may be short levy of duty as indicated in an objection raised by the I.A.D or the C.R.A.D. demands should be issued immediately on receipt of the objections. Reference Memos :

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In the case of "R" memos. received from the I.A.D. Demands need not however, be issued until they are converted into regular objections. The "R" memos. received from the C.R.A.D. should be treated differently and demands should invariably be issued for such memos. As is done for objections. to meet the objection of C.R.A.D, that the Custom House continues to assess as per its established practice, notwithstanding the assessment being objected to by them, it has been decided that future cases may be Assessed provisionally even though there may have been an established practice. In regard to Bill of Entry under a C.R.A.D. objection and other bill of entry which have already been assessed but are still in audit with the I.A.D or C.R.A.D. less charge demands should be issued on receipt of objections even though there was an established practice, so that, if it is finally decided to recover duty it should be possible to do so within the prescribed time limit. In case where there is no established practice less charge demands must issue within the usual time limit of 6 months/as the

case may be (S.O. 4/71 (CAL) issued from file CVII-19/71).

#### 4.22 CORPORATE BODIES-OWNERSHIP-INSTRUCTION REGARDING :

In the case of Imports by Post, Banks or other Corporate bodies to whom parcels or packets are addressed on account of their clients, cannot be regarded as Clearing Agents within the meaning of Section 202 of Sea Customs Act (now Section 146 of the Customs Act, 1962 ). They are deemed to be the owners of the goods and action should be taken against them under Section 142(1) of the Customs Act, 1962 irrespective of who the ultimate consignees of the goods are. (endt. of the Government of India, Finance Deptt.(C.R) No. R. Dis 654-CUS. 1/34 dated 19-9-34 R. Dis 710 Customs Act, 1962 1/35 dated 29-6-65 and C.B.R.D. DIS 78 CUS 1/37 dated 3-2-37

#### 4.23 PROCEDURE OF INTIMATING THE FIGURES OF ARREARS-CLARIFICATION REGARDING :

Board's letter says that the question of defining the arrears of customs revenue has been reconsidered by the Board and the following clarifications are furnished. The Board desires that these instructions should be borne in mind while furnishing figures to the respective Accountant Generals for the purpose of the annual para in the audit report and for replying to parliament questions etc. The terms `effective arrears' should be taken to mean demands of all types where the party's representation, if any, individual or general, has been considered by the Customs Authorities and orders passed and the amount of duty is still due. This would mean that only confirmed demand should be included in the figure of arrears unless information is specifically asked for unconfirmed demands. Doubts have been expressed regarding certain type of demands and the position is clarified as under:-

##### (A) DEMANDS MADE ON THE INDIAN AIRLINES REGARDING FUEL AND LUBRICANTS BROUGHT BY AIRCRAFTS:

Since the general question and IAC's representation is under consideration, these can not be treated as `effective arrears'.

##### (B) SHIP'S STORES:

Wherever, cases have been decided by the Asstt. Collectors or by Appellate Collectors after applying Board's latest orders issued vide Letter F. No. 1/8/69-Customs Act, 1962 VI dated the 22nd May, 1970 and duty has not been paid, the demands may be included. Where on account of the cases going to high courts, it has not been possible to apply Board's above orders, such cases should not be included.

##### (C) NOTE PASS CASES:

Where the party has not represented within 6 months of the finalisation of the Bill of Entry and duty has not been paid, these may be treated as arrears. But where a representation, in whatever form has been received and is still under consideration, outstanding amount of duty should not be included.

(D) Since the general issue of payment of duty on transit shortages on goods is under consideration/discussion with his majesty's Govt. of Nepal or with Indian Railways, arrears cannot be treated as 'effective arrears'.

The Board desires that the above orders should be applied before statements of arrears of demands issued upto 31-3-1970 and pending on 31-10-1970 are sent to the respective Accountant Generals. (F.No. 8/37/70-CUS VI Dated 9-12-70)

## \* C A S H D E P A R T M E N T

### 5.01 INTRODUCTION :

The Cash department deals with the Collection of Duty, Interest, ITC fine, Penalty, Revenue deposits and other dues pertaining to the Custom House. As far as the Appraising work is concerned, the Cash Department performs the function of collecting the duty etc., assessed both for Imports and Exports.

The Assessed Bills of Entry (fully set), Shipping Bills and challans duly completed in all respects are received in the Cash Department of this Custom House for payment of custom duty, ITC fine/penalty, less charge etc., alongwith the demand drafts/pay orders or cheques (subject to realisation), drawn on Reserve Bank of India. Small difference between the amount shown in the documents and that in the demand draft/payorder, can be paid in cash. After payment, Oval stamp is affixed on the Original, Duplicate, Triplicate, and Quadruplicate copy of the Bill of Entry, Shipping Bills and challans indicating the cash number in red ink with stamped date, sign of shroff therein. The cash number is running serially for a month. In the cash sheet, the details such as cash number and date, party's name, amount recovered (CHA No.) etc., are shown separately in the Import cash sheets, Export cash sheets and Misc. Cash sheets, i.e. CBR CUS 44, 44a & 45 respectively. After payment, full set of the Bill of Entry is sent to the Accounts Department.

In the Accounts department, the duplicate copy of the Bill of Entry is pin-point punched with the security emblem of the Custom House, thereafter, the Original Bill of Entry is detached and retained by the Accounts department. The clerk incharge of out-of-charge, then gives the Out of Customs charge on the Duplicate copy of the Bill of Entry in case of first check. Except for the Original copy of the bill of entry remaining copies are returned to the Importer/CHA. The details of the Original Bill of Entry such as cash number,

date, Rotation/line number are then entered in the 'key register' maintained in Accounts department. The Bill of Entry is then sent for Micro- filming, and subsequently the same is sent to Manifest Clearance Department (M.C.D) for matching with the duplicate copy of the Bill of Entry and for closing the line number of IGM.

In the case of Second check (Appraisalment) out of charge is not given on the Duplicate copy of the Bill of Entry. The Out-of-charge

NOTE : The Appraiser is not responsible for any Arithmetical calculations or computing errors in Duty calculation.

#### 5.02 P.D.ACCOUNT PROCEDURE :

Apart from payment of duty by payorder/demand draft or cheque, customs dues including customs duty, fine/penalty on the bill of entry, shipping bills, challans can also be paid by the process of adjustment from Personal Deposit account. In such cases, an Importer/ Exporter or CHA can open P.D. Account, maintained by the Accounts Department. If any Customs dues, fine/penalty are to be paid, the parties will take challan from the respective departments duly filled in and signed and get the same debited from their P.D. account by the Accounts department.

The same procedure, as being followed in cash department, is followed with separate records in respect of Personal Deposit Account, with separate duty recovery stamp indicating cash number in red ink, ending with 'D' therein showing that the duty/fine/penalty etc. Have been debited to the personal deposit account of the concerned personal deposit holders.

The total revenue is deposited daily in reserve bank of India, Bombay, under the head of Account "037-CUSTOMS"

#### 5.03 IDF. Procedure :

IDF. means Import Duty Free. Here the duty is not payable as per the tariff itself. Such goods when imported are not chargeable to duty. In order to process such bill of entry, the same is sent to Import Department after completion of the Appraising group formalities. The receiving clerk in the Import Department assigns the IDF. no. And date. Thereafter the bill of entry is sent for pre-audit. After receiving the bill of entry back from pre-audit the Office Superintendent, Import department give out of customs charge in case of first appraisalment bill of entry. However, in case of Second Appraisalment bill of entry the out of charge is given by the Shed Appraiser. The Original Bill of Entry is retained and sent to the Manifest Clearance Department for further necessary action.

#### 5.04 ADF. Procedure :

ADF. means Assessable Duty Free. Some items may be chargeable to a standard rate of duty, but by virtue of some notifications they are fully exempted from payment of duty in such cases, the ADF. Procedure is resorted to. After the Bill of Entry is completed, the Bill of Entry is sent to the respective ADF. clerk to assign the ADF. no., Stamp and date. the clerk after assigning the no. Puts his signature below the the stamp.

In the case of first check bill of entry, the Deputy Office Superintendent in-charge will give the "out of customs charge" after the ADF.No. and stamp is endorsed. However, in case of Second check of bill of entry the "out of customs charge" is given by the Shed Appraiser. In both these cases the Original Bills of entries are detached and sent for Micro filming. There after these bills are sent to C.R.A. for audit. Finally these bills are sent to M.C.D. for matching and closing the IGM

## **S H E D / D O C K S D E P A R T M E N T**

### 6.01 Introduction :

It is a place where the physical examination of the goods is done. The Examination can be of Import or Export cargo. The custodian will be incharge of the physical custody of the goods. The docks area or examination area is generally a place declared as Customs Area. It is approved by the Collector of Customs in charge of that area. He declares these areas as a Customs Port, Airport or Customs Area by virtue of Section 7 & 8 of the Customs Act 1962. Similarly the Inland Container Depots (ICD) or Container Freight Stations (CFS'S) are also declared as Customs area. The principal function performed in the docks is the physical examination of Import and Export cargo, generally with reference to examination order given by the scrutinizing officer.

### 6.02 Examination of Import Cargo :

Major portion of Import cargo comes into India either through Sea, or Air ports. The Import cargo can also come through the various land border stations situated in the north, north – west and north east regions of our country. When any import cargo comes through these points it is subjected to checks by the Customs Department. It is mandatory that all the Imported goods should come only through these points. Any imported goods coming through unauthorised points are liable for action under section 111 of the Customs act.1962. These goods which come into India through the authorised points are subjected to two operations.

1. The submission of Bill of entry for Scrutinising documents and Assessment.

2. Physical checking of the goods.

FCL means a Container containing cargo covered by one item in the manifest. LCL means a Container containing cargo of more than one item in the manifest. Import examination are of two types.

1. Examination under first appraisalment.
2. Examination under second appraisalment.

6.02(a) First Appraisalment Examination :

Under this procedure the Importer/CHA presents the full set of B/E containing five copies along with the invoice packing list and other documents, if any the Examination order will be endorsed on the reverse of the original B/E. It is expected of the officer who is carrying out the examination (A.O. or E.O.) to check all the parameters required by the Examination order. It may be borne in mind that first check examination is given only when the particulars submitted are not sufficient to Assess the goods. Hence Examination report must give as much information as possible to help the group A.O. to arrive at the correct assessment.

6.02(b) Mode of examination :

The first aspect of examination is to scrutinize the documents presented by the importer/CHA.

1. Check if all the parameters like value, quantity, weight etc. are written in words as well as figures.
2. Check the invoice carefully to ascertain that the particulars given in these documents tally with the declaration in the B/E.
3. Check the identity of the person bringing the documents for examination.
4. Check if the invoice number & date are correctly reflected at the foot of the B/E.
5. First read the examination order carefully and then proceed to examine the goods carefully in the following manner :

(a) "Inspect the lot" means that the total goods presented for examination should be visually inspected so that a fair idea of the number of packages presented can be ascertained. If the lot consists of more than 20 packages then it need not be physically counted, the examining officer may rely on the forwarding done by the custodian of the goods.

(b) "Check marks & numbers" marks & numbers should tally with

the marks & numbers declared in the B/E. If there is a discrepancy the same should be reported in the Examination report.

(c) Thereafter check all the parameters as required by the examination order. selection of packages should be representative in nature.

(d) Any catalogue/literature found should be sent to the group after duly initialing and dating them.

(e) Certify the quantity, weight or other such parameters if required in the examination order. Care should be taken to see that there is no overwriting. If at all there is any overwriting/corrections these should be attested with dated signature.

(f) Samples may be drawn if so required by the examination order.

Note : (1) Regarding Import sampling please see detailed note under heading "procedure for drawal of sample" below.

(2) If percentage weighment is done then 1% difference in weight is permitted. However if the full cargo is weighted then no allowance in weight is given.

**6.02(c) How to handle discrepancies during examination :** in case of:

1. Nil Import Marks :- The number of packages to be examined should be doubled. However, in case of Reputed Importers and in case of Standard packing this may not be done. All the packages having 'Nil' marks should be prominently marked with IGM & line number of the respective B/E. The Examination report must carry suitable endorsement.the making of packages with IGM & line number may not be insisted in specific cases like import of sugar,wheat,pulses etc. in break bulk.

2. Duplication of marks :- If two consignments are having identical Import markings then number of packages to be examined should be doubled. All packages in the respective B/E should be marked with the IGM & line number shown in the respective B/E. The examination report should show that action regarding duplication of marks has been taken.

**6.02(d) How to write Examination Report :**

The examination report in the case of First appraisalment should be written on the reverses of the Original B/E. The place where the examination was carried out & registration number if any should be mentioned before beginning the Examination report. If there is no discrepancy and if the full lot is presented for examination,then a simple report "examined and found all

particulars correct as declared" is sufficient. In that case the quantity, weight & other such parameters should be certified, if so required in the examination order. If sample is drawn then suitable endorsement to that effect should be made in the examination report.

However, in case of discrepancy the full particulars showing the discrepancy should be mentioned in the examination report. All the relevant documents, catalogues, literature etc. found should be properly initialed and dated.

At the end of the Examination report the Officer should put his full signature & date. The name of the officer examining the goods should also be written legibly. If this report is to be countersigned by Superior officer, then he too should do likewise. After the Examination report is endorsed on the reverse of the B/E, the Importer or his authorised representative should also sign the report in like manner in token of having been agreed to the Examination report. All discrepancies should be routed through the supervisory officer.

Note: (1) In case of serious discrepancy in the declaration or in the goods, the B/E, after obtaining the signature of the importer or his representative, should be sent by dispatch to the officer in charge who in turn will make arrangements to send the same to the respective group A.O. with his comments and signature.

(2) In case of First appraisal examination the "out of customs charge" is not given by the officer examining the goods. The same is given by the cash department after the recovery of duty.

(3) The First appraisal can be of home consumption B/E (white colour) or into-bond B/E (yellow colour).

(4) Part cargo can be presented for examination by the importer provided the lot has a running serial number to it. The importer or his representative should indicate the quantity & identifying marks & numbers of the part cargo which he wishes to get examined. If the whole lot does not bear serial number and marks are same on all the packages, then the part goods examined should be kept separately and IGM & line number of B/E should be prominently put on the packages so that the same goods should not be presented again when the remaining goods are examined.

#### 6.02(e) Second Appraisal Examination :

This is identical to the First Appraisal examination except for the fact that the Examination report is endorsed on the reverse of duplicate B/E. and the "out of customs charge" is given by the Shed Appraiser. Hence in this case it is necessary to see that duty has been paid or Import duty free (IDF) endorsement has been made. However in the case of Into-bond B/E the endorsement "permitted to be bonded" is given by the Shed Appraiser when all

formalities of examination and depositing of samples, if any, are done. In Major Ports where computerization has been done, the process of data entry has to be completed before physical "out of customs charge" or "bonding permitted" order is given.

### 6.03 Various types of Examination Orders :

(a) Inspection means to see a package externally and verify that the marks and numbers on the package agree with those declared in the bill of entry or Shipping bill.

(b) 'Opening and inspection' means to inspect the package at the outset externally according to (a) above and then to open the package and verify whether the contents agree with the items of the invoice and the declaration in the bills of entry.

