

Supplement to Sixth Edition of CBL Exam Guide

Dear Readers,

Sixth edition was published in April, 2018. There have been changes in Customs law and procedures thereafter. We always aim to keep you updated in regard to important changes so that you face the examination with full confidence. With this aim, we bring out this supplement. The important changes are as below:

Customs Brokers Licensing Regulations, 2018

CBLR, 2013 is now changed to CBLR, 2018. The new regulations are discussed below in question answer form.

Q1: How do you define a “Customs Broker”?

A.1: Customs Broker means a person who is licensed under the Customs Brokers Licensing Regulations, 2018 to act as an agent on behalf of the importer or an exporter for transaction of business relating to import / export of goods or departure and entry of conveyance at a customs station including audit.

Q.2: Can a person conduct customs clearance work on behalf of an importer or exporter without a licence granted under regulation 7 of CBLR, 2018?

A.2: No. Regulation 3 provides as under:

No person shall carry on business as a Customs Broker relating to the entry or departure of a conveyance or the import or export of goods including work relating to audit at any Customs Station unless such person holds a license granted under these regulations:

However Proviso to this regulation states no license under these regulations shall be required by-

(a) an importer or exporter transacting any business at a Customs Station solely on his own account;

(b) any employee of any person or a firm transacting business generally on behalf of such person or firm, and holding an identity card or **a temporary pass** issued by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and

(c) an agent employed for one or more vessels or aircrafts in order solely to enter or clear such vessels or aircrafts for work incidental to his employment as such agent.

Q.2.1: What is procedure for applying for the grant of licence?

A.2.1: In terms of regulation 4,-

1. Director General of Performance Management shall in the month of April of every year invite applications for conducting examination and subsequent grant of license to act as Customs Broker in Form A by publication in two leading national daily newspapers in English and Hindi in addition to disseminating the information on the web portal.

2. The above said application along with a fee of five hundred rupees shall be made to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the area where the applicant intends to carry on his business.

Q.3: Under which regulation, license is granted?

A.3: Under regulation 7, licence is granted by the Principal Commissioner or Commissioner of Customs

Q.3.1: Name the form in which licence is issued to an individual, firm and a company?

A.3.1: Licence is issued In Form B-1 to an individual and in Form B-2 to a firm, company or to an association whose partner or Director or an authorized employee has passed the examination prescribed under regulation 6.

Q. 3.2: Is there a need to take a fresh licence if there is a change in the PAN of the licensee?

A.3.2: Yes, there is need to take a fresh licence under third proviso to regulation 7 (2). Licence holder should apply to the Licencing Authority for a fresh licence and should provide him the details of new PAN.

Q.3.3: Can a Customs Broker conduct business at a Customs Station other than the Customs Station from where he is issued the licence?

A. 3.3: Yes; but after two years of the issue of licence in Form B-1 or B-2.

Q.3.4 How much is licence fee and what is time limit to pay?

A.3.4: Rs 5000/-only. This is to be paid within two months from the date of declaration of the result of the oral examination failing which right to get the licence stands forfeited. The Principal Commissioner or Commissioner shall grant the licence within one month from the date of payment of said fee.

Q.3.5: Is it necessary for an applicant for a licence to hold Adhaar Number and Pan Card Number?

A.3.5: Yes; that is a necessary condition under regulation 5 (1).

Q.3.6: What are the conditions that are required to be fulfilled for applying for a Customs Broker's licence?

A.3.6: The conditions are prescribed under regulations 5 and are as under:

(1) The applicant should meet the following conditions: — (a) he is a citizen of India;

(b) he is a person of sound mind;

(c) he is not adjudicated as insolvent;

(d) he holds an Aadhaar number;

(e) he holds a valid PAN card;

(f) he has not been penalised for any offence under the Act, the Central Excise Act, 1944 (1 of 1944), the Finance Act, 1994(32 of 1994), the Central Goods and Services Tax Act, 2017 (12 of 2017) and Integrated Goods and Services Tax Act, 2017 (13 of 2017);

(g) he has neither been convicted by a competent court for an offence nor any criminal proceeding is pending against him in any court of law;

(h) an individual applicant or in case the applicant is a firm, its partner or in the case of a company, its director or an authorised employee who may handle the Customs work shall —

(i) be a graduate from a recognized University; and

(ii) possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, CA/CS/MBA/LLM/ACMA/FCMA or Diploma in Customs Clearance work from any Institutes or University recognised by the Government or is having at least two years' experience in transacting Customs Broker work as G-Card holder;

(i) the applicant needs to establish financial viability; he should produce a certificate issued by a Scheduled Bank or such other proof acceptable to the Principal Commissioner of Customs or Commissioner of Customs in terms of possession of assets of value of not less than five lakhs rupees.

