

Manufacturing in Customs Bonded Warehouse *scheme* – Whether a viable alternative to FTP and other schemes such as Advance Authorization/EOU/SEZ?

CHOOSING THE RIGHT SCHEME

Types of warehouses under Customs Act, 1962

- Public Bonded Warehouse (Section 57)
- Private Bonded Warehouse (Section 58)
- Special Warehouse (Section 58A)



Special Bonded Warehouse

- Special bonded warehouses for:
 - Storage of gold, silver and other semi-/precious metals
 - Supply to Duty Free Stores
 - Supply stores to vessels or aircraft
 - Supply to foreign privileged persons
- Manufacture and Other Operations in Special Warehouse Regulations, 2020
- Circular No.36/2020-Customs dated 17-08-2020

Private Warehouse

- A Private Bonded Warehouse means a site or a building that is licensed under Section 58 of the Customs Act, wherein dutiable goods imported by or on behalf of licensee can be stored
- These warehouses are owned by private entities or individuals and are used exclusively for the goods owned by, imported by or on behalf of the licensee



Applicable legislations governing MOOWR

Chapter IX of Customs Act 1962 (Section 57 to 73A)

Private warehouse licensing regulations, 2016

Manufacture and Other Operations in Warehouse (No. 2) Regulations, 2019 (MOOWR)

