Circular No.36 /2017-Cus

F. No. 450/15/2017-Cus IV
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Custom)
****

New Delhi, dated the 18th July, 2017

To

All Principal Chief Commissioners/Chief Commissioners of Customs / Customs (Preventive),
All Principal Chief Commissioners/Chief Commissioners of Customs and Central Excise,
All Directors General,
All Principal Commissioners/Commissioners of Customs / Customs (Preventive),
All Principal Commissioners/ Commissioners of Customs and Central Excise.

Sir/Madam,

Sub: Detailed guidelines for re-testing of samples- reg.

IndiaCode

World Trade Organization (WTO) negotiated Trade Facilitation Agreement (TFA), which aims at simplifying the trade processes and bringing down barriers to trade has come into force w.e.f 22nd February, 2017. India is a signatory to this agreement.

2) India has placed a number of trade related measures negotiated under the TFA in Category A. Article 5.3.1 envisages granting an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding. Further Article 5.3.3 makes it obligatory to consider the result of the second test, if any, for the release and clearance of goods, and, if appropriate, may accept the results of such test. The aforementioned Articles have been placed in category A. In order to have uniformity in approach among the field formations with regard to re-testing of samples, the following procedure is prescribed:

a. Customs officers may draw the samples from import consignments for testing in case of consignments wherever needed. The results of all test reports, adverse or otherwise, shall be communicated to the importer or his authorized representative/ Customs Broker immediately on its receipt.

b. In case the importer or his agent intends to request the Additional/ Joint Commissioner of Customs for a re-rest, then the same shall be made in writing to the said officer within a period of ten days from the receipt of the communication of the test results of the first test. Customs officers may take a reasoned view in case the importer or his authorized representative Customs Broker is unable to do so for reasons beyond his control.

c. Where the Additional/Joint Commissioner of Customs grants an opportunity for a second test, he must clearly indicate in writing the name and address of the laboratory/ institution where the second test can be carried out. Such referral for re-testing may be made only after being reasonably sure that the desired re-testing facilities exist at the laboratory/ institution.

d. Re-test should be made only on the remnants of the samples originally tested or on duplicate representative sealed samples in the custody of the Customs. Further, to avoid delays, samples for second tests shall be marked as "immediate" before sending to the laboratory. In a case it may so happen that fresh samples have to be drawn, then such sampling should be done in the presence of the importer or his representative/customs broker.

e. The requests for re-test of samples on the ground that the original sample was not representative should be entertained only if the consignment is still in Customs control. At the time of drawing the samples, the importer or his representative shall be present and certify that the samples drawn are representative.

f. The competent authority shall consider the results of the re-test without prejudice to the results of the first test. In case there is a variation in the results of the first test and the re-test, the competent authority shall take the decision relying upon either of the tests specifying the grounds in writing for the decision so taken. In case the competent authority is unable to decide whether to rely upon the first or the re-test results, then it may order a second re-test provided the consignment is still within the customs control. However, this option should not be resorted to in every case of variation between the first test and re-test results.

g. The facility of re-testing, is a trade facilitation measure, which should generally not be denied in the ordinary course. However, there might arise circumstances where the customs officer is constrained to deny the re-testing facility. Board expects that such denial would be occasional and on reasonable grounds to be recorded in writing.

h. Where the re-testing procedure is done at the instance of the department instead of the importer, the above procedure shall be followed mutatis mutandis.

IndiaCode

3) Difficulties, if any, in implementation of this circular, should be brought to the notice of the Board.

4) Hindi version of the circular will follow.

Yours faithfully,

Zubair Riaz

(Zubair Riaz)
Director (Customs)