(2) A retired Group A officer from the Indian Revenue Service (Customs and Central Excise) having a minimum of five years' experience in Group 'A' post shall also be eligible to apply for a license to act as a Customs Broker provided he satisfies the conditions specified at (a), (b), (c), (d), (e), (f), (g) and (i) of sub-regulation (1) above.

(3) The Principal Commissioner or Commissioner of Customs, as the case may be, may for the purpose of this regulation, make such enquiries to verify the eligibility of the applicant as he may deem fit before forwarding the application to Directorate General of Performance Management.

Q.4: Which section of the Customs Act requires a Customs Broker to be licensed?

A.4: Section 146 of the Act.

Q.5: If you get your license can you transfer, rent out or sell your license to another person?

A.5: No; it is prohibited under regulation 1(4) of CBLR, 2018. License granted to a person is specific to that person to whom it is granted. It cannot be sold and it is non-transferable.

Q.6: Can the license be suspended?

A.6: Yes; it can be suspended under regulation 16 (1) in appropriate cases where Principal Commissioner or Commissioner of Customs considers that immediate action is necessary and enquiry is contemplated or is pending under CBLR, 2018.

As per proviso to regulation 16, he may suspend the licence for specified customs stations only after recording reasons for such kind of action.

Q.6.1 Can the licence be suspended without giving an opportunity to the Customs Broker?

A. 6.1: Yes; however in terms of the provisions of regulation 16 (2), where a license is suspended under regulation 16 (1), the Principal Commissioner of Customs or Commissioner of Customs shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose license is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker.

In case, the Principal Commissioner of Customs or Commissioner of Customs passes an order for continuing the suspension, further procedure thereafter shall be as provided in regulation 17.

Q.7: Can the license be cancelled or revoked also?

A.7: Under regulation 14, the Principal Commissioner or Commissioner of Customs may, subject to the provisions of regulation 17, revoke the license of a Customs Broker

and order for forfeiture of part or whole of security, on any of the following grounds, namely:—

- (a) failure to comply with any of the conditions of the bond executed by him under regulation 8;
- (b) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;
- (c) commits any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Principal Commissioner or Commissioner of Customs renders him unfit to transact any business in the Customs Station;
- (d) adjudicated as an insolvent;
- (e) of unsound mind; and
- (f) convicted by a competent court for an offence involving moral turpitude or otherwise.

Q.7.1: What is procedure to be followed for imposing of penalty or for cancelling the licence or for forfeiture of security?

A.7.1: The procedure for purposes mentioned in the question in terms of regulation 17 is as under:

- (1) The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person.
- (2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the specified time-limit, direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not accepted by the Customs Broker.
- (3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs shall conduct inquiry and shall consider all documentary evidence and oral evidence relevant to the inquiry for the purpose of ascertaining the correct position.
- (4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Principal Commissioner or Commissioner of Customs shall furnish to the Customs Broker a copy of the enquiry report and shall require the Customs Broker to submit defence reply to this report within the specified period not being less than thirty days.

(7) The Principal Commissioner or Commissioner of Customs shall, after considering the report of the inquiry and reply thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the license of the Customs Broker within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5).

As per proviso to regulation 17(7), it is mandatory to give personal hearing to the Customs Broker in case Commissioner considers to revoke the licence.

Q.7.2: Can penalty be imposed on a F card holder also under CBLR, 2018?

A.7.2: Yes; in terms of sub regulation 17 (8) where in proceedings under these regulations, the Principal Commissioner of Customs or Commissioner of Customs comes to a conclusion that the F card holder is guilty of grounds specified in regulation 14 then the Principal Commissioner of Customs or Commissioner of Customs may pass an order imposing penalty as provided in regulation 18.

In such eventuality, F card holder shall surrender the photo identity card issued in Form F forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

Under sub regulation (9), where in an offence report, charges have been framed against an F card holder in addition to the Customs Broker who has been issued a license under regulation 7, then procedure prescribed in regulations 16 and 17 shall be followed mutatis mutandis in so far as the prescribed procedure is relevant to the F card holder.

Q.7.3: Who can take action against G card holder if he contravenes the CBLR, 2018?