Circular No. 34/2019-Cus dated 01.10.2019

Circular No. 48/2020-Cus. dated 27.10.2020

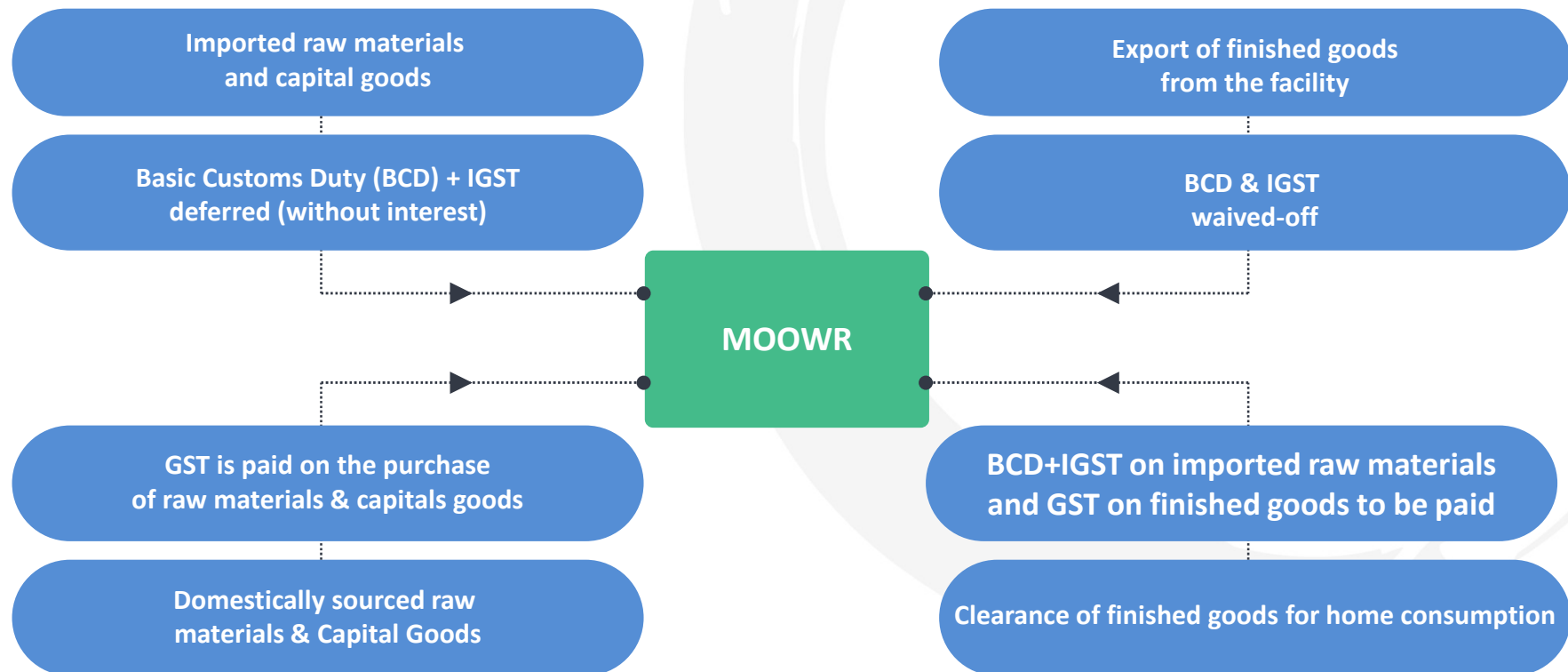
MOOWR: Highlights

- Raw material and capital goods can be brought into warehouse from customs station without payment of import duties and used in manufacturing of finished goods
 - Remission of import duties on raw material if finished goods are exported
 - Deferment of import duties on raw material with no interest liability if finished goods are cleared for home consumption
 - Deferment of import duties on capital goods with no interest liability till the time they are cleared from warehouse for home consumption. If exported or destroyed within warehouse, import duties would be remitted
- Raw material cleared as such for home consumption
 - Whether interest is payable or not on custom duty?
 - Special Warehouse Circular No. 36/2020-Customs dated 17-08-2020

MOOWR: Highlights

- Waste/Scrap arising from manufacturing process
 - If FG is exported, and
 - Waste is Destroyed -- Import duty on warehoused goods contained in waste would be remitted
 - Or Waste is not destroyed: Duty is required to be paid on such waste considering this as imported goods
 - If FG is cleared for home consumption, then import duty on quantity of warehoused goods contained in so much of waste is required to be paid


MOOWR: Duty implication



MOOWR: Highlights

- No minimum investment is required
- No minimum area/notified area
- Existing warehouse can be converted into private manufacturing license
- Submit a triple duty bond under Section 59 of the Customs Act
- No export obligation or NFE obligation attached to MOOWR
- A single application

MOOWR: Eligibility

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- Person who is granted Section 58 license/applies for Section 58 license along with Section 65 license
 - Application is made to Principal Commissioner/Commissioner of Customs
 - Maintains accounts of receipt and removal of goods in digital form in specified format
 - Execute a bond in such format as may be specified
 - Inform Principal Commissioner regarding Input-output norms, where necessary, for raw materials and final products

Easing compliance for warehouse under MOOWR

PRIOR TO 14-05-2016

61(1) (1) Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed,

(a) in the case of capital goods intended for use in any hundred per cent export oriented undertaking, till the expiry of five years;

(aa) in the case of goods other than capital goods intended for use in any hundred per cent. export-oriented undertaking, till the expiry of three years; and

(b) in the case of any other goods, till the expiry of one year, after the date on which the proper officer has made an order under section 60 permitting the deposit of the goods in a warehouse :

FROM 14-05-2016

61.(1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed,—

(a) in the case of capital goods intended for use in 100%.

EOU, EHTP, STP or any warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse;

(b) in the case of goods other than capital goods intended for use in any 100% EOU or EHTP or STP unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse; and

(c) in the case of any other goods, till the expiry of one year from the date on which the proper officer has made an order under sub-section (1) of section 60:

Validity of Warehousing period for Section 65 warehouses upto consumption/clearance from warehouse from earlier validity of 1 year

Interest applicability for warehouse under MOOWR

PRIOR TO 14-05-2016

61(2) Where any warehoused goods:

(ii) specified in sub-clause 61(1)(b), remain in a warehouse beyond a period of ninety days, interest shall be payable at such rate or rates not exceeding the rate specified in section 47, as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:

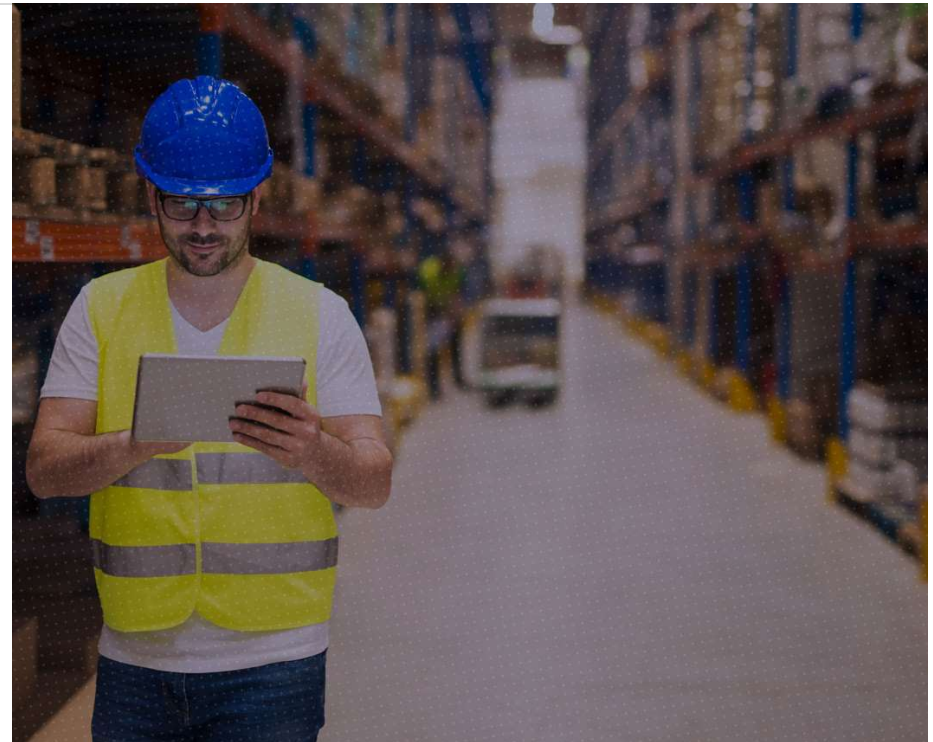
FROM 14-05-2016

61(2) Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse beyond a period of ninety days from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:

Interest applicability removed for Section 65 warehouses from earlier applicability of 90 days

Job work under MOOWR

- Sending goods for job work is permitted from warehouse
- Receipt of goods for job work also permitted (for export goods as well as domestic goods)
- Circular No. 48/2020-Cus. dated 27.10.2020
- Repair undertaken in warehouse is permitted [FAQ No. 19]



Other points

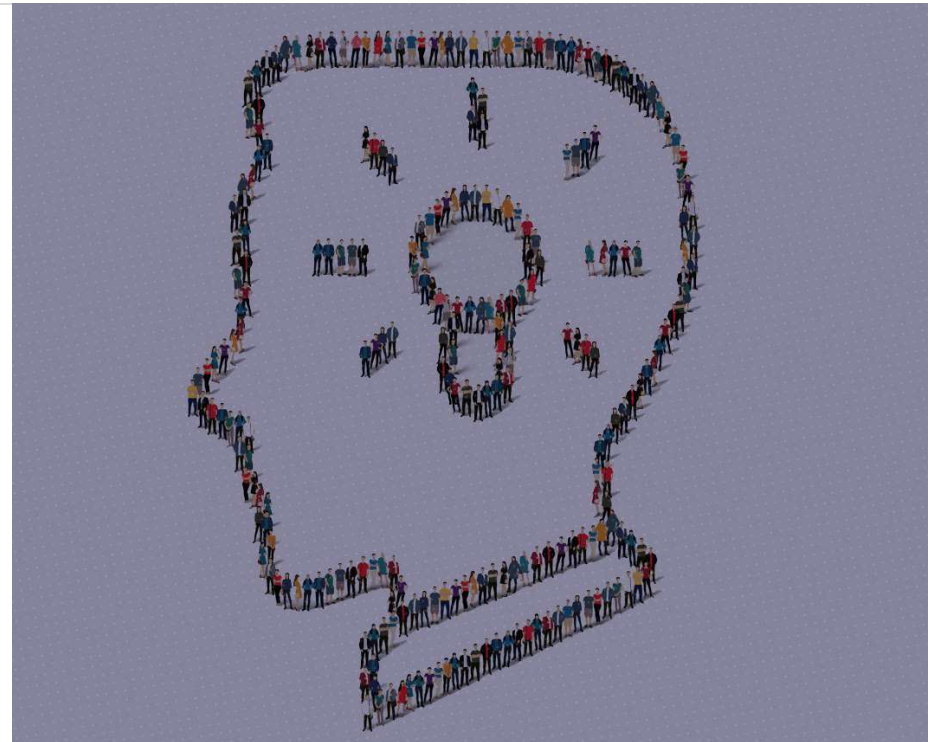
Manufacture and other operations is not defined