(c) Examination includes opening of the packages and verifying declared description of the goods. If quantity, weight or any other parameters are to be checked then specific orders to that effect is endorsed in the Examination order.

#### 6.04 Percentage of packages for Examination purposes :

Normally 2% of the total number of packages from a uniform consignment subject to a minimum of two and maximum of twenty packages to be examined, unless warranted otherwise by special circumstances. The packages are selected at random from the lot.

#### 6.05 Examination of various types of goods :

Different types of goods call for checking from different angles. Few examples are given below:-

##### i. Bulk cargo of scrap on board the vessel or on lorries :

For examination of bulk cargo of scrap on board the vessel or on the lorries, initially lotwise goods are examined superficially by the shed appraiser and report is given. However loading of the goods into the lorries is supervised by Preventive Officer. Report is given to the Shed Appraiser who attends the final weighing of the goods will, in addition to the final weighing report, give the summary report showing the total excess or shortage, as the case may be. However, the examination report should be given by the Appraiser who first examines the lot.

##### ii. Books and periodicals :

Books and periodicals are to be examined with a view to detect obscene or seditious matter, objectionable maps contained therein or books of specified titles which have been prohibited from entry into India under notifications issued in pursuance of section 11 (1) of the customs act, 1962.

##### iii. Drugs and medicines :

The goods should be referred to the Assistant Drug Controller.

The goods should be released only after obtaining no objection from that agency.

iv. Other cargo :

Edible items like pulses etc. should be referred to Port Health Officer. All plant materials including pulses should be referred to Plant Quarantine for No objection before release.

(a) Lockfast cargo :

In order to minimise the chances of pilferage of the lockfast cargo, examination of such cargo should be given priority. Goods after examination and proper repacking by the CHA.or concerned person should be deposited back in the lockfast.

(b) Motor cars and Motor Cycles & Machinery :

While Examining Machinery and automobiles, details which are relevant to check import policy in force and might have any bearing on the value of goods in order to determine correct duty, and also classification, are required to be checked carefully. In such cases detailed examination order is given. The examination is also carried out to ensure that no item of new machinery is cleared under cover of a specific import licence issued for second hand machinery and no import licence which is normally issued for new machinery only, is attempted to be utilised to cover a second hand machinery. Examination of second hand machinery imported is to be done with sufficient care by the officers.in case of examination of second hand machinery whenever enhancement in declared value is proposed basis of such enhancement with supporting evidence may be given.

(c) Defence cargo :

As there may be genuine difficulties on the part of the Defence department to furnish all the details/documents asked for by the customs officers, for reasons of security, therefore in regard to Defence cargo, only 'inspection' or where necessary 'opening and inspection' order to check agreement of the contents with the declaration, is resorted to. Being sophisticated items and of sensitive nature, the defence goods should be handled carefully.

In case of examination of Defence cargo it will be sufficient if examination order is limited to checking of marks and nos.only

(d) Re-Imported Goods :

Provisions of Sec.20 of the Customs Act 1962 are to be kept in mind, while examining these goods. All the packages of re-imported consignment are to be opened and the contents examined thoroughly and descriptive details thereof including stencilled details, if any, on the actual goods, recorded in the examination report. A specific mention in the examination report, as to the establishment or otherwise of the identity of these goods with reference to the details in the export documents and export certificate relating to their original export out of India, should also be endorsed. As per the requirement under section 20 of the customs act 1962 the re-imported goods should be the same goods which were exported out of India and their re-importation should have

taken place within 3 years after exportation of the goods.

v. Shortage, damages, deterioration of cargo :

(a) Survey :

Whenever the packages of a consignment are landed from the steamer in an apparently damaged condition, the importers apply to the docks Assistant Collector for permission to conduct survey. On orders from the Assistant Collector, all the damaged packages are opened and examined by the docks Appraiser/ Examiner in the presence of the Steamer Agent's survey representative and Importer's agent and the details viz., condition of the packages on visual inspection; description of goods, quantity of goods found sound/broken/short, existence of room for the short contents in the packages are recorded on the Bill of entry and the signatures of the representatives of the Importers and the Steamer agents are obtained thereon in token of the survey having been held in their presence.

(b) Shortage :

If a package has landed in sound condition but during the customs examination some contents are found to be short, the full details of the shortage are to be recorded in the report. From an idea of the arrangements of the contents inside the package and size of the package, the fact as to whether there is any room or not for the shortage items in the package is also to be recorded. In the absence of any room for missing contents and in view of the package having been landed in sound condition, the shortage is deemed to be due to short-packing at the supplier's end.

Note : Where value/duty amount involved is more than/expected to be more than Rs.10,000/- such survey should be carried out under the supervision of Asstt. Collector (docks).

(c) Damaged/ Deteriorated goods :

Examination and Assessment of damaged and deteriorated goods are carried out keeping in view the provisions of section 22 of the customs Act,1962 and only after the same are duly received by the custodian from the shipping agent/ship. the limit of Rs.10,000/- is also to be made applicable in case of section 22 for carrying out survey under supervision of ac/docks. The option of the importer or his authorized representative should be obtained in writing for the purpose of section 22 (3) of customs act.

(d) Shortages due to pilferage-under Sec.13 of the Customs Act,1962 :

If during the Customs Examination of the consignment and before grant of out of charge, shortage in any package is established with room for missing contents in the package and the package is found to be tampered and damaged provided the package is verified from the lantally of the Steamer Agents and the Port Trust to have landed in sound condition, then the shortage is deemed to be due to pilferage. Such pilfered goods are not liable to duty except

when such goods are restored to the importer.

vi. Examination of goods with wrong or nil marks :

(a) packages with wrong marks :

In all cases where the packages bear wrong marks i.e. the marks and numbers on the packages are found to differ from those on the Bill of entry and other documents, the packages are further inspected to check agreement of the size, measurements, gross/nett weight marked thereon with those on the documents. If agreed, a few packages may be opened to verify contents with reference to the invoice and B/E declaration. If these also agree, the importers are then asked to get an amendment application from the Steamer agents addressed to the Assistant Collector (Manifest Clearance Deptt.) And on the basis of this application, further process and fuller examination as required is completed.

(b) Packages landed with 'nil' marks :

All such packages produced by the Importers are examined by the docks Appraiser/ Examiner if the weight/size particulars, if any, marked on the packages and the contents agree with the description, value and other details on the B/E, and invoice then the packages are stencilled with the B/E no. And date and also attested by the concerned Appraiser with initial and date. This fact is also recorded on the B/E along with the Examination report so as to enable identification of packages at any time. In case it is established that there has been wrong supply of the cargo and the Steamer agents request for re-shipment of the cargo back to the foreign shippers then after verification of the port trust's out-turn statement, the foreign home manifest and other connected correspondence by way of documentary evidence to substantiate the claim of the Steamer agents as wrong supply or shipment, the cargo is examined by the docks staff with reference to the declarations in the re-shipment application and other documents and if found in order re-shipment is recommended to the Asstt. collector of Customs (Manifest Clearance Deptt.) For approval. Marking of packages with IGM and line number in may not be insisted in specific case like import of sugar, wheat, pulses etc. in break bulk.

vii. Over carried cargo :

This means that cargo was meant for a particular port but it was overcarried to another port and brought back to the original port by the same vessel on its return voyage or by some other vessel. While Examining such cargo, care is to be taken to verify whether the marks and numbers and other declarations in the Bill of entry agree with those on packages and Port trust's short-landing certificate relating to the Original voyage or the earlier vessel and a specific report to this effect is appended to the usual Examination report.

6.06 Duties of Docks Appraiser :

(i) Shed appraisers are in general control of the work in the sheds

allotted to them and should supervise the work of the Examining Officers attached to their sheds.

(ii) An overall check over the works of Examining officers will be exercised by Shed Appraisers in respect of the following cases, when the documents are marked to examiners :-

(1) Bill of entry filed under section 18, of the customs Act, 1962.

(2) Bill of entry filed under section 22, of the Customs Act, 1962 i.e. where abatement in duty has been claimed.

(3) Bill of entry filed under Sec. 20, of the C.A. 62 in cases of re-imported goods of Indian origin. (origin means produced or manufactured in India).

(4) Bill of entry where Scrutinising Appraisers have asked for opinion of the Examining Appraisers regarding CTH/CET. classification, fairness of value etc.

(5) Bill of entry where goods have to be tested or weight checked.

(6) Bill of entry for motor vehicles imported as passengers baggage.

(7) Bill of entry where infringements against the provisions of merchandise marks act, or other statutory acts have been reported by the examiners.

(8) Bill of entry where samples have been called for.

(9) Bill of entry where mis-declaration and under valuation is suspected.

(10) Bill of entry which cover goods under duplicate marks or nil - marks.

Shed Appraisers should carry out all orders that may be issued from time to time. He is also expected to ensure the following :

(a) The Shed Appraiser will ensure that the shed staff carefully examines and sees that no magazine, pamphlets, literature, books etc. Which are obscene or prohibited are passed undetected and the territorial misrepresentation in the map of India on the pages of books, magazines etc. Are not permitted clearance without rectification.

(b) The Shed A.O. will make a detailed report on the relative original and the duplicate copy of Bill of entry or Shipping bill in all cases wherein physical examination of the goods covered by a bill of entry or shipping bill reveals mis-declaration, wrong classification and/or under valuation. He should immediately forward the same, in a sealed cover together with the representative samples if there be any, direct to the scrutinising appraiser-in-charge through A.C.docks. The documents should be sent through customs sepoy and not through Importers/ Exporters or custom house agent's rep.

(c) The Shed A.O. will maintain, at the respective shed/examination center, important customs reference books such as customs tariff schedule, draw back schedule, ITC policy or tariff guide, circulars, departmental orders, office orders etc.

(d) The Shed A.O. will see that the Examination report is given on the day of the Examination of the goods. If it cannot be given on the same day reasons thereof should be mentioned on the reverse of the bill of entry or shipping bill.

(iv) Shed appraiser should maintain a register showing the articles of dead stock in his charge entering therein each new article of furniture etc. Received in the shed together with the date of its receipt and the authority under which it was received. Any exchange furniture, etc. Should also be properly recorded in the register.

(v) He should not leave the docks/ICD's. without the permission of the Asstt.collector of Customs (docks or jetties)

(vi) He should keep himself updated with all the rules, instructions, public notices and standing orders so that no clearance is prejudicial to the interest of the customs.

(vii) In addition to carrying out the orders given by the Scrutinising Appraiser, Additional examination should be undertaken, wherever necessary, either by opening further packages from the lots chosen by the Scrutinising Appraiser or by selecting packages form lots not included in the latter's order. The order "passed out of customs control" should be given only after the Shed Appraiser has satisfied himself that all custom dues, e.g. duty, interest,penalty,fine etc. Have been paid and everything is in order.

(viii) Any irregularities discovered by Examining officers should be verified by the Shed Appraiser concerned.

(ix) At the time of examination, when a package is found to contain any articles which contravenes the provisions of the customs act, the Shed Appraiser should not pass offending articles but refer the matter to the

Asstt.collector for his decision. If part goods are found to be offending on examination, the non offending goods should only be released obtaining no objection from group.

(x) If Shed Appraiser is required to supervise more than one examination center, he should give "out of charge" orders at each center, and should not require bills of entry to be presented at his office for this purpose. "out of charge" orders should be given as far as possible immediately after the examination of the goods and in the shed itself.

(xi) In cases where amendments in Bills of entry are allowed subject to the payment of a fee or fine such bills of entry should bear clear orders on them for use of the Cash and Accounts department. The Cash department should collect in such cases, the fee or fine together with the Duty Assessed. The officer entrusted with the verification of the collection of duty before signing "out of charge" orders should verify that the fee or fine has been realised from the parties.

(xii) Before signing the "passed in full" endorsement, the Shed Appraiser should see that the Scrutinising Appraiser's orders on the Bill of Entry have all been complied with.

Other duties and responsibilities of Dock/ Shed Appraiser :

(a) In addition to his duties as a Shed Appraiser, he will be fully responsible for the examination of Imported cargo and the specified categories of Export cargo, examined by him.

(b) In case of export cargo the Appraiser will be responsible for the general supervision. Where weight, quantity etc. has to be checked and if the Examiner has done the same then it will be sole responsibility of the Examiner. Valuation of the goods will be the responsibility of the Appraiser, if the same is asked specifically in the Examination order.

Note: Dispatch of Duplicate Bill of Entry to Custom House when delivery is allowed after taking sample for test.

When full or part delivery is allowed of goods from which a sample has been sent for chemical test, the Shed Appraiser will, in signing the "pass out of customs control" endorsement, ask for the immediate return of the Duplicate Bill of Entry to him after delivery has been effected and will then send it direct to the Office Superintendent, Appraising department.

6.07 Duties of Docks Examiner :

1. The Examining Officer is posted to assist the Appraiser for Examination of Cargo. Import Examination is done by the Examiner provided the same is marked to the Examiner The Shed A.O. however The S/bill marked to "S/A" can be attended by Examiner also when Assigned by A.O. Simple documents of description, quantity and weight check shall be attended by the Examiner.

2. Regarding Examination of Export cargo the Export department generally marks the Examination order either to "S.A. or S/A/EO. When it is marked to "S/A", it is to be attended by Appraiser. however, when it is marked "S/A/EO" it may be attended by either Appraiser/ Examiner. The Appraiser should mark such documents to the Examiner on the reverse of the document provided there are more than one Examiner under his charge.

3. If the Examiner is in doubt he should consult his Appraiser.

4. If the goods are examined by the Examiner, it will be his responsibility, in addition to the Examination of goods as per Examination order.

- a. Opening the number of package.
- b. Weighment of the goods if so required.
- c. Checking quantity of the goods if so required.

Note :The Appraiser in such cases, where the goods are examined by Examiner and the report is counter signed by Appraiser, will be responsible for overall supervision which include scrutiny of documents and the description of the goods.The Examiner who does the examination of the goods,will be responsible to the extent of the requirements of the Examination order only.

5. Any other duties assigned by the Superior officer in connection with the checking or examination of the cargo.

#### 6.08 Examination of Export Cargo :

When Export cargo is brought into the docks or examination shed, the exporter or CHA. will present the Shipping bill to the Shed Appraiser for getting the cargo examined by customs. The Appraiser has two options :

1. He may mark the Shipping bill to the Shed Examiner if the document is not complicated and does not contain sensitive items.

2. Appraiser may attend the Examination himself. for examination of the goods the following procedure should be adopted.

1. Scrutinise the Shipping bill thoroughly.  
See that all the declaration are signed.

See that all the parameters like weight and quantity etc. are typed both in figures and words. The Shipping bill must be typed. hand written Shipping bill should not be accepted.

See that the address of Exporter is more or less complete.

If it is dutiable Shipping bill, see the stamp of Cash department for payment of duty or cess.

See that the value shown in the invoice is also correctly shown in the Shipping bill. If the Shipping bill is under DEEC. Then see that the DEEC declaration pasted on the reverse of the Shipping bill is complete with signature of the authorised representative. Also see if the details of the Exempt material used are correctly reflected in the declaration.