A.7.3: Regulation 17 (9), if any action is contemplated against a G card holder alone under these regulations, then Deputy Commissioner or Assistant Commissioner rank

officer shall pass the order along with debarring such G card holder from transacting the business under these regulations for a period of six months from such order. In the eventuality of such an order against a G card holder, G card holder shall surrender the photo identity card issued in Form G forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

Explanation.— Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations.

Q.8: What are the obligations of a customs broker?

A.8: The obligations of a Customs Broker are prescribed under Regulation 10 of the CBLR, 2018 and in brief, are as under:

(a) obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs;

(b) transact business in the Customs Station either personally or through an authorised employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs;

(c) not represent a client in any matter to which the Customs Broker, as a former employee of the Central Board of Indirect taxes and Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities from a client who is entitled to such information;

(g) promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in

excess of Governmental or other charges payable in respect of cargo or baggage on behalf of the client;

(h) not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by the proper officer;

(i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;

(j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by the Principal Commissioner of Customs or Commissioner of Customs;

(k) maintain up to date records such as bill of entry, shipping bill, transshipment application, etc., all correspondence, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemised manner as may be specified by customs;

(l) immediately report the loss of license granted to him to the Principal Commissioner of Customs or Commissioner of Customs;

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

(o) inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days;

(p) maintain all records and accounts that are required to be maintained under these regulations and preserve for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose; and

(q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

Q.9: Can the Commissioner of Customs prohibit the custom broker to work in any one or more sections of the custom house?

A.9: Yes; he can prohibit under regulation 15 of CBLR, 2018 if he is satisfied that he has not fulfilled obligations prescribed under regulation 10.

As per first proviso to regulation 15, the period for which any Customs Broker may be prohibited from transacting business in one or more of the Customs Stations shall not exceed one month from the date of such prohibition:

Q.10: What is the maximum penalty for contravention of the provisions of CBLR, 2018 that can be imposed on a Customs Broker or F card holder?

A.10: Maximum penalty prescribed in the above context under regulation 18 is Rs. 50, 000/-. It can be imposed by the Principal Commissioner of Customs or Commissioner of Customs.

Q.10.1: How much penalty can be imposed on a G card holder by the Deputy Commissioner of Customs under regulation 18 for contravening provisions of CBLR, 2018 after completion of proceedings under regulation 17?

A.10.1: It is Rs 10, 000/- only under regulation 18 (2).

Q.10.2: Can F card and G card holders be penalized under other provisions of the Customs Act also?

A.10.2: Yes, as per regulation 18 (3), the penalty prescribed under regulation 18 is without prejudice to action under other provisions of the Act.

Q.10.3: What is remedy available under law if F Card and G card holders feel aggrieved by the orders passed by the above said authorities?

A.10.3: They can file appeal under regulation 18. The legal provisions are as below:

A Customs Broker or F card holder, who is aggrieved by any order passed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under regulation 16 or regulation 17, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act:

Provided that a G card holder aggrieved by any order passed by the Deputy Commissioner or Assistant Commissioner of Customs under these regulations may prefer an appeal under section 128 of the Act to the Commissioner of Customs (Appeals) against the orders of the Deputy Commissioner or Assistant Commissioner of Customs, as the case may be, who shall proceed to decide the appeal expeditiously within two months of the filing of the appeal.

Q.11: Before entertaining a new client how will you make sure that the client is a genuine importer or exporter?

A.11: Under regulation 10 (n) of CBLR, 2018, a Customs Broker is required to do due diligence before a client's order is taken for cargo clearance at a customs station. The regulation requires the Customs Broker to verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information

Q.12: What do you mean by due diligence? Explain in detail.

A.12: Regulation 10 (n) provides that customs broker should verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information; undertaking such an exercise with care is called due diligence.

Q.13: What is the validity period of a license granted to a customs broker and a customs broker who is also an Authorized Economic Operator (AEO)?

A.13: The validity period of Customs Broker license is ten years as per regulation 9. However, in case of Customs Broker who is also an AEO, it is valid till AEO authorization is valid.

Q.14: Can the license be renewed after expiry of the validity period; if so is the renewal subject to certain conditions?

A.14: Yes; the license can be renewed under regulation 9 (2) for another 10 years if application is filed for renewal of the licence before its expiry if the performance of the licensee is found to be satisfactory with reference, *inter alia*, to the obligations specified in these regulations including the absence of instances of any complaints of misconduct within one month from the date of receipt of the application.

In case of applications filed after expiry of the validity period, if delay was for genuine reasons, Principal Commissioner can renew the licence after payment of late fee of Rs 2000/-and renewal fee.

