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CBIC issues FAQs on Manufacture and Other Operations in Customs Bonded Warehouse

CBIC has issued FAQs in order to clarify several doubts of trade and industry with respect to the scheme of manufacturing in CBW

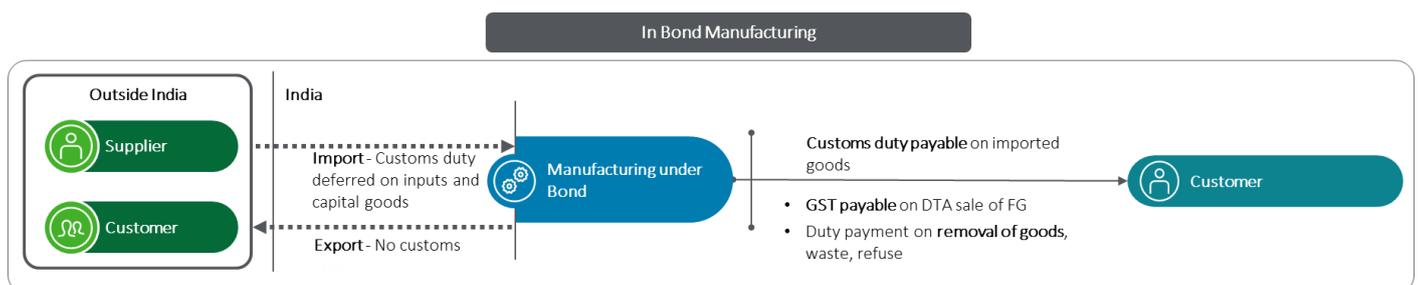
Background:

For a long time, the Indian industry had been waiting for a scheme which permitted manufacturing operations for both domestic supply as well as export out of India, from the same facility, without foregoing the duty exemption claimed on procurement of raw materials/capital goods. The drawback under various schemes such as Special economic Zone (SEZ), Export Oriented Unit (EOU), etc., was that benefits available under these schemes were primarily for export of goods. In case domestic supplies were made using the benefit of duty exemption claimed under the aforesaid schemes, then additional duties were levied on such domestic clearances. This made it unfeasible to use the same facility for supply in Domestic Tariff Area (DTA) as well export.

Also, most of the schemes under the Indian Foreign Trade Policy (FTP) (such as MEIS, Advance Authorisation, EOU, etc.) and SEZ, are subject matter of dispute at WTO forum, where WTO has already asked India to withdraw all these schemes. Though, India has filed an appeal before the concerned Appellate body but there are uncertainties around the longevity of these schemes.

In 2018, the government, heeding to the demand of the industry and in order to promote India as a manufacturing hub, launched a scheme to attract investments into India. The said scheme was based upon Section 65 of the Customs Act 1962, which enabled conduct of manufacture and other operations in the Customs Bonded Warehouse. The scheme has been introduced vide Manufacture and Other Operations in the Warehouse (No. 2) Regulations, 2019 (MOOWR 2019) and explained through Circular No. 34/2019 - Customs dated 01.10.2019 (superseding Circular No. 38/2018 - Customs dated 18.10.2018)

Under the said scheme, the manufacturer is allowed to import duty free inputs/capital goods for undertaking manufacturing in the Customs bonded warehouse. The said concept was prevalent earlier too, but manufacturing in the Customs bonded warehouse could only be undertaken under the blessing of Foreign Trade Policy (FTP) framework as an EOU scheme.



The government, by freeing CBW manufacturing from the regulatory framework of FTP, expected that the scheme would become more popular among trade and industry. However, various aspects with respect to the said scheme lacked clarity due to which the industry was reluctant to undertake manufacturing in the CBW.

In order to address the same, the government has issued FAQs to dispel various doubts of the industry with respect to the said scheme.