No AIR of Drawback is available on export from Warehouse

Filing ex-bond bill of entry for each supply for home consumption

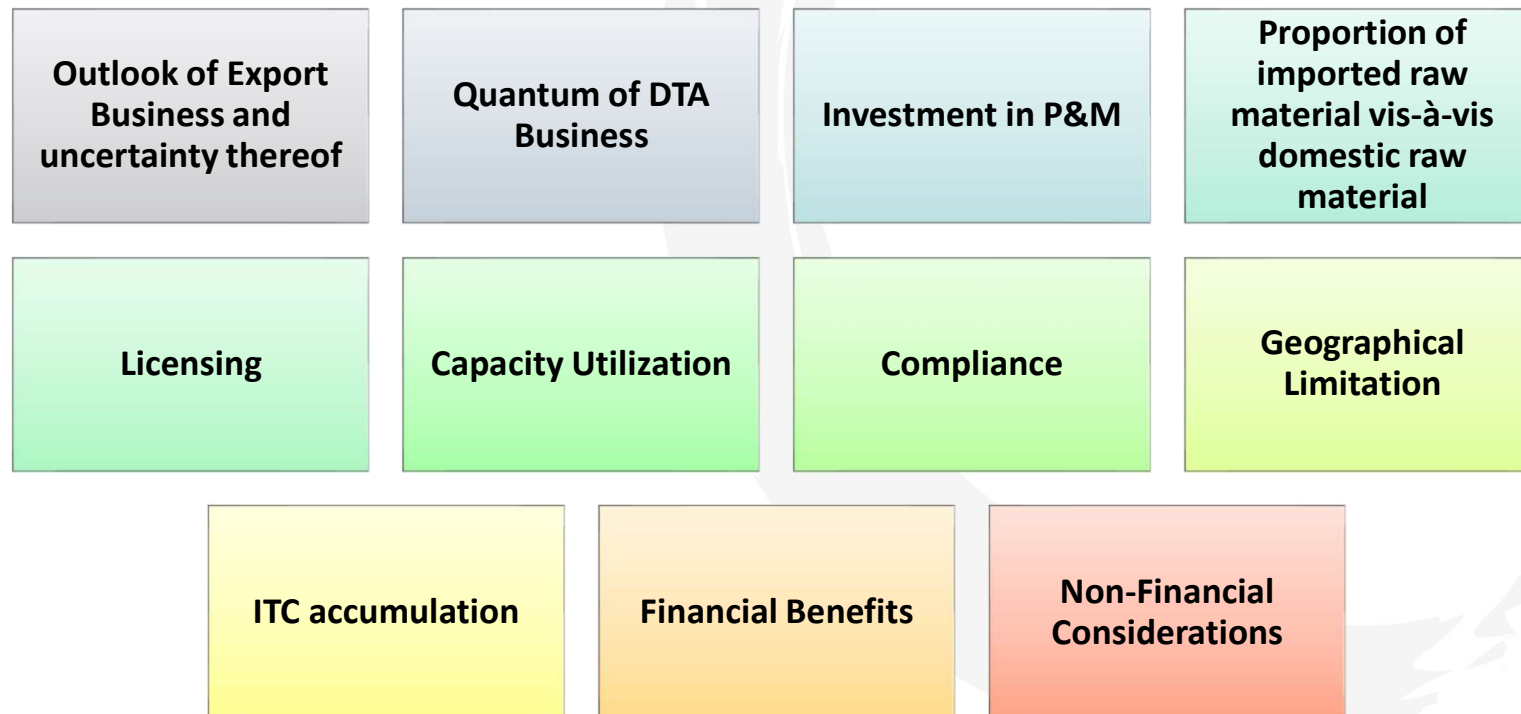
Points to ponder

- Whether importer can opt for deferment of only BCD and, pay IGST and avail credit?
- Is services industry allowed?
- Will clearance of warranty spares and replacements amount to removing of goods as such?
- Whether import licenses are required for warehousing since resultant goods may also be exported without home consumption?
- Whether duty paid imported goods can be brought into the warehouse?