Renewal fee is Rs 15, 000/-

Q.15: What is amount of security that is required to be furnished by a customs broker under regulation 8?

A.15: Rs. 5, 0 0, 000/-only under regulation 8 in the form of NSC, Postal Security, B.G. or a FDR. Any interest due on the security is payable to the Customs Broker.

Change in Constitution of a Customs Broker Firm/Company

Q.1 Is there a need to intimate the licencing authority if a company or a firm licenced under the CBLR, 2018 undergoes any change in the directors, or managing director or partner?

A. Yes, under regulation 7 (b) change of the aforesaid nature should forthwith be communicated by such licensee to the Principal Commissioner of Customs or Commissioner of Customs and should ask for a fresh licence in terms of regulation 11 within 60 days of such change as per procedure prescribed under the regulation 7.

Principal Commissioner or Commissioner of Customs shall grant the licence if there is nothing adverse against the applicant (regulation 11).

During the pendency of the application for grant of fresh licence, Customs Broker shall continue to work as Customs Broker with the approval of the licencing authority (regulation 11).

Q.2 What will happen to Customs Broker firm or a company if rule 6 pass dies or retires from the firm or company?

A. Notwithstanding anything contained in sub-regulation (1), in case of any firm or a company where a license has ceased to be in force because of the death or retirement of any partner or director or an authorised employee, who has passed the examination referred to in regulation 6, the firm or the company may apply for replacement of the name of the demised person by the name of another partner, director or authorised employee who has passed the examination referred to in regulation 6: Provided that if there is no such person in the firm or company, then such firm or company, as the case may be, may authorise any other partner, director or authorised employee who is a G card holder, referred to in sub-regulation (5) of regulation 13, to pass the examination referred to in regulation 6 within a period of two years from the date of the demise or retirement of such person, and the firm or company may be permitted to carry on the business of a Customs Broker with the approval of the Principal Commissioner of Customs or Commissioner of Customs, as the case may be till such time such partner, director or authorized employee passes the said examination. Provided that where the G-card holder of the firm or company or association has appeared in the written examination referred to in regulation 6 within the said two years, then notwithstanding the expiry of the said two years, the time period to clear the examination shall be deemed to be extended till the declaration of the result of the examination

Q.3 What are the legal provisions applicable to,-

1. a sole proprietorship entity that intends to change to a firm or company; and
2. when sole proprietor dies?

A. The above issues are covered under regulation 12 of the CBLR, 2018. The provisions provide as under:

In regard to situation at (1) above, as provided in sub regulation 1, the Principal Commissioner of Customs or Commissioner of Customs pending the grant of a license in accordance with these regulations, may permit the new firm or company to act as Customs Broker through an employee duly qualified as per regulation 6.

As regard to situation at (2) above, sub regulation 2 provides as under:

The legal heir of the deceased Customs Broker, who is a major and a G card holder, referred to in sub-regulation (5) of regulation 13, may be permitted to work as a Customs Broker with the approval of the Principal Commissioner of Customs or Commissioner of Customs and such legal heir shall be required to pass the examination referred to in regulation 6 within a period of two years from the date of demise of the original licensee:

Provided that where the G-card holder of the firm or company or association has appeared in the written examination referred to in regulation 6 within the said two years, then notwithstanding the expiry of the said two years, the time period to clear the examination shall be deemed to be extended till the declaration of the result of the examination:

Provided further that where such G card holder does not meet the requisite educational qualification as specified in regulation 5, then relaxation shall be allowed only if he has been holding the G card for a minimum of five years prior to the date of demise of the original licensee.

Engagement or employment of persons.— Regulation 13

Q.1 What are provisions applicable to regulation 6 pass regarding engagement in work relating to clearance of goods through customs?

A.1 In terms of sub regulation 13(1), a person who has passed the regulation 6 examination may engage himself in the work relating to the clearance of goods through customs on behalf of a firm or a company licensed under these regulations.

As per sub regulation 2, photo identity card in Form F by the Deputy Commissioner of Customs or Assistant Commissioner of Customs is issued to the person or persons who have actually passed the examination referred to in regulation 6.

Q.2 Who can be employed by the Customs Broker?

A.2 In terms of sub regulation 3, a Customs Broker may, having regard to the volume of business transacted by him, employ any number of persons other than an F card holder to assist him after verifying their antecedents and identity at the declared address by using reliable, independent, authentic documents, data or information.

Such employed person should possess the Aadhaar number issued to him and shall be 10+2, or equivalent. And such persons shall be employed after obtaining the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, who shall in granting approval, take into consideration the antecedents and any other information pertaining to the character of such person.

