Circular No. 01/2011-Customs

F.No.401/179/2009-Cus.III
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Room No. 227 B, North Block,
4th January 2011, New Delhi-110001

To

All Chief Commissioners of Customs / Customs (Prev).
All Chief Commissioners of Customs & Central Excise.
All Directors General of CBEC.
All Commissioners of Customs / Customs (Prev).
All Commissioners of Customs (Appeals).
All Commissioners of Customs & Central Excise.
All Commissioners of Customs & Central Excise (Appeals).

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Subject: **Provisional release of export - goods detained for investigation - reg.**

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Sir / Madam,

Attention is invited to the Board Circular No.33/2005-Customs dated 2.08.2005 which contains the instructions regarding provisional release of goods entered for exportation and is seized on the ground of mis-declaration in terms of quantity and value.

2. Instances have come to the notice of the Board that export consignments continue to be detained and not allowed clearance on provisional basis on account of pending test reports / investigations for alleged mis-declaration in terms of quantity, value and description of the goods. In one case it was reported that the detained goods were not allowed to be exported provisionally on the ground that Board"s Circular referred above provides for provisional release of only the seized goods.

3. In this regard it is observed that inordinate detention of the seized goods entered for exportation results in delays in fulfillment of export order and at times cancellation of such orders. Detention of goods also adds to congestion in ports besides resulting in payment of demurrage charges to the Custodians. Accordingly, the matter has been re-examined by the Board with the view to ameliorate the aforementioned difficulties faced by exporters and to streamline the procedure of provisional release / exportation of seized goods / goods under investigation on account of mis-declaration in terms of quantity and value etc.

4. Seizure should be resorted to only when the Customs officers have a reason to believe that the goods in question are liable to confiscation under the Customs Act, 1962 and thereafter the provisions of Section 110A of the Customs Act, 1962 would come into play. However, there may be situations when the goods are to be detained for purpose of tests etc. to confirm the declaration. In such cases the endeavour should be to quickly undertake the necessary action (test / enquiry etc.) and take appropriate legal action thereafter so that the period of detention is kept to the minimum. Thus, the following course of action is prescribed in respect of goods entered for exportation:

(a) In case the export goods are found to be mis-declared in terms of quantity, value and description and are seized for being liable to confiscation under the Customs Act, 1962, the same may be ordered to be released provisionally on execution of a Bond of an amount equivalent to the value of goods along with furnishing an appropriate security in order to cover the redemption fine and penalty.

(b) In case the export goods are either suspected to be prohibited or found to be prohibited in terms of the Customs Act, 1962 or ITC (HS), the same should be seized and appropriate action for confiscation and penalty initiated.

(c) In case the export goods are suspected of mis-declaration or where declaration is to be confirmed and further enquiry / confirmatory test or expert opinion is required (as in case of chemicals or textiles materials), the goods should be allowed exportation provisionally. The exporters in these cases are required to execute a Bond of an amount equal to the value of goods and furnish appropriate security in order to cover the redemption fine and penalty in case goods are found to be liable to confiscation. In case exports are made under any Export Promotion / Reward Schemes, the finalization of export incentives should be done only after receipt of the test report / finalisation of enquiry and final decision in the matter. The Bond executed for provisional release shall contain a clause to this effect,

(d) Export goods detained for purpose of tests etc. must be dealt with on priority and the export allowed expeditiously unless the prohibited nature of goods is confirmed. Continued detention of any export goods in excess of 3 days must be brought to the notice of the Commissioner of Customs, who will safeguard the interest of the genuine exporters as well as the revenue.

5. A suitable public notice for information of trade and standing order for guidance of staff may be issued.

6. Difficulty faced, if any, in implementation of this Circular may be immediately brought to the notice of the Board.

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Yours faithfully,

(Vikas)
Under Secretary (Customs-III)