See if the packing list, invoice and other documents are properly attested by the Export Department.

2. If the goods are Drugs, Cosmetics etc. See endorsement on duplicate copy of the shipping bill for no objection of ADC.

3. Check if the goods require any no objection certificate, e.g.,

- a) Wild life certificate
- b) Non-antiquity certificate
- c) Explosive certificate
- d) Pre-inspection certificates :
  1. Export inspection certificate
  2. Agmark certificate.
  3. Texprocil certificate
  4. Tea board certificate etc.

4. After checking the documents proceed to inspect the lot. It may be remembered that physical counting is not necessary if the lot is more than 20 packages. It must be a general inspection to estimate that the cargo appears to be as declared in the S/B. The responsibility of presenting the entire lot declared is that of the Exporter or his CHA. who makes the endorsement of receipt of packages on the reverse of the S/B. Check this endorsement before proceeding for examination of goods.

5. Examine the goods with respect to the requirements in the examination order after selecting the required representative packages.

6. After the examination is over it is the responsibility of the exporter or his representative to repack the goods into the package.

Note : The Exporter or his agent should make all the necessary arrangements for examination of the cargo, including facilities for weighing etc. All expenses for conducting proper examination shall be borne by the exporter or his agent. They themselves shall ensure the safety of the goods. This provision in terms Sec.145 of Customs Act, is equally applicable in case of examination of Import Cargo.

7. Samples of the goods may be drawn if it is so required in the examination order. However, if the officer examining the goods feel that the sample has to be sent for test or to the Export department then he should clearly make an endorsement to that effect on the Shipping bill.

8. After completion of the Examination of the cargo the officer will give examination report on the reverse of the duplicate copy of Shipping bill. If the Shipping bill is under DEEC., the report is given on the duplicate and an extra copy called DEEC. copy. In case of Drawback S/B the report should be endorsed on duplicate and triplicate copy (or drawback copy) of the shipping bill.

9. The Examination report should be simple. if no discrepancy is noticed then the examination report should be "examined the goods as per the examination order and found correct". However the package number opened should be mentioned if the total number of packages to be examined is less than hundred. If they are more than hundred or if the package numbers are not mentioned then the opened package should bear marks "O.B.C." (opened by customs). if any discrepancy is noticed then the examination report should mention the discrepancy including the shortage/excess of weight, value etc. Or the drawback amount involved, as the case may be. The objection should be routed through A.C.(docks). when sample is drawn, the report should have suitable endorsement to that effect. However, if the objection pertains to production of "No objection" from Archaeological department, Wild life authorities etc. A query may directly be raised in the Shipping bills.

10. All relevant information like weight, quantity, square meters etc. should be certified in figures & words. The invoice and packing list and other related documents should be signed/initialed with date.

11. After writing the examination report the Exporter or his authorised agent should be asked to sign the examination report. There- after the S/B should be put up to Appraiser for out of customs charge.

12. Examination report should be given on the day when the goods are subjected to examination. If for any reason the examination report cannot be given on the same day, then the reason for not doing so should be given on the reverse of the duplicate S/B. In no case the S/B should be returned to the party without giving the examination report or stating the reason for not giving

the Examination report.

13. After the out of charge is given the S/B should be handed over to the Steamer agent by the Customs staff after obtaining proper receipt. They should prepare tally sheet for export cargo under Drawback claim and send it to A.C. docks office for onward forwarding to Drawback department.

Note : 1 It is mandatory to show the package numbers in the examination report if they are subjected to examination. If package numbers are not shown then the packages subjected to examination will bear marking "opened by customs". The total number of packages subjected to should not exceed 40 packages, unless the goods are examined for discrepancies or on specific orders.

2. In case all the goods are not loaded the balance goods will be considered as shut out cargo. procedure for back to town should then be initiated. In case of drawback shipping bill the A.O./E.O. has to make the tally sheet.

3. Please also Refer Export Department Vol.-III of Appraising Manual for certain other details of Customs Examination of Export Cargo.

#### 6.09 Back to Town : Procedure :

In case of shut out cargo the Exporter/ his agent will make an application to the Assistant Collr. Export department. The Exporter/ Agent will present the S/B with necessary permission to the shed A.O. who will again examine the goods for description only. He will then make an endorsement "permitted to be taken back to town". It is the discretionary power of the Assistant Collector in-charge to grant back to town or to adjudicate the case with fine and/or penalty. The order of back to town may be given after ascertaining the genuineness of the case of the Exporter. If it is found that the goods are called back due to the non availability of the vessel, or cancellation of the order, letter of credit etc. In such cases "back to town" should be permitted without any penal action. However, back to town in other cases of mis-declaration should be considered only after proper adjudication of the case with penal action as the case may be. Only on the specific order of A.C. Export will A.C. Docks permit the back to town procedure to be carried out. The Appraiser in charge will either himself or through his Examiner get the goods examined as per the order before permitting the actual removal of the goods back to town he shall make an endorsement "permitted to take back to town" on the Shipping bill after the examination report is endorsed on the Shipping bill. He shall ensure that the exporter or his agent shall also sign the said report. Care should be taken to ensure the identity of the goods with the respective shipping bill, by verifying the Marks & Nos. And other details of the consignment.

## 6.10 Examination of Export Cargo during Overtime :

1. In the case of examination of cargo during over time in docks area or such designated area where the control of the cargo is with the authorised custodian and not with the Exporter or his agent, the following procedure will be followed.

a) The Officer posted on overtime should first verify the voucher & application made by the agent and attend to only those cargo for which overtime is paid. He shall not attend to Examination of any other cargo for which there is no order in the O.T. voucher. However if some cargo is urgently required for loading then the Appraiser can accept special application made by the Agents and put up the same to the Assistant Collector in charge for his orders or can take post- facto approval if the Assistant Collector is not readily available.

b) For examination of Export cargo on Over- time The officer will follow the same procedure as is followed for the Examination of Export cargo in normal course. The only exception will be that while writing the examination report he will write the voucher number and the place of posting clearly.

c) The customs staff posted on overtime should hand over the completed S/B to the Steamer Agent after obtaining proper receipt. They should make a tally sheet for DBK. S/bills.

d) If any samples are drawn for testing or any other purpose as per examination order, these samples after properly sealing in the presence of the officers by the Scale man or Sepoy posted should be deposited with the Customs Preventive staff manning the docks or any such other designated area, from where the same will be collected on the next working day by staff specially posted for that purpose.

e) It shall be the responsibility of the Agent applying for the overtime to make the arrangements like weighing scale, seating arrangement etc.

f) The Agents applying for the overtime shall see that the Export cargo required for examination will be made available within Two hours from the commencement of the Overtime. If the goods are not made available within the stipulated time then the Officers will be at liberty to close the voucher and suspend the overtime. However, care should be taken not to suspend the overtime if good and sufficient reason are given by the Agents for the delay in presenting the cargo for examination. Even if the O.T. voucher is closed the officer will be entitled for the full overtime shown in voucher.

g) Stuffing of the Cargo into the container or supervision of loading of cargo on board is not the responsibility of the Appraiser or Examiner

in docks or in such designated areas.

Note: The tally sheets made for drawback shipping bills should be sent to the drawback deptt. After retaining one copy in the docks.

#### 6.11 Examination of Export Cargo in Exporters premises or godown :

After the advent of containerisation of cargo, the movement of export cargo has undergone a lot of change. Now it is an established practice to permit exporters to stuff the Export cargo in the Exporters premises if they are so approved. Certain authorized premises are now permitted to examine and stuff export cargo either by posting officers on cost recovery basis or on overtime basis. The procedure to be followed when the Export cargo is to be examined on overtime in the private authorised premises of the Exporter is as follows :-

a) Follow the same procedure for examination of the cargo in general as stated above.

b) Check the voucher and application filed by the exporter or his agent. Restrict the examination to only those cargo for which Overtime has been paid. In case of emergency, if the Exporter makes an application for examination of the cargo for which overtime has not been paid, the A.O. shall accept the application after considering the urgency and take the permission of the Asstt. collector in charge for attending the urgent work. In case the assistant collector in charge is not easily available then the Appraiser may attend the work on account of urgency but he should get post facto approval of the Assistant Collector in charge on the next working day. He should also see that the overtime amount is paid or credited to the Government immediately.

c) The Export cargo should be examined as required in the examination order. After checking the container number into which the goods are to be loaded and verifying that it is empty, the cargo should be allowed to be stuffed. While the stuffing is being done, random checks can be carried out. When the container is fully loaded and sealed with customs seal the examination report should be endorsed in the same way as stated in the procedure for examination of export cargo in normal course. In addition, order for seal checking in the docks by Appraiser/P.O. should be given after the goods are stuffed into the container and it is sealed. If for any reason the report cannot be given instantly, the reason should be endorsed on the reverse of the duplicate shipping bill.

d) The responsibility of stuffing and sealing of such export cargo is that of the Appraising staff posted for the work. Hence during stuffing of the container at least one of the officer must be present.

e) The Exporter or his agent shall make all arrangements like

weighing scale,space,etc for proper examination of the goods.

f) The Exporter or his agent shall bear all the expenses incurred for the purpose of the examination of the cargo. He shall open the packages as required by the examination order or any specific order given in pursuance to the carrying out of the examination of the cargo by the Appraiser. In case more number of packages are opened than required by the examination order, the officer examining the cargo will make a specific report for the need for such opening of packages in the examination report.

g) In case if the total number of package does not fit into the relevant container then the goods so left out will be treated as short shipped cargo. Short shipment procedure will be initiated.

h) Before starting the examination it should be verified that the exporter or his agent has made an endorsement about the container number and number of packages presented for examination.

i) The Exporter or his agent should present the cargo to be examined and the containers within thirty minutes of the commencement of the overtime. The Appraiser may close the voucher if the container or goods are not available within the stipulated period. However if good and sufficient cause is given for the delay the Appraiser may consider the same to avoid any undue hardship caused to the Exporter.

#### 6.12 Procedure for Customs/ Central Excise seal checking in docks :

Seal checking is a very important function performed by the appraising officers. The sealed container can come from two sources.

1) From a Central Excise formation, where the Export goods are examined and stuffed at the factory premises by the Central Excise Staff. After examination and stuffing of the export goods the container is sealed and sent to the port for seal checking along with the examination report which may be on a Shipping bill or on the invoice of the Exporter. The other documents sent along with the container is the AR4 or AR5 as applicable.

2) The other sealed containers are those which are examined and stuffed under customs supervision. The stuffing takes place in the godown or factory premises of the exporter which are located within the jurisdiction of the respective Customs Collectorate. Generally these goods are examined outside the docks area.

On receipt of all such containers the exporter or his clearing agent will present the shipping bill along with other relevant documents like GR. form, AR4/5 forms or transshipment permit as the case may be.

The Appraiser or the Examiner will first check that the documents presented are correct in all respect. Thereafter, he will proceed to physically verify the container number with the documents produced. The Customs or Excise seal numbers will be checked with those mentioned in the examination report. Once the container numbers and the seals tally with the examination report, the officer will sign the GR. form and AR4 or 5 forms and other documents the Appraiser will then give the "out of customs charge" by writing "passed out ----- containers" stating the number of containers the documents cover.

The Appraiser is the proper officer for giving out of Customs charge for such containers. The Appraiser or Examiner is the proper officer for checking the seals on such containers.

Note: The Appraiser and/or Examiner is supposed to check the shipping bill, invoice, GR form etc. to verify that there is no mis-declaration or violation of export policy or any other law which they have to enforce, like antiquities export control act, dangerous drugs act, Indian arms act, Indian coffee cess act, Merchandise & Marks act, etc. Apart from this he has to verify if there are any local alerts or Standing orders/ instruction pertaining to the export of the goods covered. If the seals on the containers are tampered with or are not proper then the same should be brought to the notice of the Asstt.Collr. In-charge, who may order for Re-examination of the goods if he so desires.

#### 6.13 Scales man :

He is a uniformed staff who is to assist the Appraiser and the examiner in the docks, ICD's. etc. He will be directly responsible to the Shed Appraiser and shall attend to all tasks assigned by the Shed Appraiser or Examiner. apart from this he shall also carry out the following functions:-

1. He shall attend the weighment of the goods by operating the weighing scale. He shall read out the weights as shown on the scale, when weighment is carried out. The Appraiser or Examiner may check the weights so read out from the scale.

2. He shall open the Customs Shed Office in time in the morning and shall be responsible for the cleanliness of the shed office. He shall leave only after closing the shed office and securing all properties of the shed office including the weighing scale, customs seals etc.

3. He shall maintain the books and various registers in good conditions and present them to the Appraiser or Examiner when asked for.

4. He shall accompany the Shed Appraiser or Examiner when samples

are to be collected and seal these samples immediately on reaching the shed so that substitution of samples is avoided.

5. He shall carry all dispatch to and from the shed to various departments as per orders of the Shed Appraiser.

6. He shall prepare statement in duplicate by entering all the shipping bills attended at that particular shed and send it to the steamer agents under receipt. He shall keep all these receipts in proper order and produce when asked for by any officer.

7. All samples sealed and kept in his custody should be dispatched properly to DYCC or other agency as required. The duplicated samples shall be kept properly so that the same can be produced when required. The retention period of duplicated samples in section office of docks may be specified as 3 months or 6 months etc.

8. He shall also be posted at the office of the Asstt. collector of Customs(docks).Here he is expected to regulate the entry of the visitors to the office. He shall attend to all other work assigned by the Assistant Collector.

9. He shall be also posted in the office of the posting officer, where he will attend to the sorting and attaching of O.T. challans to the respective O.T. vouchers. In addition he shall attend to any other work assigned by the Posting officer.

10.He shall attend to the sealing of any containers which are meant for transshipment after taking orders from the Shed Appraiser or Examiner, as the case may be.

11.He shall also prepare drawback tally sheets and see that the same are regularly sent to the drawback department.

12.During overtime he shall attend his duties promptly and seal the containers and samples which are ordered to be sealed by the Appraiser or Examiner.

13.He shall also attend any other work assigned to him by the superior officers.

6.14 Precautions while working in docks or examination shed/docks  
:

1.Check the B/E or Shipping bill properly,to see that all the required information has been given.

2. Check all the declaration given by the importer/ exporter or their representatives. See that these declarations are signed properly.

3. Inspect the lot if it is a break bulk cargo, see that the documents and cargo presented are co-related to each other. It may happen sometimes, that either wrong goods may be shown or wrong documents produced.

4. After checking the goods, immediately initial the B/E or shipping bill so that there is no chance of substitution at the time of writing report.

5. For Examination of container cargo check the container nos. and see that the Steamer agents seal is intact. Tally the seal nos. with the bill of lading. If seals are tampered with or broken, examine the goods thoroughly.

6. At the time of taking weighment check the weighing scale for accuracy.

7. When samples are drawn see that they are immediately sealed. Supervise the operation of drawl of samples and sealing. Take the sepoy/scale man for this purpose.

8. Do not Examine the second consignment when the examination of the first consignment is incomplete.

9. Do not give out of customs charge till the examination report is signed by the importer/exporter or their representative. Also verify that customs duty has been paid and all formalities are completed.