A 10+2 pass employed by the Customs Broker shall be issued a photo identity card in Form H by the Deputy /Assistant Commissioner under sub regulation 9.

Q.3: Who is a G card holder?

A.3: In terms of sub regulation (5), H card holder shall, within four attempts from the date of his appointment, pass a written examination conducted by the Deputy Commissioner of Customs or Assistant Commissioner of Customs and the examination shall be such as to ascertain the adequacy of knowledge of such person regarding the provisions of the Act subject to which goods and baggage are cleared through Customs and the person shall, on passing the examination, be issued a photo-identity card in Form G by the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

If a G card holder shifts his job to another Customs Broker, he is not required to pass the G card exam as per sub regulation 6.

Q.4: Who can sign declaration on the B/E or shipping bill or annexure thereof?

A.4: As per regulation (7), a Customs Broker shall authorise only such employee who has been issued a photo identity card in Form F or Form G to sign the declaration on the bills of entry, shipping bills, annexure thereof or any other document generated in connection with the proceedings under the Act or the rules or regulations made thereunder.

A Customs Broker is required to file with the Deputy Commissioner of Customs or Assistant Commissioner of Customs of each Customs Station a written authority in this behalf and give prompt notice in writing if authorization to sign is modified or withdrawn.

It is necessary under sub regulation (10) to carry photo identity card by F, G and H card holders and produce the same for inspection on demand by any officer of the Customs Station.

Under sub regulation (12), the Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment.

Other relevant Questions

Q.1: What is liability of an Agent viz-a-viz under the Act?

A.1: Liability of an Agent is defined under section 147 of the Act. Section 147 provides as under:

- (1) Any act which is required to be performed by the Importer or exporter of the goods can be performed by his agent also;
- (2) Any such thing done by an agent of the importer or exporter of any goods shall, unless the contrary is proved, be deemed to have been done with the knowledge and consent of such importer or exporter, so that in any proceedings under this Act, the importer or exporter of the goods shall also be liable as if the thing had been done by himself.
- (3) When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer or exporter, be deemed to be the importer or exporter of such goods for such purposes:

Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any willful act, negligence or default of the agent, such duty shall not be recovered from the agent unless in the opinion of Assistant Commissioner of Customs or Deputy Commissioner of Customs the same cannot be recovered from the owner, importer or exporter.

Q.2: What are special benefits available to a Customs Broker who is also a AEO?

A.29: Following benefits are available to a Customs Broker who is also an AEO:

- (a) Waiver of Bank Guarantee to be furnished under the CBLR, 2018.
- (b) Extended validity (till validity of AEO status) of licenses granted under regulation 9 of the CBLR 2018. System Manager is required to incorporate date of validity of AEO from time to time in the System Directory
- (c) Waiver from fee for renewal of license prescribed under CBLR, 2013

Q.31. What is GSTIN?

A.32 "GSTIN" as per regulation 2 means a 15 digit state-wise PAN- based Goods and Services Tax Identification Number assigned at the time of issue of Goods and Services Tax registration certificate.

Customs Audit Procedure

Customs Audit Procedure is governed by the provisions of Customs Audit Regulations, 2018 framed under section 157 (k) of the Customs Act, 1962 read with the provisions of section 99 A and section 158 (2) (ii) of the Customs Act, 1962. The main features of the regulations are as below:

1. Important definitions as per regulation 2:
 - a. Audit: includes examination or verification of declaration, record, entry, document, import or export licence, authorization, scrip, certificate or permission etc., books of accounts, test or analysis report and any other document relating to imported goods or export goods or dutiable goods and may include inspection of sample and goods; if such sample or goods is available and where necessary drawl of samples.
 - b. Auditee: means a person who is subject to an audit under section 99 A of the Act and includes an importer or exporter or custodian or a appointed under section 45 of the Act or a licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.
 - c. Premises: includes the registered office, branch office, warehouse, factory or any other premises at which imported goods, export goods or dutiable goods or books of accounts or records of transactions or other related documents are ordinarily kept for any purpose by the auditee.
2. Under regulation 3 (1),-every Auditee shall preserve records relating to the imported goods, export goods or dutiable goods for five years and shall produce before the proper officer on demand for the purpose of audit.
3. Under regulation 3 (2) every Auditee shall provide assistance to the proper officer and his team in discharging his official duties and shall not obstruct him or his team in carrying their duties.

