



(2023) 6 Centax 109 (Article)

(2023) 6 Centax 109 (Article)

Domestication of Exim Containers

By



DR SANJAY KALRA

LLM., Ph.D.(GST Law), Advocate, KPS Legal

1. Notification No. 104/94-Cus., dated 16-3-1994 exempts Containers of durable nature and falling within the First Schedule to the Customs Tariff Act, 1975, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule; and the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act. For availing such duty exemption, the Shipping Line or the Importer has to execute a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs binds himself to re- export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Collector and to pay the duty leviable thereon in the event of failure to do so. Such period of six months may, on sufficient cause being shown, may be extended by the said Assistant Collector for such further period, as he may deem fit. The said Notification No. 104/94-Cus., dated 16-3-1994 notifies that the imported Containers, falling within the First Schedule to the Customs Tariff Act, 1975, are eligible for duty exemption subject to the condition that the same containers are re-exported within six months from the date of their importation. The bond for re-export within six months and the security, if applicable, is required to be furnished with the Customs, by the Shipping Line or the Importer at the time of import. After Customs clearance, the empty EXIM containers can be moved out of the Customs Area, subject to the conditions of the bond and the security if applicable.

2. The CBEC Board, vide Circular No. 83/98-Cus., dated 5-11-1998 [1998 (104) E.L.T. (T58)], observed that as and when request for extension beyond 6 months period is received, the Customs Houses are routinely granting such extensions. This casual approach leads to the possibility of use of such containers for domestic trade in addition to affecting the domestic industry engaged in manufacturing of marine containers. Thus, the CBIC board expressed its concern over granting extension of period for reexport of EXIM Containers stating that such extension leads to use of such containers for domestic trade adversely affecting the domestic industry engaged in manufacturing of marine containers.

3. While dealing with the specific grievances of the trade to allow the use of imported

containers for carrying domestic cargo, the CBEC, vide its Letter F.No. 450/69/2000-Cus.IV dated 30.10.2001, has specifically decided that the containers imported under the said Notification No. 104/94-Cus shall be allowed for the purpose of carrying domestic cargo during the stipulated period of 6 months or the extended period as may be allowed, pending re-export of the same. This facility may be allowed by Customs on temporary basis.

4. The CBIC, vide Circular No. 31/2005-Cus., dated 25-7-2005 [2005 (186) E.L.T. (T29)], stated that presently, the Containers which are of durable nature and intended to be imported temporarily are exempt from the levy of Customs duties in terms of Notification No. 104/94-Cus., dated 16th March, 1994 subject to the condition of re-export within a period of six months from the date of importation and subject to other conditions specified in the notification. As per the existing practice, the clearance of containers whether empty or loaded, intended for temporary admission, is to be allowed without requirement of filing a formal Bill of Entry for each container separately. The party concerned should intimate the Customs the number and identification particulars of the containers to be moved outside the customs area. The Bond for such movement could be either for a specific individual consignment of containers or a general Bond covering a larger number of containers, as requested by the party. Disapproving the divergent practices of accepting different types of bonds by the field formations, the Board has instructed to adhere to a simple uniform procedure for clearance of temporary importation of containers as detailed below :-

- (i) The nature of bond should be "continuity bond".
- (ii) No Bank Guarantee/Security is required is furnished along with the bond.
- (iii) Bond should be executed by shipping line, Non Vessel Owning Common Carrier (NVOCC), Steamer agents or their authorised representatives.
- (iv) The bond amount should cover only the duty element of the imported containers and not the cargo it is carrying.
- (v) The validity period of the bond should be for a year which would be extendable till further such period as requested by the person executing the bond.

The aforesaid Circular dated 25-07-2005 also does not mention any condition in Bond as regard purpose of use of EXIM Containers during the stipulated time period of re-export.

5. Trade brought to the notice of the Board that due to limited availability of return cargo on most of the coastal shipping routes, the cost of repositioning of empty containers is high which increases the total logistic cost of coastal shipping. Considering representation of the trade, the CBICBoard, vide Circular No. 8/2019-Cus., dated 26-2-2019 [2019 (365) E.L.T. (T52)], has considered its earlier decision, taken vide Letter F. No. 450/69/2000-Cus.IV, dated 30-10-2001, whereby the containers imported under said Notification No. 104/94-Cus. were temporarily allowed to carry domestic cargo during the stipulated period of re-export. The Board has clarified that as the Central government's impetus is to promote the coastal shipping, Board hereby permits the use of containers availing benefit of notification No. 104/94-Cus., dated 16-3-1994 for the purpose of carrying domestic cargo during the stipulated period of 6 months or the extended period as may be allowed pending re-export of the same. Hence, this time too, the CBIC to promote the coastal shipping, has allowed the use of containers availing benefit of notification for the purpose of carrying domestic cargo during the stipulated period of re-export. Further CBIC has also categorically specified that there should not be such condition in the bond submitted for availing the benefit under notification, which restricts the use of the containers for carrying domestic cargo after importation.

Conclusion:

As far as the liability of Shipping Line / Carrier / Agent / Importer (whosoever clears EXIM containers against a Bond with Customs) towards Customs is concerned, it is observed that

the relevant exemption Notification No. 104/94-Cus., dated 16-3-1994 does not provide for the specific use of EXIM containers. EXIM Containers are exempted from duty subject to conditions of the bond. (Please refer Para 1 above). However, as per Circular No. 31/2005-Cus., dated 25-7-2005, there is no condition in Bond as regard specific use of EXIM Containers (Please refer Para 4 above). It is observed that though there is no expressed condition regarding use of EXIM containers for carrying Domestic Goods in any of the Notifications / Circular / Bond discussed above, the Customs Board, vide Circular No. 83/98-Cus., dated 5-11- 1998, has expressed its concern that extension of stipulated period for reexport may lead to use of such containers for domestic trade adversely affecting the domestic industry engaged in manufacturing of marine containers. (Please refer Para 2 above). Considering the specific request of the Trade, the Customs Board, vide Letter F.No. 450/69/2000-Cus.IV dated 30.10.2001, decided that the use of EXIM Containers for carrying Domestic Goods during the stipulated period of re-export may be allowed on temporary basis. (Please refer Para 3 above). Once again to promote the coastal shipping, the CBIC Board, vide Circular No. 8/2019-Cus., dated 26-2-2019, has expressly allowed the use of EXIM containers for carrying domestic cargo during the stipulated period of re-export. In addition to this, the CBIC has also categorically clarified that there should not be such condition in the bond which restricts the use of the containers for carrying domestic cargo after importation. (Please refer Para 5 above).

From the above interpretation of relevant Notification / Circulars / Bond, it appears that there is no express condition as regard the purpose of use of EXIM Containers during the stipulated period for re-export. Hence, the use of EXIM containers for the purpose not specified as an expressed condition may not hold them liable for confiscation in terms of Section 111(o) of the Customs Act, 1962. Similarly, the said EXIM containers may not be held as 'prohibited goods' in absence of any expressed condition either in the Notification or the Bond, in terms of Sec.2(33) of the Customs Act, 1962.

However, apprehension arises that if there is no express condition as regard the use of EXIM Containers, why the Trade & Industry specifically asked for the permission for using EXIM Containers for carrying domestic goods and why the CBIC Board also granted its permission firstly in year 2001 and again in 2019 and why despite the specific permission, lakhs of EXIM containers, in India, are still lying unused and are not being used for carrying domestic goods.