10. Check the identity of the person presenting the documents. He should not be an unauthorised person.

11. When discrepancy is noticed point it out in the examination report. If discrepancy is serious then do not give the document back to the parties or their representative, send it through dispatch or carry it personally to the concerned authority.

12. In case of Export consignments ask the CHA/exporter to declare the number of packages presented for examination on the reverse of duplicate shipping bill.

13. If there is short shipment, ask the CHA/exporter to state clearly which goods are short shipped and examine to co-relate it with the invoice, packing list & shipping bill.

14. Do not accept unsigned invoice, packing list or any other documents.

15. If any inspection agency's certificate is produced check its validity and see that it is properly signed and stamped.

16. In case of chemicals and other such items which are identified with markings of description check the markings carefully and in case of any discrepancy state the fact in the report.

17. Be very careful while examining the goods going to or coming from sensitive ports like dubai, Singapore & hongkong (free ports).

18. The packages which are subjected to examination should be examined thoroughly. The packages may be emptied at random. However, care should be taken to see that the goods are not damaged.

19. Look for markings on the packages which are distinct from the marks on the lot, these may contain wrong goods or sometimes may lead to detection of mis-declaration.

20. Check the DEEC book and other relevant documents with shipping bill in case of goods being exported or imported under DEEC. scheme.

#### 6.15 Survey Procedure Regarding :

##### (i) Survey not to be held without orders :

(a) No survey shall be allowed to be held unless prior order in this regard is taken from the Shed Appraiser or the Assistant Collector incharge of the docks/jetties.

(b) Agents or customs survey will be attended by an examining officer and an Appraiser who will report the result of the survey on the back of the B/E.

(c) Other surveys will be subject to general supervision of the shed staff but will only be recorded if the importers so request. (shortage noticed at the customs examination will be dealt similarly).

(d) In their report examining officers should clearly state the nature of survey held (e.g. agent's survey, insurance survey).

##### (ii) Surveys held at jetties and docks-procedure reg.:

The following procedure will be followed by the examining officers with regard to surveys held on behalf of the steamer agents and under-writers :-

(a) On presentation of an application duly accepted by the assistant collector, docks, the examining officer will first ascertain the time at which the survey is to be held and presence of Appraising and examining officer shall be required.

(b) The Examining officer and Appraiser must see that the packages for survey are not opened except in their presence.

(c) Details of surveyed cases will be taken in the presence of the steamer agents, importers and surveyors and compared by examining officer before transcribing the same on the relative live B/E's or Survey application.

(d) Goods found in excess of the invoiced quantity should not be allowed to be taken out (and kept in the port commissioner's lockfast) but should be packed in the original cases.

(e) Goods found in loose condition in the sheds and removed by the port trust into their lockfast are not to be taken to steamer agent's godown unless an application is made to the assistant collector concerned and his sanction obtained.

(f) All cases to be surveyed will be detained by the examining officer at the time of appraisal of that particular consignment after ascertaining their number from the importers representative.

(g) Surveyed cases which have already been appraised will be passed by the appraiser after survey, if extra duty is not involved.

(h) All surveyed cases should be prominently marked "s" in large type by the examining officer who attends the survey. Stencil and ink for this purpose will be supplied by the agent's clerk representing the importer. All surveys held at the docks and the jetties outside office hours have to be attended by Customs officers and the overtime fees payable to the Customs officers attending such surveys shall be charged from the Steamer agents or the importers, as the case may be.

In order to ensure holding of survey without any delay or impediment importers and surveyors may be particularly requested to give proper notice to the Shed Appraiser concerned about the intending survey by means of usual applications accompanied by noted bills of entry and to obtain specific time for holding of such survey. The Assistant Collector (docks) will ensure that in each Appraising Section a register containing details of the B/E, such as vessels name, Rotation no., Line no., B/E no. And surveyors company's name. the names of the Examining officer and Appraiser attending such survey is maintained. This register shall in addition contain `remarks' column which shall be filled in by the concerned Examining officer attending the survey, to report the findings of survey in brief. This will be countersigned by the Appraiser

concerned. The Assistant Collector jetties/docks shall check these registers once a week on his rounds to ensure that the entries are being made properly. The Appraisers are further required to see that the surveys are held without any interruption. Any particular difficulty should immediately be brought to the notice of the Asstt. Collector docks/jetties for immediate remedial action.

#### Results of Insurance Surveys :

If held before the out of charge order is signed by the Shed Appraiser, should invariably be recorded by the Examining Officer attending such surveys on the B/E as well as in the survey register maintained by each section in the docks or jetties and counter- signed by the concerned Appraiser.

It has been decided that permission to survey the packages should be given after the order for clearance has been made if a request for such permission is made to the shed staff. It should however, clearly be understood that the giving of such permission does not mean that any refund claim under section 13 of the Custom Act 1962, or any other section will be entertained.

#### (a) Surveys on O.T. fees - Regarding :

Agent's and insurance surveys should normally be held in the docks during office hours and an Appraiser and an Examining officer posted in the docks will attend such survey for which no. O.T.fees will be charged. If in any case, holding of survey during office hours is not possible, exceptions may be made by the concerned Assistant Collector (docks) and surveys may be allowed to be held before office hours and the importers will have to pay O.T. fees for the services of an appraiser and Examining Officer. All surveys will be attended both by an Appraiser and an Examining officer and the survey report made by the Examining Officer is to be countersigned by the Appraiser. Normally the Appraisers posted in the docks will be posted to attend the surveys wherever permitted to be done before office hours on O.T.as is the case with the Examining officer and Appraiser, the Posting Appraiser (docks) will make the posting.

#### (iii) Survey applications, Disposal of :

(a) On the completion of the work of a vessel at a jetty, all survey applications (other than those for bonded goods) relating to that vessel should be collected, made up into a bundle, labeled to be filed in the ship's file and sent to the manifest clearance department.

(b) The Rotation number of the ship should be written on each application as well as on the label affixed to the bundle.

#### (iv) Surveys of Transshipment Cargo :

Applications for surveys (whether agents or insurance) as also wrong mark application should be made by Steamer agents or Transhippers, in respect of transshipment cargo lying at the jetties or steamer agent's godowns. It will be attended to by the Shed Appraiser and Examining officers, when received during office hours. In the event of shortages being discovered at surveys of transshipment cargo, the survey application will be endorsed by the Examining officers and countersigned by the Appraiser with the details of shortages, approximate value and rate of duty before being forwarded to the Import department.

The Import department will note such shortages against the relative Import General Manifest and after entry in the entry duty register will issue a demand for the payment of duty on the shortage reported. The bill of entry on being filed will be noted against the shortage recorded in the Import Manifest and sent to the Appraising Department for classification.

(v) Survey on Warehousing Bills of entry - Reg.

(a) Every application for survey of any kind on goods covered by a warehouse bill of entry must be accompanied by the duplicate warehouse bill of entry. The result of the survey must be entered both on the duplicate warehouse bill of entry and on the survey application with full particulars on each, including the marks and numbers of each case surveyed, the quantity, description, invoice rate per unit, trade discount, the value of the shortage, and the rate of duty.

(b) On completion of the survey the application must be sent forthwith to the manifest clearance department for recovery if necessary, of duty from the agents. This procedure will also apply 'mutatis mutandis' to goods short landed or short warehoused.

(c) The Examining Officer attending the survey should record on the duplicate w.h. bill of Entry :

(i) Whether the package was landed under a qualified receipt.

(ii) The date of landing of the package in the shed.

(iii) The date when the survey was held. Particulars regarding (i) and (ii) can be obtained by direct reference on the bill of entry to the port trust shed staff.

Note : When recording the result of steamer agents surveys on the duplicate W.H. bill of entry and on the survey application, the officers attending to survey will also mention whether the survey held was a 'qualified' or an 'unqualified' agents survey.

## 6.16 Sampling of cargo

### 1. Call for sample-general principles :

#### (i) Samples for examination or test :-

In order to decide the classification of some goods or for ascertaining their value or for any other purposes of the Customs Act 1962, samples of the goods have to be drawn either for inspection or testing. The Customs Officer's powers for drawal of samples and their disposal are covered section 144 of the customs Act, 1962. Whether samples should be drawn for inspection or testing before classifying the goods or valuing them is assessing officer's discretion under sec. 17(1) & (2) of the customs Act, 1962. Obviously he must realise that calling for samples prior to assessment will delay clearance of goods hence, this must be reserved only to cases where such calling for samples is really justified, say, where the Assessing officer/ Appraiser is unable to classify the goods unless he has seen a sample. In other cases, like dispute in tariff classifications, he may also have to call for a sample and even make market enquiries for the purpose of classifying the goods. Since drawal of samples and market enquiries tend to delay the processing, a certain amount of mature judgment will be necessary where samples are taken to market for enquiry, the party's name should not be divulged. Apart from samples required to be drawn for purposes of chemical test in the customs laboratory, or in approved government laboratories like the metallurgical laboratory, Jamshedpur, in cases where there is no facility to have the test done at the custom house laboratory. The guiding principle should be, before conducting a chemical test, whether the test is absolutely necessary. In such cases the parties should be encouraged to take delivery of the consignment against bonds/guarantees, or part consignments where there is no possibility of the goods being confiscated later for violation of any law. In other cases they should be encouraged to store the goods in the public bond warehouse without warehousing so that the goods need not unnecessarily incur demurrage. The attitude of the staff should be helpful, unless malafides are strongly suspected. The course of action should be generally discussed with the Asstt. Collector.

(ii) The Scrutinising Appraiser, should avoid, as far as possible, calling for large and heavy items to be put up to him as samples. Wherever inspection is necessary, the scrutinising appraiser should himself visit the docks and examine the goods. such inspection should be done on the same day. (adopted from g.i.m.i. f.no.25/5/59-cus.(crc) dated 10-9-59 w.r.t. e.no.27/6/59-cus (crc) a.d.o.no.117/59)

(iii) In all cases of doubt, samples should also be examined by the A.C.docks, who will countersign the Appraiser's notes on the bill of entry in confirmation of the assessment.

(iv) When the A.C. or group A.O. considers that the test of any sample by the chemical examiner is necessary, he will forward the sample with the requisite memo duly filled up by the clerk and countersigned by the appraiser, to the chemical examiner under his signature in the usual manner.

(v) In the absence of any record of previous test or in cases where the strength recorded is no longer valid, samples of all preparations containing spirit should be drawn for test unless the importers expressly state on the bill of entry "not to be tested". This applies to preparations other than wines and liquors.

(vi) Samples of dyes, which have not either been already tested within the specified period or which are not already included in the standard test, shall be similarly tested at the instance of the appraiser and a.c. concerned.

(vii) When the amount of duty involved is large the Scrutinising Appraiser should consult the A.C. concerned regarding any special arrangements desirable to ensure that representative and uncontaminated samples are drawn and are protected against tampering or substitution. The Appraiser should discuss such cases with the Asstt. collector unless they are covered by general order.

(viii) It is of utmost importance that samples should be dealt with in such a way that tampering or substitution can not pass undetected. Officer concerned should take all reasonable precautions against such tampering or substitution, and officers receiving samples should examine them closely to satisfy themselves that the samples they receive are the samples actually drawn by the examining officers.

#### 6.17 Reasons for Testing of Samples :

To determine whether duty is chargeable under the tariff heading and the rate claimed or under some other heading of the tariff at a higher rate, and for checking permissibility of import as to whether the import licence produced or claimed for coverage under o.g.l.etc. Is acceptable or not. although regular importers are encouraged to file continuity bonds for the clearance of goods which require test, there may be other importers whose importations are casual or who, for one reason or other choose not to file continuity bonds or do not agree to payment of duty at the higher rate pending the result of test. Further, there may be certain importers who wish to be sure about the exact amount of duty leviable before the time of payment rather than to pay extra duty on demand on receipt of the test report. In such cases, therefore, it is necessary to resort to assessment under the first appraisal system. in the case of iron and steel goods, viz., standard products or goods of recognised brands which are regularly imported and supplied by the same manufacture, a sample should be

drawn and tested only once during a specified period as prescribed in the standing instructions. In such cases facility of clearance against continuity bonds should not be denied provided that detailed specifications/test certificates/works analysis reports covering the goods described in the invoice are available to connect the goods with a particular manufacturer. This procedure is to be followed regardless of whether the goods are supplied directly by a manufacturer or by a supplier in the country of export.

#### Drawing of Samples avoidance of Delay-Instruction Reg.:

In order no.505/83-c to 515/83-c dated 12-9-83 customs, central excise and gold (control) appellate tribunal, commented adversely on the department for not drawing samples with promptitude and for reviewing and recovering duty after years of completion of tests. To avoid such a situation and to safeguard revenue, it should be ensured that samples, where necessary, are drawn with utmost promptitude and that follow-up action is taken without any loss of time. (re.ministry's letter f.no.384/85/83-au dated 6-4-84)

#### 6.18 Procedure for Drawing & Dispatch of Samples by Shed staff :

(1) All examining officers and appraisers will pay particular attention to the drawing and sealing of samples. It is of utmost importance that all samples drawn should be kept in the control and under the supervision of the examining/appraising officer, from the time when they are drawn and till they are sealed. The bills of entry in which orders have been given for drawing of samples for test will be attended to at the end of each round. After samples have been drawn the examining officer should not hand them over to importer's representative or the clearing agents, for taking them to the sectional office for the purpose of sealing. When the samples drawn are small in size the officer should himself carry them to the sectional office or the same may be handed over, either to a peon accompanying the examining officer or to the importer's representative or to the clearing agents to be carried under examiner's escort to the sectional office for sealing. But the examining officer should in these cases keep a constant watch and vigil to prevent substitution. Under no circumstances should samples other than those of large size which are not easy to be substituted, be made over to the importer's representatives or to the clearing agents, before they are properly sealed with customs seals. While sealing the sample the examining officer should ensure that no chance of substitution is afforded to the importers during transit from the shed to the sectional office. If he has the slightest doubt, fresh sample should be drawn. The examining officer, while reporting on the bill of entry should mention the seal number with which the samples are sealed and samples should always be sealed with the sectional seals.

(2) Each examining officer will be provided with lead seal and wire with which he would seal such samples. If he cannot carry the samples then he

will seal them immediately after drawing and will hand over to the respective parties for carrying to the shed appraiser's office. Odd size or heavy samples will either be escorted by him or will be initialed by him for easy identification. The samples which are light will normally be carried by the examining officer themselves. as regards the sealing of samples drawn from export consignment after office hours, the sample should be sealed with the lead punch seal provided to the scales man (sepoy) posted for attending work on overtime or after office hours. these samples received by the gate preventive officer will be collected by the officer posted for sample collection on the next working day, along with the shed samples and deposited in dy.c.c. it is noticed that samples sent from docks and jetties to the custom house laboratory under custom house seals are not sometimes properly sealed. The seal on sample drawn in bottle should be put in such a way that the sealed cap of the bottle may not be opened.

when the seal is put on bottle/container care should be taken to see that the seal is put on the upper cap or cork in such a way that cap or cork may not be opened without disturbing the seal. Similarly when the sample is sent in packets the seals should be put on all the opening from where there is slightest chance of content coming out. It is not sufficient in a packet where cord is tied crosswise, to put the seal at the knot only. The chord passing over the sides should also bear the seals so as to close the opening on the sides securely. examining staff attending to the sealing of samples should be careful to see that defects found in sealing of samples, which in itself does not require any skill, are avoided. The escorting officer will ensure that the seals are properly and adequately affixed by the concerned examining staff from whom he will be receiving the samples. shed appraiser and a.c.(docks) will conduct a test check of samples sealed by the staff working under them.