4. As per regulation 4, auditee as well as import or export declaration shall be selected for the purpose of audit on risk evaluation based on appropriate criteria.
5. Manner of conducting audit: the manner of conducting audit is described in regulation 5 and is as under:
 - i. The proper officer may conduct audit in his office or in certain cases at the premises of the auditee.
 - ii. The proper officer can ask the auditee to produce relevant record/information including electronic records for the purpose of audit wherever considered necessary.
 - iii. For conducting audit at the premises of auditee, proper officer shall give at least 15 days advance notice to the auditee.
 - iv. The proper officer may, where considered necessary, inspect imported goods, export goods or dutiable goods at the premises of the auditee or request the auditee to produce sample thereof if available.
 - v. The proper officer shall discuss the objections if any with the auditee before preparing the Audit Report and provide him opportunity to offer clarification in regard to the objections with supporting documents.
 - vi. Where the auditee is in agreement with the audit objection, he may make voluntary payment of the duty or any other sum in part or full and may record necessary note to that effect in the Audit Report.
 - vii. Where the proper officer has asked the auditee to produce certain record, information, document or sample of the goods for the purpose of audit, it shall be compulsory for the proper officer to record audit findings of such audit.
 - viii. On site audit shall be completed within 30 days from the date of start of audit; however, the jurisdictional Commissioner can extend the time limit by an order in writing.
6. Assistance of Professionals: Under regulation 6, proper officer can take assistance of Chartered Accountants/Cost Accountants with the approval of Principal Commissioner of Customs.

7. Penalty: If any auditee contravenes any of the provisions of these regulations or abets in doing that, he shall be liable to penalty not exceeding Rs 50,000/-only.

Application of Courier Import & Export (Electronic Declaration & Processing Regulations, 2010 as amended in August, 2018

As per regulation 2 (1), these regulations shall apply for assessment and clearance of imported or export goods, carried by an Authorised Courier by air, on behalf of a consignee or consignor at such Customs airports and in such form and to such extent, as the Board may, by notification, declare for the purposes of these regulations in this behalf.

As per regulation 2 (2), these regulations shall not apply to:

(a) the following imported goods requiring testing of samples thereof or reference to the relevant statutory authorities or to experts before their clearance, namely:-

- (i) animals and parts thereof, plants and parts thereof;
- (ii) perishables;
- (iii) publications containing maps depicting incorrect boundaries of India;
- (iv) precious and semi-precious stones, gold or silver in any form;

(b) import or export of goods under any export promotion scheme other than Export Oriented Unit (EOU) scheme and similar schemes referred to in Chapter 6 of the Foreign Trade Policy 2009-14.

As per proviso to this sub clause, this sub-clause shall not apply to goods notified in Appendix 3C of the Foreign Trade Policy (2015-2020), under the Merchandise Exports from India Scheme (MEIS) in consignment of value up to five lakh rupees and involving transaction in foreign exchange.

(c) the following export goods, namely:-

- (i) the goods which are subject to levy of any duty on their exports;

(ii) goods where the value of the consignment is above rupees five lakh and transaction in foreign exchange is involved:

However as per *proviso to this sub clause*, the limit of rupees five lakh as provided in this sub-clause shall not apply to such export consignments where the G.R. Waiver or specific permission has been obtained from the Reserve Bank of India.

Powers of Adjudication under the Customs Act, 1962

Section 122 empowers the Customs officers to adjudicate cases of various categories. The provisions of section 122 are reproduced below:

In every case where anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged, -

(a) without limit, by a Principal Commissioner of Customs or Commissioner of Customs or a Joint Commissioner of Customs;

(b) up to such limit, by such officers, as the Board may, by notification, specify.

The CBIC vide notification No: 50/2018-Customs (N.T.) dated 8th June, 2018 has given following powers to the officers under section 122 for the purposes of adjudging confiscation of goods or penalty on persons contravening the provisions of the Customs Act, 1962:

S. No	Designation of officers	Limit of Value of goods
1.	Assistant Commissioner of Customs or Deputy Commissioner of Customs	Above rupees one lakh but not exceeding rupees ten lakh
2.	A Gazetted officer of Customs lower in rank than an Assistant Commissioner or Deputy Commissioner of Customs	Not exceeding rupees one lakh

Sea Cargo Manifest and Transshipment Regulations, 2018

In supersession of the earlier regulations relating to sea cargo, CBIC has framed new regulations under section 157 and section 158 of the Customs Act, 1962. The full text can be read on www.cbic.gov.in These have come into effect from 1st of August, 2018. The regulations are discussed below:

