**Circular No. 54 / 2011-Customs**

F.No.450/55/2008-Cus.IV (Pt.III)

Government of India

Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

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229-A, North Block,

New Delhi, dated 29th December, 2011.

To,

All Chief Commissioners of Customs / Customs (Prev).

All Chief Commissioners of Customs & Central Excise.

All Commissioners of Customs / Customs (Prev).

All Commissioners of Customs & Central Excise

All Director General under CBEC.

**Subject: Handling of Cargo in Customs Areas Regulations, 2009 - Clarification - regarding.**

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Attention is invited to the provisions of Handling of Cargo in Customs Areas Regulations, 2009 (HCCAR) and various circulars and instructions issued by the Board on the above subject from time to time.

2. At the time of introduction of the said regulations it was explained that it provides for a comprehensive mechanism for handling of goods in a customs area and set out the terms and condition for all facilities where customs cargo is handled. These Regulations also fulfilled the recommendation made by the Public Accounts Committee for formulating appropriate provisions to exercise adequate control over the cargo handling entities to ensure that the adequate infrastructure is set up at all customs areas for efficient handling of imported or export goods.

3. In this context, it is stated that Regulations 5 and 6, provide for conditions to be fulfilled by a Customs Cargo Service Provider (CCSP) and their responsibilities in relation to imported or export goods. Regulation 6(2) particularly provides that CCSP approved for custody of imported or export goods and for handling of such goods shall not lease, gift, sell or sublet or in any other manner transfer any of the premises in a customs area; or sub-contract or outsource functions permitted or required to be carried out by him in terms of these regulations to any other person, without the written permission of the Commissioner of Customs. The condition of such permission has been provided for the reason that the powers for approval of any place as 'Customs Area' and to approve / appoint a custodian under section 8 and 45 of the Customs Act, 1962, respectively, including the power for suspension or dismissal of such approval is vested with the jurisdictional Commissioner of Customs.

4. In this regard, a reference has been received from the Ministry of Shipping pointing out that the developmental activities in respect of major ports on Public Private Partnership mode are taking place wherein private operators are constructing and operating terminals in the land leased out to them. Such projects require obtaining the approval of Minister of Shipping/ Finance Minister/ Cabinet Committee of Infrastructure depending upon the cost of the project. Hence, they had represented that specific permission from another authority i.e., the Commissioner of Customs is unwarranted. Hence, they had requested to exclude Major port trusts from the purview of the said Regulations.

5.1. The matter was examined in detail. At the time of introduction of the said Regulations itself it was clarified vide Board's circular No.13/2009-Customs dated 23.3.2009 that Port Trusts of the notified major ports shall not be required to make an application for approval or renewal under these regulations, since section 45 of the Customs Act, 1962, which provides for approval of custodians, makes an exception to major ports. However, they are required to discharge the responsibilities cast upon them as specified in Regulation 6 which include obtaining written permission from the Commissioner of Customs prior to outsourcing or leasing part of the premises within

a customs area. This has been provided in order to take into account the concerns of the revenue for safeguarding the duty on imported goods.

5.2. It is also important to note that the provisions of Section 128 of the Major Port Trusts Act, 1963 provide for saving of the right of Central Government for collecting duties and of power of Customs officers by specifically providing as follows:

*"128. Nothing in this Act shall affect-*

*(1) the right of the Central Government to collect customs duties ...., or*

*(2) any power or authority vested in the customs authorities under any law for the time being in force."*

6. In view of the above, it is clarified that all cases of lease, gift, sale or subletting or transfer of the premises in any other manner, in a customs area by major ports may be firstly examined to see whether required permission from the Central Government/ Ministry / Cabinet Committee has already been obtained or not. In cases where appropriate authority has already given permission for such lease or transfer of premises, then necessary written permission may be given by the Commissioner for such lease or transfer. On the contrary, if no approval of the Government has been obtained, then appropriate action may be initiated against the erring Custodian under the said Regulations and the Customs Act, 1962.

7. These instructions should be brought to the notice of all the concerned by way of issuance of instructions/ trade notice.

8. Difficulty faced, if any, may be brought to the immediate notice of the Board.

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Yours faithfully,

(G.S. Sinha)
OSD (Customs IV)