(3) The samples should be properly sealed with custom house seals in the sectional office. In case where a test memo form prepared by the scrutinizing appraiser is attached to the bill of entry, the shed appraiser should sign the test memo form before the sample is actually dispatched. the reference no. of the test memo assigned by the group should be entered in the sectional register.

where the scrutinising appraiser passes an order on the duplicate bill of entry that the goods could be released after sending a sample for test, the bill of entry need not be sent to the custom house along with the sample. Where the scrutinising appraiser passes an order to detain the consignment (or a portion of it) pending test the shed appraiser should mention on the test memo that this has been done (and the number of packages detained) before the bill of entry is sent to the custom house.

(4) The samples should be properly sealed with the custom house seal in the sectional office. in case where a test memo is attached to the bill of

entry, the shed appraiser should sign the test memo form before the sample is actually dispatched.

(5) The examining officer shall write the bill of entry number and date and any further particulars over his initials on each sample or on a label firmly attached thereto, so as to prevent removal.

(6) Samples of liquids, not in original containers and powders or broken solid shall be sent in sealed bottles or envelopes.

(7) Where it is found necessary to send samples in bottles or metal containers it should first be seen that such containers are perfectly clean. should the sample fall within the category of articles listed below the instructions as follows should be scrupulously observed. when duty has been paid, the Appraiser will endorse the duplicate Bill of entry as follows:-

"C.E.'s test pending duplicate bill of entry should be sent to the superintendent, appraising deptt. After passing the goods in part/in full Shed Appraiser to take action" and return it to the importer to enable him to take delivery. the Shed Appraiser will, in signing the "pass out of customs control" stamp, indicate that "B/E to s/a" after delivery. Such bills of entry are forwarded by the port commissioners to h.c.o. preventive deptt. Who in turn send the same to internal audit department. The I.A.D. after necessary noting send them to manifest clearance department who in turn sends it to the superintendent Appraising Department, will then give name, line no., Bill of entry no., Importer's name, package no. Etc. And all precaution to be taken by all concerned to see that the samples are handled properly prior to their representation to the chemical examiner for purposes of testing.

Some specified commodities and procedure to Draw samples :

(i) Poisonous drugs:- These samples are to be drawn with a certain amount of circumspection and diligence. In all such cases the examining officers and appraisers must ascertain from the description given on the goods or in the accompanying documents whether they are of a poisonous or otherwise of dangerous nature before drawing and forwarding the samples.

Definition of poison : A substance may be called poison if it is capable of destroying the functions of any living organism, by its own inherent nature, in case it is taken into the system of such living organism. these are of three types :-

(a) Poisons causing death immediately in a few minutes : mineral acids (strong) carbonmonoxide, carbon dioxide, with the irrespirable gases, prussic acids, the cyanides, oxalic acid, and occasionally strychnine are chief poisons under this heading;

(b) Irritant poisons (symptoms mainly pain, vomiting & purging) :

Arsenic, antimony, phosphorous, cantharides, savin, ergot, digitalis yew, laburnumend putid animal substance.

(c) Irritant and narcotic substances (symptoms-those of an irritant nature, with the addition of more or less pronounced cereterol indications).

The following chemicals should be handled carefully :-

- (1) Ammonia.
- (2) Arsenates.
- (3) Arsenic calises.
- (4) Arsenic oxides.
- (5) Calcium arsenates.
- (6) Calcium arsenites.
- (7) Copper acets arsenites.
- (8) Copper arsenates.
- (9) Lead arsenates.
- (10) Organic compounds of arsenic.
- (11) Potassium arsenites.
- (12) Sodium arsenites.
- (13) Sodium arsenates
- (14) Sodium thioarsenites.
- (15) Belladonna alkaloid & salts.
- (16) Morphine & its salts.
- (17) Cannabis; the resin of cannabis, extract of Cannabis, tincture of cannabis.
- (18) Coca alkaloids & salts.
- (19) Cocaine & salts.
- (20) All cyanides, especially potassium and sodium cyanides, hydrocyanic acid.
- (21) Phenols, creosote.
- (22) Formaldehyde.
- (23) Hydrofluoric acid.
- (24) Opium.
- (25) Phosphorous compounds & phosphorous yellow.
- (26) Caustic soda & potassium hydroxide.
- (27) Zinc phosphide.
- (28) All kinds of mineral acids especially fuming and sulphuric acid.
- (29) Organic acid such as acetic.
- (30) Chloroform.

Note: Direct physical inhalation of the chemical gases should be avoided as it could be dangerous. as far as possible in all such cases, the original containers should be forwarded to the laboratory. These containers

should, however bear a special label with a thick red border and on which the word "poison" should be noted in large letters at the top. if however, due to bulk or weight this is not possible the staff should see that the word "poison" is invariably written in red in bold letters on the label which are required to be fixed to the containers and that the goods have to be carefully handled must be indicated on the containers before the samples are forwarded. The use of glass or fragile containers in such cases should be avoided and due precaution be taken in the dispatch and handling of such samples at all stages.

(ii) Paper samples :

The Examining officer should draw samples from inside the bale and they should be rolled and wrapped with a separate piece of paper before sealing. The samples should indicate particulars, viz, vessel's name, rot.no.,line no., Bill of entry no., importer's name, package no.etc. And all precaution to be taken by all concerned to see that the samples are handled properly prior to their presentation to the chemical examiner for purposes of test.

(iii) Liquid samples :

The samples to be drawn after consulting the sectional appraiser if stirring would be necessary.

(iv) Chemical samples :

The Examining officer should draw samples from the center of a bag or cask and put it into wide-mouthed bottles perfectly clear.

(v) Cargos like betelnuts etc. :

In order to submit true representative samples, examining officer should draw samples from several bags of a consignment of like kind and quality opened for appraisal. The samples are then to be mixed together and put in a paper bag of a durable nature and sent to custom house duly sealed showing particulars, viz, line number rot.no.,vessel's name, package nos., Bill of entry no., Importer's name etc.

(vi) Food colours :

Appraisers are directed to see that samples of food colours are sent to chemical examiner for test in original containers.

(vii) Wrong samples :

The drawing of wrong samples which may lead to wrong assessment

is very dangerous to revenue and examining officers should exercise greatest caution in checking and recording the mark and numbers of the packages from which samples are drawn. Drawal of wrong samples will entail disciplinary action.

(viii) Transformer oil :

When a sample is required from a drum, the oil should be set to flow at a steady rate into the sampling bottle or container and after being swirled around the sides and neck it should be discarded without altering the rate of flow of the oil. The quantity required (about a gallon) for test should then be allowed to run off into the sampling bottles or container while taking extreme care to prevent the ingress of atmosphere dust, cloth fiber or moisture.

It is absolutely necessary to ensure that the container together with corks leather washers or other absorbent materials used for the drawal of the sample is neat, clean and dry, free from dust or rust or any other particles.

Note (1) : Tests other than "pour point" and "sludge" test prescribed in the BSS. or IS. specification for transformer oil, are adequate for distinguishing transformer oil from technical grade of white oil or other grades of oils inferior to transformer oil. Hence the "pour point" and "sludge" tests may be dispensed with. (c.b.r.f.no.8/60/62-cus.vii dt.4-12-62, a.d.o 12/63 c.11/430/61 & c.11/675/62-ap)

Note (2) : Clearance of transformer oils on guarantee pending test: any consignment declared as transformer oil and found on visual examination to be coloured (that is not less coloured than pale yellow) may be released on bond after drawing of samples and without waiting for the test report. consignments of transformer oil which are colourless should however be released only after the test results are available. (c.br.f.no.70/(130)-cus.1/53 dt.13.7.55 read with board's lr.no.70(150)-cus.1/53 of 19.10.1953)

(ix) Ferrous metals and their scrap :

In case the goods declared as ferrous metals and when the invoices and the works certificate are not very precise or clear; manufacturer's certificate showing the composition are not available, testing may have to be done. But if works certificates from reputed manufacturers are available no test will be insisted upon. In those cases, where tests are required to be carried out, the importer will be given the option of taking immediate delivery of these goods against a letter of guarantee. A bank's surety will not be insisted upon for such letters of guarantee provided another regular importer of repute who has got a deposit account with this custom house concerned stands surety. In case of ferrous scrap, viz. melting scrap etc. sample is to be survey certificate certifying the quality is to be insisted.

#### 6.19 Laboratory Test Reports-sanctity and maintenance of :

Samples will be sent for test to the laboratory along with a test memo in form C.B.R. Customs-149 in which the chemical examiner's report also will be entered.

The section which sends the sample must confine itself to entering the description of sample, price, ship's name, manufacturer's name, importer's name. Bill of entry or other number etc. To enable the sample being connected with a consignment and the information which is sought from the laboratory. The sending section should not encroach on the space ment for the laboratory reports.

The report from the laboratory should similarly be confined to data which would assist the Appraising deptt.to decide classification, assessment etc. If the chemical examiner wishes to to make a recommendation regarding the classification or on other aspect, it should not be made on the test report itself, but on a separate note sheet. There are certain types of materials where a report cannot be intelligibly worded except by indicating or implying the classification. Such cases cannot be helped. the test reports should not be loaded with figures or observations which are not likely to be of use to the Appraising deptt. Test memos and reports should not be treated as note sheets. The reports must be entered on the memo by the chemist and initialed. Even when the reports are typed the chemist should initial them. Erasing and overwriting are forbidden. If any error has crept in, the figures or words which are erroneous should be neatly scored out and the correct figures or words entered in their place. All corrections must be initialed and dated by the chemical examiner (or other officer) who signs the report. No slips of paper carrying a report or correction should be pasted on the main document to hide or replace an old (perhaps erroneous) entry. such practice is forbidden even if the slip of paper is signed and dated both by the chemist and the chemical examiner.

If a report is irretrievably spoilt. The laboratory should call for a fresh test memo properly written up from the sending section and make the report on this fresh test memo.

Some reports have to be issued on form `a' (explosive rules 1940) or form `g'(petroleum rules 1937) or special forms devised for central excise work, or even as separate letters. The spirit of the above instructions as regards cleanliness, ban on erasing etc. Sanctity of the entries and proper attestation of any corrections must be observed in all cases.

Test reports must be copied by a clerk into a laboratory registers maintained for the purpose. Before copying the reports he must make sure that there are no unattested corrections. If there are any, he should bring them to

the notice of the chemical examiner. Each report entered in the laboratory register must be initialed by the chemist concerned in token of its correctness. If any mistake has been made in copying the report, the correction should be initialed by the chemical examiner. This is necessary as the registers serve as permanent bound office copies of the reports.

If an appraiser or other officer who handles a test report for the first time after receipt from the laboratory notices any unattested corrections in the report. He must bring the fact to the notice of the chemical examiner through the head of the section. special care should be taken by the test section to ensure that original test reports issued by the laboratory are not lost or mislaid. [c.b.lr.no.54(14)-cus.iii/54 of 18.1.55 f.no. 116/50(p1)]

Test memos writing & signature on :

One test memo should not contain more than one (1) samples to be tested in the custom house laboratory. The test section, Appraising deptt. Should also keep note of the above instructions. all test memos should be signed by the appraisers themselves for A.C.A before sending samples to laboratory for testing.

In sending articles of a poisonous or dangerous nature for test to chemical examiner, the test memo, must be prominently marked "poisonous" or "dangerous" as the case may be. Appraiser should pay special attention to this, as absence of such marking may lead to serious accident in the laboratory.

When two or more samples drawn from the same consignment are sent to the chemical examiner for test they must be entered in separate test memos in one sheet and balance in the continuing sheets, and when samples are sent at different intervals of time and the second samples are sent under another test memo such memo should have a serial number different from that of the first memo to which however, a cross reference must invariably be made for guidance.

Where a sample is marked for "immediate" attention of, and report by the chemical examiner, the request should be initialed by the asstt. collector of the group concerned.

It should be noted that the chemical laboratory is not expected to indicate any tariff item that would be applicable to the sample tested. There should generally be no queries about articles sent for test. As a general principle, queries on the test memos, to only reports about the composition and descriptions of the goods and any other details that may be necessary for determining the classification and admissibility under license/deec of the goods may be made. the board reiterate that the assessing officers at the various levels should not ask the deputy chief chemist/chemical examiner, to give the tariff classification but should put the proper query enabling the laboratory to

carry out tests required for determining the classifications. when technical opinions regarding classification are obtained from the deputy chief chemist/chemical examiner, these should neither be made available to the party nor should they state that their assessment is based on such opinions.

Unmarked & unstencilled packages test memo in regard to :

The test memo number in respect of samples drawn from unstencilled or unmarked consignments by docks and jetties staff will be assigned in the groups/units. After test, the laboratory test report, instead of going to the shed appraisers should go to the groups/units directly whereon the appraisers will give order for release or detention of the goods. The wharf rent exemption certificate on account of such tests will be issued by the A.C.of the groups concerned at the same time.

Dispatch of samples from docks and jetties :

In order to cut down the delay in the dispatch of samples from the docks and jetties to the laboratory for test, custom house supdt. should ensure that the custom house vehicle starts from custom houses on scheduled time on every working day for collection of samples from the various sections in the docks. An examining officers should accompany the vehicle for collecting and escorting the samples from the sectional offices in the docks. Each section in the docks and jetties should maintain a register in token of dispatch to the laboratory :-

The escorting officer will maintain a permanent diary in the following form in token of delivery of the samples to the receiving clerk of the laboratory.

Test Memo no.and date, initials of the samples receiving clerk who received the samples in the laboratory. the escorting officer will have to check the seal and the samples at the time of their collection and ensure that they are delivered intact to the clerk in the laboratory who will also check these.

Other documents, such as duplicate bill of entry connected with the consignment from which samples are drawn, shall be forwarded by the dock and jettis staff directly to the group unit concerned in the transit book or by hand of the importer or clearing agent's clerk as the case may be after making note thereon regarding drawal of samples and dispatch to the laboratory. the jetty staff who do not avail of the custom house vehicle for sending the samples to the custom house will obtain this receipt directly from the receiving clerk of the laboratory.

Sample-time for submission at the custom house :

Samples which are required by the custom house for inspection or chemical test from the docks and jetties respectively should reach the custom house before 3.50 p.m. beyond which time, group appraiser can not receive them. In cases where samples have been drawn within the stipulated times but for unavoidable reasons cannot be delivered by 3.50 p.m. the importers or clearing agents may approach the public relation officer who, if he considers that there are sufficient reasons for the delay, will recommend acceptance to the scrutinising appraisers concerned. Should samples be drawn during the last round of examination, the time should invariably be endorsed on the bill of entry by the E.O.