1. Regulation 2-Definitions

(b) “arrival manifest” means an integrated declaration required to be delivered by an authorised carrier on arrival of the vessel or train or truck carrying imported goods, export goods and coastal goods;

(c) “authorised carrier” means an authorised sea carrier, authorised train operator, shipping line or a custodian registered under regulation 3;

(d) “authorised sea carrier” means the master of the vessel carrying imported goods, export goods and coastal goods or his agent;

(e) “authorised train operator” means the train operator carrying imported goods, export goods and coastal goods;

(f) “Coastal goods transited through a designated foreign route” means: (i) coastal goods transported between an Indian port on east coast and another Indian port on west coast or vice versa, by a vessel through the territorial waters of Sri Lanka, whether or not calling any port in Sri Lanka in between and without change of vessel;

(ii) coastal goods transported between an Indian port on east coast and a river port in India or vice versa, by a vessel through a route passing through the Bangladeshi waters and without change of vessel;

(g) “custodian” means a person approved by the Principal Commissioner or the Commissioner of customs, for the purposes of section 45 of the Act;

(h) “departure manifest” means integrated declaration required to be delivered by an authorised carrier before departure of a vessel or train or truck for imported goods, export goods and coastal goods;

2. Regulation 3-Registration of persons delivering Arrival Manifest or Departure Manifest:

1. Every person who intends to deliver arrival or departure manifest should apply for registration in Form -1 with the jurisdictional Commissioner of Customs.
2. On being satisfied with the information given in Form -1, Commissioner shall register such a person for transacting business under these regulations for three years from the date of issue of registration.
3. Once registered as above at a customs station, the person shall be deemed to be registered at all customs stations in the country.
4. The jurisdictional Commissioner of Customs shall review the registration before expiry of three years and may extend for five years and in the case of a Authorised Economic Operator for ten years.

3. Regulation 4-Delivery of an Arrival Manifest

Regulation 4 provides as below:

(1) An authorised sea carrier carrying imported goods, export goods or coastal goods, shall deliver the arrival manifest to the proper officer electronically and where it is not possible to deliver the arrival manifest electronically then the manifest shall be submitted manually in duplicate with the approval of the Commissioner of Customs.

(2) The arrival manifest shall consist of, -

(a) an application for entry inwards in Form-II (except in case of vessel carrying exclusive coastal goods);

(b) a general declaration in Form-III;

(c) vessel's stores list in Form- IV;

(d) list of private property in the possession of the Master and crew, in Form- V (e) cargo declaration: -

(i) for vessel arriving at an Indian port from a Foreign port in Form-VIA; or

(ii) for vessel arriving at an Indian Port from another Indian Port directly or through designated foreign route in Form-VIB;

(f) any other declaration which, under the provisions of the Customs Act or any other Act for the time being in force is required to be delivered to the proper officer on arrival of vessel.

(3) The general declaration and cargo declaration shall be delivered before the departure of the vessel from last port of call and the rest of the arrival manifest shall be delivered before arrival of the vessel.

4. Regulation-5 Delivery of a Departure Manifest

Regulation 5 provides as under:

(1) An authorised sea carrier carrying imported goods, export goods, coastal goods or goods meant for foreign transit or foreign transshipment, shall before the departure of the vessel from the port, deliver the departure manifest to the proper officer electronically and where it is not possible to deliver the departure manifest electronically, then the manifest shall be delivered manually in duplicate with the approval of Commissioner of Customs before the departure of the vessel.

(2) The departure manifest shall consist of, -

(a) a general declaration in Form-III;

(b) a vessel's stores list in Form-IV;

(c) a list of private property in the possession of the Master and crew, in Form-V; (d) a cargo declaration:

(i) for vessel departing from an Indian port to a Foreign port in Form-VIIA; or

(ii) for vessel departing from an Indian Port to another Indian port directly or through designated foreign route in Form-VIIB;

(e) any other declaration which, under the provisions of the Customs Act or any other Act for the time being in force is required to be delivered to the proper officer on arrival of the vessel.

5. Regulation 6 Other Declaration in respect of specific cargo. - (1) the cargo declaration in respect of —

(a) arms; (b) ammunition; (c) explosives; (d) narcotics and psychotropic substances; (e) dangerous drugs; (f) gold; (g) silver; (h) radio-active material for import, export, transshipment, or for being carried as same bottom cargo shall be delivered in separate sheets and shall be set out in the order of the ports of loading.

(2) Where a vessel does not carry any of the cargoes referred above, a nil declaration shall be delivered.

