

? 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 have 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 are 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 department & 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 Assistant 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 in-charge 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 customs 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 section 116 of the Customs Act, 1962 for short-landing of goods. The matter is then 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:

1. The cases of short-landed goods are detected by the MCD 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 Assistant Collector.

2. After receiving the reply from the steamer agent, the AO 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 Assistant 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 submits the case to the Assistant Collector with recommendations for disposal of the case.

3. In cases where the refund is sanctioned by the Assistant 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:

1. Receipts and registration of IGM and ship file:

In order to ensure that all Import Manifest, which are given running number from January to December 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 Assistant 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 department

(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 transfers 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 IAD 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 IAD 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 department 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 department of the custom house & other department 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 MCD department returns the requisition slip with the endorsement that the bill of entry in question is "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 Assistant 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 Assistant 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 accounts department while reconstructing a bill of entry. Thereafter, entries should be made in the register of reconstructed bills of entries in the MCD 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.:

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 department to the manifest clearance department. 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 affected 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 Trusts do 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 OTR.

2. When any goods are lost overboard while being loaded or discharged, Preventive Officers concerned shall report such loss to the MCD through Assistant Collector, Preventive department 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 custom 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 IAD, 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 transhipment 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 AC 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 are 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 SCN to be issued to the custodian of the goods i.e. BPT. The SCN should be put up through the Appraiser, who will assess the goods, the duty liability and after mentioning the same in the schedule attached to the SCN, put up the SCN for approval and signature of AC.

After the reply is received from the custodian i.e. BPT, the AO will scrutinise the reply and put up to the Assistant Collector 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 recovered. 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 from the custodian i.e. BPT.

7.11 Adjudication & Imposition of penalty under section 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.1,00,000/-, 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 Customs Act, 1962 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 malafide, 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 Assistant Collector 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 Assistant Collector 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 penalize 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 MCD 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, under 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 proceeds 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 Assistant 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 Assistant 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.

2. 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, and 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.

3. 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.

4. 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 MCD 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 Assistant Collector has sanctioned the refund amount. The refund order is sent for dispatch 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 Assistant 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 Assistant 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 vessel. 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 Assistant 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 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, 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 an 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 landing, 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. FC 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 custom 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 quality 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 carg:

(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 damaged, the customs authorities shall also take into consideration the sweepings on 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 alongwith 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

Assistant 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 levying penalty under section 116 of the Customs Act, 1962 are of quasi-judicial nature and section 124 of Customs Act, 1962 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, alongwith 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 alongwith the shipping bills. After all the s/bills are entered, the s/bills alongwith the duplicate EGM are returned to MCD after about 2 to 3 weeks. The same are then arranged serially alongwith the port clearance papers (which are received from export department). For a whole year the s/ bills are also tailed and stitched vessel wise. Both are then linked to the original EGM.

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 EGMs the scrutiny sheet is signed by the OS/MCD, the EGMs 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.