Receipt of sample from docks & jetties action reg.:

On receipt of samples from docks and jetties, the scrutinising appraiser should examine the package to see that custom house seal is intact and all number agrees with those mentioned in the examining officer's report in the bill of entry. He should also verify the bill of entry number and the marks and numbers recorded on the samples with the particulars on the relevant bill of entry. The test memo form should be completed and the scrutinising appraiser will state therein, for the information of chemical examiner the purpose for which the sample has been sent to the laboratory and the precise nature of analysis required. The number of the custom house seal used for sealing the sample should also be invariable stated on the test memo in order to be able to verify that the samples right up to its receipt by the chemist are intact.

Note 1 :

The above mentioned procedure will be followed when the sample is drawn before filing in the test memo form is filled before drawal of the sample in the docks/jetties the samples should be received by the test clerk in the custom house laboratory.

6.20 Weighment for the purpose of assessment :

The object of weighing the goods is to ascertain

1. The value, as the value of the goods mostly depends on the weight.
2. If duty is on weight basis, then to ascertain the correct weight in order to charge the proper duty.

(a) Power to reduce percentage of check weighment:

It is always open to the Assistant Collector to reduce the percentage of check weighment prescribed in the examination order in any

particular case, if he considers that this is warranted by special circumstances.

(b) Assistant collector's powers to waive check weighment :-

The assistant collectors may exercise reasonable discretion in the matter of dispensing with check weighments in suitable cases of certain standard articles which are frequently imported provided that the results of previous check weighments were as per declaration and these can be relied upon. (c.b.e.r. dig.no.304/cus-1/30 dated 6.4.30) The Assistant Collector is also authorised to waive weighment or to accept the declared weight when on examination of the relative documents or of the sample from the consignment leaves no doubt as to the correctness of the declared weight on the documents by the Importer/Exporter as the case may be.

Selection and initialling of packages for weighment :

(1) The Examining officer shall personally select the packages to be weighed after inspection of the lot. The packages to be weighed should represent the entire lot. Hence one package in a lot of every twenty (20) packages should be selected. The number of the packages so selected should be incorporated in the report given on the reverse of the shipping bill or bill of entry as the case may be. If the total number of packages to be examined exceeds ten (10) and if the goods are exported or imported by reputed exporter/importer, then the package numbers need not be mentioned, but only the percentage of the packages to be examined should be mentioned in the report. If however, the packages do not bear serial number then the packages opened for examination should be so marked that it can be easily identified at the time of re-examination if so warranted.

Check-weighment-procedure of :

(a) Where a Scrutinising Appraisers order "S.A.open and inspect 5% and weigh 5%" and if the package numbers to be opened are specified by the Scrutinising Appraiser then the Examining officer will open those packages and weigh them and tally the weight with the weight given in the invoice or packing specification. If no packing specification is available then there can be two alternatives.

1.To weigh the full consignment

2.To permit the making of the local packing list with the approval of the Assistant Collector in charge. However, in such cases the percentage of examination and weighment will be doubled.

In case of discrepancy in the weighment which comes to more than 1% or if the duty difference is more than rs.25/-(twenty-five only) in the case of import and difference in drawback amount or export duty of rs. 25/-(twenty five only) in the case of export, the case will be reported and the discrepancy

reflected in the examination reported. The difference in weight when examined on percentage basis will be calculated on prorata basis and the total difference in weight arrived at. However, if the difference in weight comes within the tolerance as stated above, the same shall be condoned forthwith and a clear report given. If the importer/exporter or their agents do not agree to the difference in weight on the percentage basis then they can ask for the full weighment of the goods to ascertain the correct difference, and the same should be permitted by the shed appraiser. If the full consignment is weighed then the result of the weighment should be recorded in the examination report. The excess or shortage in such cases should be reported and sent to assistant collector in charge for further action of:-

1. To either recover the duty if due.
2. Any adjudication or other process as may be deemed fit.

Note 1. In case of short weighment in import cargo no claim for refund will be entertained unless the party applies for survey.

2. If the total consignment consist of more than one lot of different items, then percentage weighment of each lot should be weighed separately keeping in mind the total percentage to be weighed.

The excess or shortage in one lot cannot be set off against the excess or shortage in other lots, if value & duty are different. However, if the difference comes to more than the stipulated percentage then suitable action should be initiated.

#### Weighment of packages/contents :

Whenever the goods are packed in uniform packages with uniform weight duly declared in the clearance/shipping documents, the correctness of the weight declared is duly checked, by weighing the packages individually or in the lots of 2,4,6,etc. The weight may be checked on gross to gross basis, but the tare weight of at least one package should be taken to verify the correctness of the weight. Hence if the gross weight tallies with the gross weight given in the declaration in the invoice or packing list then the net weight should be admitted and certified when necessary. Wherever the packages are not of uniform weight, then the individual packages are weighed after the same are selected at random. This weight is then compared with the weight declared in the packing specification and if the difference is within the permissible limit then it should be accepted and certified when necessary.

Note:-

In case of goods imported regularly and in uniform bag packings it is not necessary to record weight of each and every bag weighed in the examination report. An endorsement in the examination report that "checked weight and found as declared" would be sufficient.

#### Variation in weight - how to deal with :

The variation of the weight between the declared and the ascertained weight is condoned if the same is within 1% of the declared weight, and also the amount of duty involved is less than rs.25/-(twenty five).this condonation is permitted in percentage check only. When full consignment is weighed, then difference of weight (excess or shortage) should be recorded in the report and suitable action initiated, by putting the papers to the Assistant Collector concerned.

Check-weighment-excess to be noted in the ITC licence :

When on check-weighment, an excess over the prescribed allowance is noticed, the weight and value of the consignment should be proportionately increased on the bill of entry and the licence, if any, debited with the full weight or value so re-determined. In the case, however, the weight is found to be less than the declared weight, no action should be taken unless the full weighment of the consignment takes place under customs supervision.

Surprise checks of weighment by Assistant Collector for outdoor (Docks):

(a) Assistant Collector (outdoor) or Assistant Collector jetties/dock shall make surprise check on weighments of far east cargo at the jetties and outstations where they may find such cargo weighed.

Weighment of heavy packages-relaxation of powers of Assistant Collector (Docks) :

Weighment of heavy packages, weighing more than 500 kgs.(1/2ton) can be waived under the orders of the asstt.collr. Of customs appraising. Each case is however, to be considered on merit and in sole discretion of Assistant Collector of Customs docks.

Full weighment of consignment :

When an importer desires full weighment he must make an application to the Assistant Collector appraisement docks. Assessment will, in such cases, be made on the quantity arrived at after full weighment of the goods, irrespective of the declaration in the bill of entry, provided that the packages in the consignment are sound and intact and goods not pilfered. The weight of any packages found to be torn or slack etc. Will be calculated under Assistant Collector's order on the basis of weights for the intact and sound packages.

Scales for check weighments :

(a) Examining officers should utilise the Custom house scales provided

in each section of docks and jetties upto the limit of their capacity. In cases where the packages are of uniform weights by weighing several packages together and thereby economise time and space. In case the customs or port trust scales are not functioning then the goods can be weighed at the nearest functional scale.

In cases where weighment of the goods are to be done in the godown or factory premises of the importer/exporter, then it is their duty to provide with a functional scale which will be used for such weighment.

Excess weight determined on check weighment-part consignment-release of- in second appraisalment case :

In case where check-weighment is to be carried out before clearance of the goods and if the result of such check-weighment shows that extra duty is recoverable, a sufficient quantity of the goods shall be detained to cover the extra duty and/or fine leviable in such a case.

Whenever a request is made by the importer or his clearing agent for part release of the consignment, it should ordinarily be allowed by the shed appraiser himself ensuring that extra duty and/or fine payable is covered by the quantity detained. The clearing agent must, in such cases, agree to abide by the result of percentage check weighment for payment of extra duty etc. Before their request for part release is countersigned, it is not necessary to refer such cases to the scrutinizing appraiser for this particular purpose. The party should be asked to present the bill of entry to the group for payment of extra duty etc. After taking the part delivery.

Action when invoice is not available :

In case the goods are not covered by any invoice, the usual action under section 46 (1) of the Customs act will be taken.

Tolerance limit for hygroscopic substances :

The tolerance of weight for hygroscopic substances will be 5%. Hence difference of weight upto 5% should be condoned. The list of hygroscopic substances are as under:-

Yarn	Percentage of regain
1. Natural silk (yarn & raw silk)	11%
2. Viscose rayon	11%
3. Cupramonium rayon	11%
4. Cellulose acetate rayon	6%
5. Nylon	4.2%

6. Yarn spun from viscose staple fibre	11%
7. Yarn spun from cupramonium staple fibre	11%
8. Yarn spun from nylon staple fibre	4.2%
9. Yarn spun from cellulose acetate staple fibre	6%
10. Wool (tops combed with oil)	19%
11. Wool (tops combed without oil)	18.25%
12. Worsted yarns	18.25%
13. Carded woollen yarns	16%
14. Cotton yarn	8.5%
15. Cotton (dyed twist and yarn)	8.5%
16. Orlon (acrylonitrile)	1.5%
17. Terylene and dacron (polythyna terephalate)	0.4%
18. Ardil (regenerated protein)	18%
19. Acrilan (acrylonitrile)	1.5%
20. Jute	13.8%
21. Dynel (modacrylic)	0.4%
22. Polyvinylchloride	0.1%
23. Kuralon (polyvinyl alcohol)	4.5%
24. Polyethylene	0%
25. Saran (poly vinylidene chloride)	0%
26. Polypropylene	0%

Note: Only in case of hygroscopic items the condonation limit will be 5 % as against the normal 1% in case of percentage weighment.

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Description Hygroscopic goods Standard of basis  
Nature  
of packing. Of quantity in that  
packing  
as dealt within  
the whole sale  
trade.

Cochineal	No importation	50 kgs. Nett.
Borax	Bgs	50 kgs. Nett
Sodium bi- Carbonate	Bags	50 kgs. Nett.

Indian aliali	Limited importaion	50 kgs. Nett.
Ammonium ch-	loose lumps.	
Lorides	kgs	150 kgs. Nett.
(crystal-		
Line)	250 /360 kgs.nett.	
Muriate of amm-	casks	50 kgs. Nett.
Onium (sublimed)	casks	50 kgs. Nett.
Muriate of amm-		
Onium (salamon-	casks	50 kgs. Nett.
Lac)		
Soda ash	bgs	50 kgs. Nett.
Sodium sul-	drms.	50 kgs. Nett.
Phide.		
Caustic soda	drums.	250/300 kgs nett.
Calcium carbide		50 kgs. Nett.
Epsom salt		150,250 kgs
Potassium bi-		
Chromate		
Arsenic.		
Fillers earth		
Activated etc.		

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1	2	3	
-----			
Ammonium carbonate	tins		
3kgs,80kgs,25kgs,50kgs			
Ammonium bicarbonate.	Tins.	12	
1/2kgs,50kgs,casks			
Boric acid.	Bags.	250 kgs nett.	
Copper sulphate.	Kegs.	50 kgs	
nett.			
Sodium hydrosulphate	drums.	50 kgs nett.	

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Description	specified rate	goods	
Magnesium chloride	... ..	...	
Calcium chloride	... ..	...	
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? Manifest clearing department

### 7.01 Introduction :

#### Functions of the MCD

The Manifest Clearance Department in the Customs House works with a view to account for all the goods imported and exported, and to see that the duty leviable has been collected. The MCD. section thus performs following

important functions :-

[1] To recover the duty leviable on the goods short-landed by the steamer agent and to impose the penalty under sec.116 of the customs act.

[2] To recover the duty on the goods lost/ pilfered while in custody of the custodian under section 45 of customs act

[3] To grant refund/remission of the duty on the short-landed goods, pilfered goods, etc. To the importer under sec 27 of the customs act,1962.

[4] To close the manifest (IGM & EGM) with all relevant bills of entries & S/bills etc and to forward the bills of entries and s/bills etc on requisitions to the various departments like, refund, group, investigating agencies etc.

#### 7.02 Role of Manifest Clearance Department:

As per section 12 of the customs act, all the goods imported in and exported out of the country are liable to customs duty. It is therefore, important to account for all the goods that are imported or exported and to see that the import and export duties has been collected where leviable in all the cases. Section 30 of the Customs act, 1962 requires the person-in-charge of the conveyance carrying imported goods to file an import manifest containing the details of the goods brought within 24 hours of arrival of the vessel or aircraft as the case may be. Similarly section 41 requires that in the case of vessel or aircraft carrying exported goods, an export manifest shall be filed within 7 days of the departure of the vessel or an aircraft. Thus the customs house relies on the delivery of the manifests to ensure that all duties on goods imported and exported has been collected. As required under section 12. the IGM. is filed by the steamer agent in the import department of the customs house. Thereafter, the CHA/ Importers file bills of entry which is noted against the relevant line number of the igm. when the bills of entries are duly assessed by the Groups, the importer pays the duty in the cash department and clears the goods from the docks/ shed. The original bill of entry is retained by the cash deptt. & then forwarded to the MCD after completing the audit etc formalities.

The Import department sends the Import manifest to the MCD, after 60 days of the arrival of the vessel. The Port Trust which is having the custody of the goods by virtue of Section 45 sends 'an out-turn' report in respect of each vessel within 45 to 60 days to MCD this out-turn report contains the details of the goods which have landed and cleared. Also a report of the goods which are not cleared is sent to the Asstt. Collector of Customs for disposal of the goods, by auction to recover the dues together with the customs duties and

penalty etc. All these documents from different departments/agencies are received ultimately in the mcd where the manifest is finally closed after taking the necessary action to recover the customs duties on the short-landed goods and to pay refund due to any importer. The entries in the Import Manifest relating to the short- landed are transferred to a register known as P.L.(pending list) register according to the Section 116 of the Customs act, the person incharge of the vessel is liable to pay penalty upto twice the amount of import duty on all the goods loaded in the vessel but not unloaded at the destined Custom Port. As per section 148 , the Steamer Agent representing the master of the vessel is liable for the goods short- landed. A show cause notice is issued to him under Section 124 to account for the short landed goods and to show cause as to why action should not be initiated against them under the Sec. 116 of the C.A.62 for short-landing of goods, the matter is than adjudicated by the authority after taking into account the representation given by the steamer agent,if any. In case the adjudicating authority is not satisfied with the reasons given by the steamer agent then a penalty equal to the duty leviable on the short-landed goods or upto twice the duty amount is imposed and a speaking order is passed.

#### 7.03 Duties of the Appraisers in MCD.Section :

Appraisers posted in the MCD. are required to perform the following duties :

##### 7.03(a) Adjudication of Short-Landed goods :

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1. The cases of short-landed goods are detected by the m.c.d. staff and put up to the appraising officer. The appraising officer shall scrutinise the cases submitted and take decision to issue show cause notice under section 124 of the customs act. Taking approval of a.c.

2. After receiving the reply from the steamer agent,the a.o.will put up the case for adjudication with suitable remarks about the action to be taken. He is required to Appraise the approx. C.I.F. value of the goods in question, duties payable, and the Import-Export policy applicable and any act enforceable on the defaulted goods. He should critically examine the full facts of the missing goods and put up them before the adjudicating authority.