6. Regulation 7- Transshipment of imported goods or export goods between a port/ICD and Inland Container Depot (ICD)/Container Freight Station (CFS) /Special Economic Zone (SEZ). It provides as below:

An authorised carrier shall file a departure manifest before the departure of a train or a truck and arrival manifest upon arrival of the train or truck, as the case may be, in Form-VIII.

7. Regulation 8-Amendments of arrival or departure Manifest. –

Where the proper officer nominated by the Commissioner of customs is satisfied that the arrival manifest or departure manifest is in any way incorrect or incomplete, and that there was no fraudulent intention towards incorrect or incomplete submission as regards the contents thereof, he may permit it to be amended or supplemented.

8. Regulation 9-Conditions governing transshipment or transit through a designated foreign route. – (1) The transshipment shall be allowed under the following conditions–

(a) the goods are mentioned in the arrival manifest or departure manifest, as the case may be, for transshipment to any customs station;

(b) such transshipment is by, a vessel, train or a truck or by a combination of two or more of these modes of transport;

(c) the authorised carrier executes a bond in the prescribed with or without bank guarantee or surety. However, where the transshipment of goods is directly between two sea ports, no bond and bank Guarantee shall be furnished;

(d) in the case of imported goods meant for transshipment by land route, the proper officer nominated by the Commissioner of customs shall seal the containers before permitting such transshipment.

(2) In case of coastal goods manifested for transit through a designated foreign territory, the authorised carrier shall execute a bond in the prescribed with or without bank guarantee or surety.

9. Regulation 10-Responsibilities of the authorised carrier under these regulations. - (1) An authorised carrier shall-

(a) transact business in the customs station either personally or through an employee duly approved by the Deputy Commissioner or Assistant Commissioner of Customs, as the case may be;

(b) keep a record of imported goods, export goods, coastal goods or goods brought for transshipment as the case may be, and produce such records to the proper officer as and when required;

(c) keep a record of movement or handling of imported goods, export goods, coastal goods or goods brought for transshipment;

(d) make available track and trace facility for locating imported or export goods, coastal goods or goods brought for transshipment;

(e) be responsible for the safety, security and delivery of imported, export goods or coastal goods under its custody;

(f) be liable to pay duty on goods pilfered, lost during the transit or transshipment thereof in the customs area or enroute;

(g) be responsible for re-export of hazardous goods where such goods are ordered to be exported back to the exporting country;

(h) advise his client to comply with the provisions of the Act and in case of noncompliance, shall bring the matter to the notice of the deputy commissioner or assistant commissioner of customs as the case may be;

(i) not procure or attempt to procure directly or indirectly, information from the government records or other government sources of any kind to which access is not granted by the proper officer;

(j) ensure electronic transmission of delivery orders to the importer or the consignee and intimation of the same to the custodian and the proper officer;

(k) publish and display at prominent places including website or webpage of the authorised carrier the schedule of charges for the various services provided by him in relation to the imported goods or export goods or coastal goods in the customs area;

(l) not charge any rent or demurrage on the goods seized or detained or confiscated by the Customs Authorities;

(m) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued there under;

(2) The authorised carrier shall not sublet or sub-contract or outsource functions permitted or required to be carried out by him to any other person.

10. Regulation 11- Suspension of operations or revocation of registration of an authorised carrier. - (1) The jurisdictional Commissioner of Customs may revoke the registration of the authorised carrier, for failure to comply with any provisions of the regulations.

(2) The Commissioner of Customs of any customs station on reasonable belief that operations of such authorised carrier is detrimental to the interest of revenue, may suspend their operation in his jurisdiction by an order stating the grounds of suspension.

(3) The Commissioner of Customs shall, within fifteen days from the date of such suspension order, shall give an opportunity of hearing to the person and pass such order within fifteen days from the date of the said hearing, as he deems fit, either revoking the suspension or continuing it for a further period not exceeding ninety days from the date of suspension, as the case may be.

Provided that where the suspension against the authorised carrier has been continued, the Commissioner of Customs concerned shall intimate to the jurisdictional Commissioner of Customs.

11. Procedure for revocation of registration of authorized carrier

Procedure for revocation of registration is given in regulation 12. It is similar to the procedure relating to the cancellation of Customs Broker's licence. For details may log on www.cbic.gov.in

12. Imposition of Penalty: If any authorized carrier contravenes the any of the provisions of these regulations, penalty up to rupees fifty thousand can be imposed under regulation 13.

13. Appeal: Regulation 14 provides that any person aggrieved by any decision or order passed under these regulations may file appeal before CESTAT.