Choosing the right scheme

Various factors in choosing the right scheme



Benefits of MOOWR over other schemes

No export obligation or minimum value addition required. No limit in clearing FG in DTA.

Capacity utilization by way of undertaking jobwork for DTA units with respect to FG be sold in DTA

No bar in clearing imported goods as such.

Exports on payment of IGST even if procurement without payment of IGST [No bar under Rule 96(10)]. Can help in minimizing ITC accumulation.

No capacity expansion or new R&D is required for conversion of existing Units

No geographical limitation

Financial Benefits not provided under MOOWR

- Excise duty and CST exemption/refund on procurement of FUEL from DTA
- Surrender of IGST on inputs contained in FG not required on clearance into DTA
- DTA supplier can avail Duty Drawback or AA on supplies to EOU. Also, GST refund available either to Supplier or EOU recipient.
- Depreciation benefit available for capital goods at the time of clearance/debonding subject to positive NFE
- No duty on inputs contained in waste if within norms.

The above benefits are provided to an EOU/SEZ since it also has additional NFE obligation

Non-Financial benefits not provided in MOOWR

- Service Exports Units are allowed in EOU/SEZ
- Prohibited goods are allowed to export on case to case basis

Scenario if same input is imported as well as domestically procured

- A unit may use both imported and domestically procured identical inputs. Domestically procured inputs are used in export business and imported inputs are used in domestic business.
- **EOU**: Domestic inputs are duty-free since AIR given to DTA supplier. Hence, exports are free of taxes. Imported inputs when used in DTA business need to surrender taxes. So it is neutral.
- **AA**: It is neutral since benefit extended to post-export imported inputs (through legally disputed)
- **MOOWR**: There is a problem. Domestic inputs have suffered inherent duties which are not reimbursed since final exports are not eligible for AIR. Imported inputs when used in domestic business need to surrender duties.
- This effectively means that MOOWR has pre-import condition to avail benefit. Also, the quantum of imported raw material should be more than domestic raw material.

Procedural Benefits under MOOWR as compared with AA and EOU/SEZ

- A single application for conversion
- No application and subsequent redemption of various licences like in AA. Once converted into MOOWR, free flow of duty-deferred inputs and subsequent exports. Even no renewal of warehouse licence is required
- Monthly Returns are easy since no NFE calculations are involved
- Norms only need to be ratified by Jurisdictional Commissioner and not by Norms Committee or SION notified
- No restriction on availment of benefits under FTP

Transferring imported capital goods to Supporting Manufacturer location

- Under MOOWR, jobwork is allowed. But capital goods imported cannot be shifted to jobworker premises. Only tools, moulds and drawings etc. can be provided to jobworker and not main machinery.
- Under EPCG Scheme, facility of installing the machinery at supporting manufacturer location is also provided.
- Even EOU/SEZ scheme does not allow shifting of main machinery to supporting manufacturer.

Who should OPT for MOOWR?

A few cases

- Heavy investment in imported P&M
- High percentage of imported raw materials vs. domestic raw materials
- Good DTA business along with Export business
- Inverted duty structure (CG can be imported under this scheme to reduce accumulated ITC)
- Period of operations

Way Forward

- Impact Analysis between various schemes based on factual position
- Representation on making MOOWR more attractive
 - Eligibility to RODTEP
 - Eligibility to Depreciation on Capital goods
 - Eligibility to AIR Drawback to DTA Supplier of MOOWR
 - Clarification on AA/EPCG along with MOOWR
 - Clarification on 'other operations' – Warranty goods
 - Clarification on storage of duty paid imported goods

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