Few Important FAQs providing clarity to industry are discussed below:

S.No	Questions	Response
1.	Can a factory which is solely engaged in the manufacturing of goods, which are to be sold in the domestic market, be eligible for the scheme?	Any factory can avail license under Section 58 (i.e. as a private bonded warehouse) and under Section 65 of Customs Act 1962 and avail benefit of duty free import of inputs/capital goods under the said scheme. Further, there is no quantitative restriction on sale of finished goods in domestic market.
2.	Is an existing factory, which solely manufactured goods to be sold in the domestic market, be eligible for application for manufacture and other operations in a bonded warehouse? How will the existing capital goods and inputs be accounted?	Yes. Any unit in DTA is eligible for making an application for manufacture and other operations in CBW. The existing capital goods and inputs are to be accounted for in the prescribed forms.
3.	Can manufacturing be undertaken in public bonded warehouse licensed under Section 57 of the Customs Act 1962?	No. Manufacturing and other operations can only be undertaken in a private bonded warehouse licensed under Section 58 of Customs Act 1962.
4.	Will a unit licensed under Section 65 and Section 58 of the Customs Act 1962, be under the physical control of Customs?	No. There will be no physical control on day-to-day basis. The unit shall be subjected to risk-based audits by Customs authorities.
5.	Would any Customs duty be payable on the goods manufactured in the bonded premises using imported capital goods and sold into the domestic tariff area?	When the finished goods are cleared to the domestic market, import duty is to be paid on the imported raw materials used in the production and GST needs to be paid on the finished goods. Duty on the capital goods would be payable if the capital goods themselves are cleared into the domestic market (home consumption). Thus the duty on the capital goods does not get incorporated onto the finished goods.
6.	Is depreciation available on imported capital goods which are cleared for home consumption after use?	No. Depreciation is not available if imported capital goods (on which duty has been deferred) are cleared for home consumption after use under this scheme.

7.	Can all export benefits under FTP and Customs (Import of Goods at Concessional Rate of Duty) Rules 2017, be taken in bonded warehouse simultaneously?	A unit operating under Section 65 can avail any other benefit, if the benefit scheme so allows.
8.	Whether First-In-First-Out (FIFO) method be followed for inventory control?	The Generally Accepted Accounting Principles will be followed for inventory control in a Section 65 unit. Thus FIFO method can be followed.
9.	What are the procedure and documentation requirements for re-entry of manufactured goods, returned by the customers for repair, in the premises?	In case the resultant goods cleared from the warehouse are returned by the customer for repair, they will be entered as DTA receipts as provided in accounting form. After repair, when the same is cleared from the warehouse, the same will be entered in the prescribed accounting form. If the goods were exported and subsequently rejected or sent back for repair by the customer, then the goods upon re-import have to be entered as imports receipts in the accounting form. The relevant Customs notification for re-imports has to be followed while filing the Bill of Entry for re-import of the goods.

Our Comments:

The issuance of FAQs on the CBW manufacturing scheme is a welcome move by the government. The same would help in addressing the concerns on the industry on various aspects of the scheme which required clarity.

However, it is worthwhile to highlight here that there are still various open issues which need to be clarified by the government in order to provide the necessary impetus to the said scheme so that investors can start using this scheme with confidence. Few of the issues which require clarity are as follows:

- Mechanism for payment of Customs duty on inputs embedded in the finished goods clearances in DTA. Whether multiple ex-bond Bills of Entry (BoE) would need to be filed for each transaction or a single BoE may be filed?
- Can job work for DTA be undertaken in Customs Bonded Warehouse and if so, which duties are required to be paid?
- Whether duty payment has to be made along with interest in case imported goods are supplied in the DTA without any processing?
- What is the time period for which goods other than capital goods (intended for trading) can be warehoused in the bonded warehouse, without interest?
- The roles and responsibilities of Bond officer, Warehouse keeper and Proper officer should be clarified.

- There are judicial precedents wherein it has been held that manufacture in a Customs Bonded warehouse amounts to manufacture outside India and hence, Customs duty is payable on finished goods cleared therefrom. No change has been made in Sections 58 and 65 of Customs Act 1962, and the entire scheme is based on a Circular. So there is no clear statutory backing to what has been stated therein.

Refer the link for complete FAQs:

[https://www.cbic.gov.in/resources//htdocs-cbec/customs/FAQs_manufacture_inbond_scheme\(MOOWR2019\).pdf](https://www.cbic.gov.in/resources//htdocs-cbec/customs/FAQs_manufacture_inbond_scheme(MOOWR2019).pdf)



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