

\$ LICENCE DEPARTMENT

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 (Exim) 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 customs house are:

1. Registration of licences and CCPs; and Release Advices issued by other customs 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 scrutinizes 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 prepare a release advice for the particular custom house. After Assistant Collector (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.) is retained in the licence section.

3.04a With effect from 3.4.1995, in view of Ministry's circular no.12/95 Customs dated 20.2.1995 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 Ministry 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-à-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 checks 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:

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 OF I.T.C. BOND:

When clearance is permitted against I.T.C. Bond it is to 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 Assistant 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 prescribed form and put up for Assistant Collector'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 REGISTER/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 department. These are not to be sold by auction without prior intimation to the custom house and copy to the Assistant 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 takes 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 Assistant 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 unauthorized, 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, 1962.

(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 malafide, 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. Assistant 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 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 Assistant Collector to that effect.