3. After the case is adjudicated by the concerned authority, he should put-up the file for preparing order-in-original to the concerned adjudicating authority. In case the adjudication order is passed by the Asstt. Collector, MCD he should attest the order-in-original before it is issued to the Steamer Agent/ party.

##### 7.03(b) Refund for Short-landed Goods to the Importer :

1. The Applications received for claiming the refund of duty on the short-landed goods, etc are put up to the appraiser concerned by the refund clerk who will scrutinise the application and issue query/notice to the importer, if required.

2.The Appraiser shall examine the case in the light of the explanation /reply given by the importer on the queries raised,and submit the case to the Asstt. Collector with recommendations for disposal of the case.

3. In cases where the refund is sanctioned by the Asstt.Collector then after completing the refund formalities, the appraiser shall check the refund order and get it issued by registered post to the party. In cases where refund application is rejected by the adjudicating authority, he shall put up the file to the adjudicating authority so that a speaking order can be passed rejecting the refund claim.

#### 7.04 Submission of Documents in the MCD. :

The documents prescribed for the MCD. section must be received within the time-limit provided. It is the duty of the receipt section of the MCD to see that the documents prescribed are received within the time-limit provided, and bring to the notice any delay or omission on the part of any section to furnish the required documents. procedure followed in MCD.

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#### 1. Receipts and registration of IGM. and ship file :

In order to ensure that all Import Manifest, which are given running number from Jan. To Dec. In the Import Department, are timely received in the Manifest Clearing Department, a register of receipt of "IGM" is maintained and all the Manifests are entered therein in the order of their rotation number. On the receipt of a manifest, the date of the receipt is noted in the register against the respective entry. Every document relating to the vessel's cargo or Manifest is required to bear that number (Rotation No.) So that it may be readily traceable and can be put up with the "ship's file" the receiving clerk shall prepare a list of import manifests overdue from the import department and submit it to the asstt. Collector of customs through Office Superintendent on every last working day of the week.

#### 2. Receipt and registration of original and duplicate bill of entry :

(i) Original bill of entry: the original bills of entry for dutiable and free goods are received from internal Audit department/CRA. after 45 days from the date of payment of duty, or completion whichever is earlier. On

receipt, they are registered in form no. c.b.r.41. This register is called "key to bills of entry" and it is bound into volumes monthly. The bills of entry after entering in the register are handed over to the posting clerk who enters the cash, ADF/ IDF No. etc. against the relevant line number of the manifest. The key register clerk will at the end of each week prepare a list of overdue bills of entry from the key register and take steps to obtain them by issue of a reminder to the internal audit deptt.

(ii) Duplicate bills of entries: The duplicate bills of entry are received in the MCD section from docks prior to the receipt of original bill of entry and are registered in red ink in the "key to bills of entry register". In this register, the receiving clerk will enter the rotation number and the line number and initial it. The mcd stamp is affixed on the bill of entry in token of having registered them and then transfer them to IAD./CRA. for audit. After audit, these bills of entry are transferred to the attender in MCD. for sorting according to the vessels etc. when the original bill of entry are received from i.a.d. the relative entries are ticked off in black ink in the key register.

(iii) Sorting of bills of entry: After the bills of entry both original and duplicate are received and registered, they shall be handed over to the dafteries who will first sort them according to the vessels and then arrange them according to line numbers, matching the original and duplicate of each bill of entry. While sorting, he will ensure that the bills of entry are duly stamped and initialed by the receiving clerk. Dafteries are required to see that the documents on which customs duty/fine etc. are recovered are endorsed with the i.a.d. stamp and initials. They should bring to the notice of Office Superintendent any discrepancy/omissions etc.

#### 7.05 Central supply unit-for documents requisitioned :

The Central Supply Unit forms part of the Manifest clearance deptt. and is under the supervision of the O.S. The function of this unit is to supply B/E's and other documents to different Deptt. of the Customs house & other deptt. against proper requisitions. All Customs documents relating to Sea or Air Cargo like bills of entry, IGM, etc., which have been received in the department to be placed in the relative ship's files. No document will be requisitioned by any department from any other department except through central supply unit. All requisitions received in the central supply unit should be entered in the register should be numbered day to day in monthly series. The unit keeps notes of all bills of entry on which IAD. or CRA. have raised objections. The unit will also, through the receiving sec., receive all documents which were once supplied. When returned, the entries in the supply register shall be scored out accordingly.

#### 7.06 Reconstruction of missing Bills of entries :

The department requisitioning the bill of entry should take the steps for reconstruction of the bill of entry, where the m.c.d. deptt. returns the requisition slip with the endorsement that the bill of entry in question "missing". The bill of entry is to be reconstructed only after ascertaining that the bill of entry has been lost, misplaced and it is not possible to retrieve it. Orders of the Assistant Collector of Customs in charge of the department and approval of the Addl/Deputy Collector should be obtained for the reconstruction of the Bills of entry. After obtaining the orders from Asstt. Collector of Customs, a true copy of the bill of entry should be called from the Importer/CHA and all details should be compared with the available copy of the Bill of entry. In case both original and duplicate copies are missing then relevant triplicate copy should be obtained for verification. After the requirement is satisfied then the Asstt. Collector in charge should certify the copy of the bill of entry as "true reconstructed copy". Particulars of payment made should also be verified from the account department while reconstructing a bill of entry. Thereafter, entries should be made in the register of reconstructed bills of entries in the m.c.d. and further action on the bills of entry may be proceeded with. All the departments in a Customs house after reconstruction of missing bill of entry should inform MCD. For the purpose of maintaining the correct record.

7.07 Goods short-landed but subsequently imported - instruction reg.:

1. If the goods on which duty has been paid are short-landed in part and are subsequently imported by another vessel, the bill of entry presented by the importer in respect of the goods arriving by the latter vessel after being 'noted' in the manifest, is sent by the import deptt. To the manifest clearance deptt. The MCD. notes the particulars of the fresh bill of entry in the bill of entry on which duty was paid but has not been refunded and returns the fresh bill of entry to the party with an endorsement on the reverse of the original copy thereof stating that a note of the filing of the fresh bill of entry has been made on the duty paid bill of entry. the import department should insist that the triplicate copy of the bill of entry on which duty was originally paid is presented by the importer alongwith the fresh bill of entry. The MCD shall note on this triplicate copy, the fact of filing of a fresh bill of entry, in cases where the relative original or duplicate copies of the bill of entry on which duty was originally paid are not readily available, the triplicate copy is retained in the MCD. for necessary endorsements. remarks should also be made in the manifests against the respective item.

Where all the goods covered by a bill of entry are short-landed, a fresh bill of entry for clearing the goods on subsequent arrival shall not be required, and clearance in such cases should be allowed on the bill of entry on which the duty has already been paid after amending the vessel's name and rotation number in the bill of entry, provided that the vessel's name etc, is

received within six months from the date of payment of duty. If however, there is any change of duty during the period, the same should be effected and any less charge of duty should be recovered before allowing the clearance.

#### 7.08 Shortages in Manifested quantities - instructions reg.

The following instructions shall be followed in respect of the shortages observed in the manifested quantities.

(1) Coal and Coke : Shortages upto 2% of the manifested quantities may be allowed without penalty under sec.116. If the deficiency exceeds 2%, the agents of the vessels should be required to explain the whole shortage. If their explanation is not satisfactory, penalty should be imposed under section 116 of the customs act for the whole shortage.

(2) Mixed consignments of Oil : In the case of the oil import, deficiency upto 1% to 1.3% may be allowed without any reference to the steamer agent. Any deficiency above this percentage should be allowed on the basis of satisfactory explanation given by the steamer agent. The port trust does not issue any out-turn report in the case of bulk consignments.

#### 7.09 Claim for duty on goods falling overboard during discharge :

1. No claim for duty would be made on the steamer agents if it is established that the missing goods fell into the sea or harbour during the course of discharge, and there is no possibility of their having passed irregularly into consumption. The department is also imposing penalties on the steamer agents on the basis of o.t.r. }4x

2. When any goods are lost overboard while being loaded or discharged, preventive officers concerned shall report such loss to the MCD through Asstt. Collector, Preventive Deptt. Giving the full particulars.

3. Short-shipment certificates prepared by the local agents after the date of arrival of a vessel should not be accepted as bonafide evidence of actual short-shipment. However, advices of short shipment, soon after the departure of a vessel from the port of loading, issued at the port of shipment before the date of arrival of the vessel in the ports should be accepted as evidence of short-shipment even though they are received by the local agents and produced to the customs house after the arrival of vessels.

#### 7.10 Scrutiny of Manifests :

1. The following procedure may be followed in order to ensure proper action at various stages and locating the delay.

[a] Immediately on receipt of the import general manifest

together with the complete set of documents such as bills of entry, out-turn report, etc, the manifest clerk should open a ship's file.

[b] He should prepare a progress chart having two columns first indicating nature of work to be performed at each stage and second indicating the actual date of completion of that work.

[c] After the ship's file is received from the i.a.d., the letter call clerk compares the list of uncleared items in the manifests with the port out-turn statement received and prepares the pending list indicating the following :

(i) The short-landings in the out-turn statements will be serially numbered with red-ink and a 'letter of call' (scn) showing the serial number, line number and the number of packages short-landed will be prepared.

(ii) In the cases of excess landing shown in the out-turn statements, if the item has been cleared or transhipped, an endorsement to that effect is made against the relative entry. Items not cleared or transhipped are entered in the letter to the port trust, enquiring disposal.

d. All the short and excess cargo shown in the out-turn and all other items including those of transshipment and unaccompanied baggage still to be accounted for i.e. items for which no bills of entry, tranship permits or baggage forms, as the case may be, have been put in, will be included in the letter of call.

e. For the entire short-landed packages, the explanation of the agents of the vessel is called for in the letter of call. the assistant collector will decide whether having regard to the circumstances of each case, such explanation should be accepted as satisfactory or not.

f. A reference should be made to the deputy manager in charge of the docks for the settlement of the discrepancies found in the port's out-turn report.

g. The letter of call clerk shall submit his report to the office superintendent, after scrutinising the manifest, within 120 days after the vessel's arrival.

h. The office superintendent after checking and verifying all items in the pending list, letter of call, memo of fees, etc. put it up to the assistant collector. The a.c. passes the orders on the final disposals of items of the pending list and signs the letter of call and other references, if any.

i. The letter of call is issued to the agents of the vessel, after giving the serial number in the demand register. The agents of the vessel is required to adjust the letter of call within 30 days of receipt or within 2 months of the date of inward of the vessels, whichever expires later.

j. On the receipt of the replies from the steamer agents, the adjustment of the items contained in the letter of call is taken up. The replies of the steamer agents are examined with reference to the orders in force. Where no reply is received even after the final notice is issued, final scrutiny of the manifest taken up and penalty action may be finalised within a month thereafter.

k. Action regarding the shortages for which the agent admit liability or for which they are not able to account for satisfactorily, shall be taken against the agents in accordance with the section 116 of the customs act.

l. The MCD section also ensure that duty is recovered from the custodians of the goods in cases of goods pilfered after landing i.e. goods landed but missing. The custodian of the goods must supply the consolidated tally sheet duly signed by steamer agent, bpt, the importer, which should item wise any difference between the tally sheet and the goods cleared by the consignee would reveal the goods pilfered, goods lying unclaimed, goods lost due to natural & handling losses. The adjudication clerk has to locate the goods which are landed but missing (pilfered) and put up a s.c.n. to be issued to the custodian of the goods. I.e. bpt. The s.c.n. should be put up through the appraiser, who will assess the goods, the duty liability and after mentioning the same in th schedule attached to the SCN., put up the SCN. for approval and signature of AC.

After the reply is received from the custodians i.e. BPT, the AO. will scrutinise the reply and put up to the AC. with his suggestions as to whether duty should be imposed on the custodians. After that the adjudicating authority has to decide the SCN and duty has to be recover. In case the adjudicating authority decides that the duty should not be recovered, then reasons for the same should be recorded in writing and a speaking order should be issued. similarly for those cases/ cartons / packages which are damaged, subsequent to landing , the same procedure as above should be adopted & duty should be recovered form the custodian i.e BPT

#### 7.11 Adjudication & Imposition of penalty under sec.116 of the customs act:

1. On receipt of the reply from the agents within the time stated in the letter of call the shortages will be adjusted after obtaining assistant collector's orders after due consideration of explanations furnished by the agents. The remaining unaccounted shortages will be submitted, if necessary, to the Appraiser for assigning value and rate of duty. On return from the A.O, a

show cause memo showing all particulars of the shortages together with value, rate of duty and the amount of penalty leviable in the columns of the schedule attached to the show cause memo shall be prepared and submitted to the assistant collector for approval.

#### Powers of adjudication

2. The powers of the Assistant Collector in adjudicating and imposing the penalty under the Section 116 of the Customs Act is upto the value of Rs.100,000/.the cases where the penalty is upto Rs. 2 lakhs are adjudicated by Deputy collector and above Rs. 2 lakhs by the Collector.

3. In determining the amount of penalty leviable, instead of going by the amount of the duty, the nature of the goods short-landed whether these are prohibited or restricted items etc., The circumstances leading to the short-landing, the explanation furnished by the steamer agents particularly in respect of precautions, the steamer agents have taken to avoid short-landing all these factors should be taken into account.

The imposition of a penalty may depend on two factors :

(i) The establishment of the fact of packages being missing or short landed.

(ii) The failure to account for the same to the satisfaction of the adjudicating authority. It is however, irrelevant whether the importer has paid the duty on the consignment or not. The agent's explanation should be sought in all the cases of short -landed pkgs. With a view to give them opportunity of imposition of penalty under Sec.116 of the C.A.62 and irrespective of the fact that duty thereon has been paid by the consignee and no refund claimed. The penalty should ordinarily be not less than the amount of duty involved. However, where duty has already been paid and refund thereof is time-barred it is within the discretion of the adjudicating officer to impose a lower or 'nil' penalty. In practice, where there is no evidence of malafides, the penalty can be waived.

4. On the receipt of the reply to the show cause memo from the agents, the ship's file will be submitted to the Asstt. Collr. for orders either imposing the penalties or otherwise on the shortages a penalty bill will then be prepared in form cus.42 & submitted to the Asstt. Collr. For signature. After signing the order (original) & penalty bill, it is given to the demand register clerk for entry in the register before issuing. when payment is made by the agents the Cash no. is noted in the demand register and against the shortage endorsement in the IGM.

#### 7.12 Precaution to avoid loss of revenue - instructions reg.:

Under section 116 of the act, the Master of a vessel could be penalised if it is shown that any Manifested goods meant for unloading have not

been unloaded, i.e. if the deficiency has occurred before the unloading. Under section 13, the importer will no longer be liable to pay duty on pilferage occurring after the unloading but before the proper officer of customs passes the order of clearance. It will, therefore, be necessary to find out whether the deficiency had occurred before or after the unloading, particularly because under the section 116 it will be for the adjudicating officer to show that the deficiency had occurred before the stage of unloading. In order to safeguard revenue interests, the packages landed in the broken condition, should be examined immediately by the customs staff to ascertain the deficiency, if any. Arrangements should be made with the port trust etc. to ensure that these broken packages are kept in locked enclosure so that the chances of pilferage are reduced to the very minimum. With all these precautions, it will be possible to locate the deficiencies occurring before the unloading and penalise the agent on their account and also to reduce the amount of duty that the customs might have to forego under the provision of section 13 of the act.

#### 7.13 Shortages - Liability to pay :

Whenever packages are landed in broken condition or when a part of the contents of a package is missing and the steamer agent's survey is held, the shed appraiser will clearly endorse the bill of entry to that effect and indicate the steamer agent's liability by filling in the report and affix the same to the bill of entry to enable the m.c.d. to recover survey penalties from steamer agents.

#### 7.14 Final Closing of Manifests :

1. When shortages are accounted for and penalties imposed, if any, necessary endorsements should be made in the import general manifest by the letter call adjusters and initialed by the office superintendent. The letter of call adjuster will obtain assistant collector's orders to close each formal letter of call immediately after all the items covered are accounted for. If any items are pending for adjustment for long time for which explanation is awaited, or under auction, the letter of call clerk can transfer the items to the pending register under the orders of the Assistant Collector.

2. The letter of call clerk proceed with the closing of the ship's file after accounting for all the action taken and obtaining the signature of the office superintendent, and completing the audit formalities and recovery of fees and penalties imposed. He has also to verify that all the prescribed documents are submitted and available in the file.

3. The closed file after properly stitched with all the papers available is sent to the internal audit department, by the signature of the office superintendent, who satisfy himself that all checks have been exercised then he initials in the remark column of the manifest register. The ships file

is then submitted to the assistant collector for the orders to close the file. A ship's file should ordinarily be closed within 10 months from the date of entry of the vessel and sent to the IAD for final audit.

#### 7.15 Refund of duty on short-landing packages :

When the importers find that some or all the packages on which they have paid the duty are not available for clearance from the docks, they approach the Port Trust for information. If the packages are landed and traceable, the port trust issues an `A' certificate and the importer proceed to clear the goods. When any package has not been landed by the Steamer agent, the Port Trust issues `B' certificate. On the basis of this `B' certificate the importer files refund claim before the Assistant Collector of Customs (MCD.). When a package is landed by the steamer agent but is missing than the Port Trust issues `C' certificate and the importer can avail the relief under Section 13 and 23(1) of the Customs act. The following procedure to be adopted in respect of the refund claims filed for the short-landed goods

1. Receipt of the refund applications : Applications for the Refund of the duty on short-landed packages are processed by the MCD the refund applications are required to be submitted in the prescribed form by the consignees. The refund applications received shall be stamped with the date and put up to the Asstt. Collector (MCD). These applications are registered in serial order in the refund register and the relative serial number is endorsed on each application.

2. Preliminary scrutiny of refund claims and acknowledgements.

When the claim in the proper form is received, the clerk in the unit will immediately open a progress sheet in the prescribed form. The file is then put up for scrutiny as to whether the claim is within the time period prescribed under section 27 of the customs act or not. If the claim is time barred, order-in-original should be issued immediately rejecting the claim under asstt. collector's signature. If the claim received is in time then the refund clerk will scrutinise to see that if any documents have to be called for from the party. If so, he will issue a call memo for the documents wanted from the party and issue acknowledgement of the receipt of the claim within 7 days of the receipt of the claim in the department. he should enter the date in the progress sheet and then prepare a requisition slip for the original bill of entry. On the receipt of the required documents from the party and the original bills of entry, the file shall be put up for disposal.

3. Final scrutiny of the refund claims : on the receipt of the relative bill of entry, vessels out-turn and `B' certificate, the following procedure is to be adopted for final scrutiny and processing of the claim.

(a) The A.O./E.O. dealing with claim examines the 'b' certificate issued by the port trust which establishes the identity of the short-landed packages. The appraiser posted shall ascertain the value of the short-landed goods based on the invoice, or other documents etc. Available. He may consult the group to ascertain the correct value if otherwise not possible, & may ask the party to provide the evidence for the value from supplier. the refund amount due is calculated by the clerk and then the file is put to the Assistant collector through dealing Appraiser Examiner for the sanction of the refund or otherwise.

4. Preparation of refund order: The refund clerk prepares the refund order in the prescribed form and impresses the refund stamp on the face of the original bills of entry and the reverse of the duplicate bills of entry and sends the file to DOS who checks that all the formalities have been completed and everything is in order. If so, then he initials the refund order and puts the refund stamps on both the copies of the bills of entry. When the refund order is prepared, it will be passed on to the IGM clerk concerned who will make the necessary entries in the ship's file and return the refund order to the refund unit.

5. Payment and issue of refund order.: The refund order shall be prepared in the name of the importer. The refund file alongwith the refund order is sent to IAD. for pre-audit. the auditor audits the same and put the audit stamp, if the claim is in order on the reverse of the refund order and initials in the stamp on the original bill of entry. After audit the file is returned to m.c.d. the refund clerk makes the necessary entries in the refund schedule maintained for each vessel and submits the file alongwith the refund schedule to the appraiser who will sign the refund order as a token of attestation that the Asstt. Collector has sanctioned the refund amount. The refund order is sent for dispatched by regd.post and the file is sent for final audit. The file is ultimately returned to the MCD section for record.

#### 7.16 Instructions regarding processing of the refund claim :

The following instructions shall be followed while dealing with the refund claims.

(i) The refund claims not received in the prescribed form shall be returned to the party with the remarks " returned in original with enclosure for re-submission in the prescribed form".

(ii) The refund shall be sanctioned only on the basis of the original and duplicate bills of entry.in case any b/e is not available, the same may be reconstructed as per the procedure laid down with the approval of the asstt.collector.

(iii) In case the required documents are not received within the time period as stated in the call memo then a reminder to be issued to the importer for submitting the required documents within 15 days. If still no reply is received then final notice may be sent by regd.post with acknowledgement under the signature of the asstt. Collector. The file shall be put up for disposal after this period on the basis of the documents available.

(iv) There should be separate claim for different vessels and for different consignments in each vessels. The refund claims pertaining to different vessels and/or consignments should not be clubbed.

(v) The refund for short-landing shall not be dealt in case the assessment is on provisional basis. The claim should be returned to the claimant as "premature".

(vi) Where all the documents are submitted by the party, the refund action shall be completed within a period of one month and in all other cases within 5 months. Cases pending for more than five months shall be put up to the asstt.collector for taking necessary steps for speedy disposal.

Interest on delayed refunds :-

Necessary steps should be taken to see that there is no delay in payment of refunds otherwise the liability to pay the interest on delayed payment arise. For this purpose, a proper record of all the cases involving the refund cases should be monitored by indicating the last date of payment in the register.at the end of each week,the clerk should go through the register and list out the cases where the time limit is going to expire within the next 30 days and put up for immediate attention of AO. & AC.such cases should be dealt with on priority so that the department does not have to bear the additional burden of payment of interest.

7.17 Short-landing of goods -- General guidelines :

7.17(a) Categories of cargo :

The cargo which is generally imported can be conveniently divided into five categories.

- (1) Liquid cargo in bulk,
- (2) Cargo brought in containers,
- (3) Dry bulk cargo
- (4) General cargo, and
- (5) Hazardous cargo discharged in barges and lighters.

7.17(b) Procedure of recording the short-landing by the port authorities :

At the time of unloading of the cargo, the port trust authorities prepare tally sheets, also known as landing tallies, and in these sheets columns are provided for recording marks under which the goods are landed, the number of packages, the description of the goods, the weight and the remarks, if any. The goods which are unloaded in torn or damaged conditions are set out in the remarks column. These tallies are recorded at the wharf or at the entrance of the landing shed and after the completion of the tallies, the goods are taken into the landing shed. The goods remain in the landing shed till they are removed by the consignee after completing the customs and other formalities. The copies of the tally sheets are sent to the vessel agents within 48 hours from the time of carrying out the tallies. If the agents find any discrepancy, then the port trust authorities physically check the goods and verify the correctness of the complaint and in such cases supplementary landing tallies are issued. In case the goods are not cleared within a week after the landing, the goods are removed from the landing shed to the uncleared warehouse and the consignee is required to take the delivery thereafter from such warehouse. The remark list is also prepared from the tally sheets and in this remark list are recorded the number of packages which are landed in torn or damaged condition and in respect whereof remarks are made at the time of landing.

Subsequently, an out turn report is prepared in respect of each item of the Import general manifest and the documents considered for preparation of out turn report are tally sheets and delivery orders. The out turn report is prepared after a considerable delay because the consignee who complain that entire consignment is not delivered are offered goods which are in custody of the port trust but without any marks.

7.17(c) Guidelines for ascertaining the short-landing : the following

Guidelines are to be observed by the all concerned parties :

(i) Liquid cargo in bulk :

(1) The quantity shown in the bill of landing reflected in the import general manifest should be prima facie accepted as the cargo on board the vessel brought for unloading at the port of Bombay.

(2) In case, the person-in-charge of the ship or his agent produces the ullage survey report prepared at the port of loading and certified by the independent surveyor, then the quantity mentioned in the ullage survey report should be accepted as the correct quantity brought by the vessel for unloading.

(3) The vessel should be permitted to discharge liquid cargo after

a ullage survey is carried out under the supervision of the customs officer and such survey report is signed by the customs officer, by the ship owner and the consignee.

(4) After the discharge of the liquid cargo from the vessel, a fresh survey should be carried out under the supervision of the customs officer and this discharge completion survey report should be signed by the customs officer, the ship-owner, and the consignee.

(5) In case of any difference between the bill of lading, quantity or the ullage survey report of the port of loading quantity and the discharge port ullage survey report quantity, then such difference shall be considered as short landed quantity and for which the ship owner should be held responsible.

(ii) Cargo brought in container. FCL.container (full container load)

(1) A full container load when loaded from the vessel and the seals are found intact, then the vessel owner shall not be held responsible for any short landing or be made liable to pay penalty

(2) In case where the seal is found broken, the survey report will be prepared of the contents of such container in the presence of customs officer and this survey should be carried out within 72 hours after the container is unloaded and seal is found broken. The customs officer and the port trust authorities should ensure that the container is re-sealed after completion of the survey reports of the contents. Any shortage noticed in such survey report will have to be accounted for by the carrier and the liability for such shortage will be solely of the carrier.

(iii) LCL. container (less container load)

(1) At the time of unloading of the LCL. container, if the seals are intact and again at the time of de-stuffing of the container, the seals are found intact, then the carrier should be responsible to account for the difference between the manifested quantity and the de-stuffing tally.

(2) In case, the seals of the LCL. containers at the time of unloading are found to be intact, but are broken or tampered with at the time of de-stuffing then the responsibility for difference between the manifested quantity and de-stuffing quantity would be that of the port trust authorities and not of carrier.

(iv) Dry bulk cargo

(1) In respect of dry bulk cargo, an independent survey report should be prepared by the carrier and the consignee and such report should be

counter-signed by the customs officers before discharge of the cargo. Such report should be accepted for the purpose of ascertaining the actual cargo unloaded.

(2) The Bombay port trust authorities should not issue out turn report on the basis of actual weighment after landing in cases where the survey report is prepared and counter-signed by the customs officer, carrier and the consignee.

(v) General Cargo :

(1) The port trust authorities shall maintain tally at the time of landing of the cargo with appropriate marks in respect of cargo without any remarks or numbers.

(2) A copy of the tally sheets shall be furnished to the carrier or its agent and the customs officer at the earliest. The tally sheets shall be rectified or amended, if any discrepancy is brought to the attention of the port trust authorities and the customs authorities.

(3) The Customs authorities shall ascertain whether any cargo was short landed on the basis of the copy of the tally sheets furnished by the port trust authorities and not on the basis of any out turn report forwarded by the port trust authorities long thereafter.

(4) In respect of bulk cargo in bags, if the bags or packages are found in intact condition, it should be so shown in the tally sheets. If the packages or bags are found in damaged or torn condition, the survey shall be carried out immediately and the survey report should indicate the short landed quantity. Such survey report should be carried out as far as possible within 48 hours of unloading.

(5) In the case of cargo containing the packages or bags and found damages, the customs authorities shall also take into consideration the sweepings on the and in the ship for ascertaining whether the quantity could be accounted for.

(6) Even if the cargo is landed without any marks or numbers it should be accepted on account of the cargo referred to in the manifest, it is established that the cargo landed from the particular vessel.

(vi) Hazardous cargo discharged in barges & lighters :

(1) In cases where the hazardous cargo is discharged in lighters and barges, the stevedores who unload the cargo shall prepare the tally sheets and unloading in lighters and barges shall take place under the

supervision of the Customs officer.

(2) Such tally sheets should be included in the boat-note signed by the master of the ship, the master of the barge the stevedores and the customs officer.

(3) The boat note along with the tally sheet shall be the basis for ascertaining whether the cargo has been short landed and the quantum thereof.

These guidelines should be carried out by all the concerned parties both in its letter and spirit so that the problems would be reduced, if not totally eliminated. (para 8) --- writ petition nos. 1236 of 1981 and 1354 of 1984 decided on 17-7-1986.

M/s Shaw wallace & co. Ltd.

v/s

Asstt. Collector of customs & other.

Short-landing of goods--penalty proceeding under section 116 are quasi judicial proceeding hence to be commenced by service of a show cause Notice -- The proceedings commenced by the customs officer for levy- ing penalty under section 116 of the customs act, 1962 are of quasi-judicial nature and section 124 of customs act, 1962 of customs act prescribes that no order imposing a penalty shall be made unless such person is given a reasonable opportunity of being heard in the matter. the reasonable opportunity of hearing includes an opportunity to such person to give evidence or to summon witnesses. The customs officer while exercising quasi-judicial powers should exercise discretion judiciously before passing adverse orders against the person, confiscating the goods or imposing penalty under section 116 of the customs act [ para 9 ]

7.18 Procedure relating to closing of Export General Manifest :-

The Steamer Agent files the EGM. in duplicate, along with duplicate copy of shipping bills and submits the same in the manifests clearance department within seven days from the date of sailing of the vessel. The original EGM. is retained in MCD which is entered in the EGM register whereas the duplicate EGM is stamped and endorsed by the egm clerk and the same is sent to the DTR. section along with the shipping bills. After all the s/bills are entered the s/ bills along with the duplicate e.g.m. are returned to mcd after about 2 to 3 weeks. The same are then arranged serially along with the port clearance papers ( which are received from export deptt. For a whole year ) the s/ bills are also tailed and stitched vessel wise. Both are then linked to the original e.g.m.

A scrutiny sheet is prepared, furnishing the name of

the vessel, Steamer agents name, the P.C. number, the date of receiving of the EGM. and the total number of S/bills and attached to the original EGM then after checking the EGM.'s the scrutiny sheet is signed by the OS/MCD , the EGM.s are then closed and entered in the EGM. register and sent to IAD. After they are audited, the EGMs are retained in MCD and S/ bills are sent to CRA. and then subsequently to MCD (Transport house) for record purpose.