CIRCULAR NO. 50/2005-Cus

F.No.442/12/2004-Cus.IV (Pt.II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

December 01, 2005

Subject:- Procedure for disposal of unclaimed/ uncleared cargo under section 48 of the Customs Act, 1962, lying with the custodians - regarding

I am directed to invite your attention to the report of the Task Force which was constituted by the Central Board of Excise and Customs as a sequel to the observations of the C & AG, vide order F.No. 442/12/2004-Cus.IV (Pt) dated 27.6.2005 to examine the various issues arising out of the audit review, and to suggest effective measures to be put in place as a permanent mechanism for expeditious disposal of the backlog of accumulated, unclaimed, uncleared and confiscated cargo, and also to ensure that no delays in disposal take place in future. The Chief Commissioner of Customs, Delhi Zone was the Chairman of the Task Force.

2. Looking at the considerable success in expeditious disposal of Section 48 unclaimed cargo as a result of the interim special initiatives taken by government vide Circulars dated 17.10.1997, 13.01.2000, and 28.01.2004, the Task Force viewed that the procedure laid down in the Ministry's last Circular No. 7/2004 dated 28.01.2004 should be put in place as a permanent measure with some modifications.

3. The matter has been examined by the Board. In order to ensure expeditious disposal of unclaimed/ uncleared cargo, under section 48 of the Customs Act, 1962, and lying with custodians, whether in the private or public sector, the following procedure should be followed:-

(i) The procedure shall be applicable only to unclaimed/uncleared cargo landed at least one year prior to the date on which the list of goods for customs "no objection" is prepared. In other words, this liberalized procedure would not apply to goods which have been lying uncleared for a period less than one year from the date of their import.

(ii) The custodian will furnish the list of items to be considered for disposal to customs. The list will contain complete particulars such as Bill of Lading/Airway Bill number, description of goods, weight, name of the consignee/consignor, etc. A notice shall simultaneously be issued by the custodian to the consignee at his known address and also displayed on the custodian's notice board stating that if the goods are not cleared within 15 days they be sold by the custodian under Section 48 of the Customs Act, 1962.

(iii) Customs shall scrutinize the list with their own files/records and intimate the custodian a list of disputed or stayed consignments or consignments required to be retained for any investigation/adjudication/court proceedings, motor vehicles or negative list items as restrictions imposed under allied acts. If no such intimation is received from the Customs within 15 days, the custodian shall go ahead with the disposal of the goods.

(iv) The responsibility for the disposal shall exclusively be with the Custodian who shall fix a reserve price arrived at by a panel of Government approved valuers appointed by the Custodian [irrespective of any value arrived at by the Customs Appraisers earlier], which should include an expert on the product line.

(v) The customs will not insist on complete and detailed inventory of the contents of the consignments to be drawn in their presence. They shall, instead choose 10% consignments for which detailed inventory shall be made in their presence for sample check.

(vi) The disposal of the goods shall be made by public auction/ E-auction/tender. The date of the public auction/ E-auction/tender should be adequately publicized in advance through national newspapers (both in English and Hindi), departmental website as well as in at least one newspaper in the local language. The values assessed by the approved valuers appointed by the custodians shall form the "reserve price". The maximum number of auctions/tenders to which a lot is subjected should be four, with the goods to be necessarily sold for the highest bid in the last auction/tender regardless of the reserve price fixed. Reserve price fixed would **not** be applicable in case of fourth auction/tender. In the event of the goods not being disposed of in the first auction, subsequent auctions/tender should be conducted in time bound manner.

(vii) Guidelines issued by the Central Vigilance Commission as available at CVC website http://www.cvc.nic.in particularly letter No.98/ORD/1 dated 18th December, 2003 should also be kept in view.

(viii) The bidding shall be on cum-duty price and duty shall be back-calculated from the sale price [Local taxes like Sales Tax etc, will however have to be charged/recovered extra from the buyer].

(ix) The custodian should fix a date for holding the auction/tender and communicate such date to the officer in charge of the customs station and the concerned Assistant Commissioner/Deputy Commissioner. The Assistant Commissioner/Deputy Commissioner would nominate, if necessary, an officer not below the rank of Superintendent /Appraiser to witness the auction/tender. Customs shall not withdraw any consignments at the last moment from the auction/tender except with the written approval of the Commissioner of Customs.

(x) For each consignment which is sold, the custodian will file a consolidated Bill of Entry, buyer-wise, for assessment of the effective rate of duty by the Customs. Auctioned goods will be allowed out of charge only after the duty assessed is paid by the custodian [Refer Unclaimed Goods {Bill of Entry} Regulations, 1972].

(xi) The sale proceeds shall be shared as per the provisions of section 150 of the Customs Act, 1962.

4. For uncleared/ unclaimed goods which are lying for a period less than one year, the custodian would get the reserve price fixed by a panel of Government approved valuers appointed by the Custodian. However, if these goods remain unsold and pass into the category of landed-more-than-one-year-prior, then the custodians can sell the same following the independent procedure without any reference to customs, and adjusting the number of auctions/tenders to which the lot was already subjected to against the prescribed number of four such auctions/ tender. It is re-iterated that for the valuation of goods landed at least one year prior to the date of seeking NOC, Customs should not associate with the valuation of the goods lying uncleared with the custodian, however, both reserve price and bids would be approved by the Customs. This is to ensure that the custodians do not cast the responsibility for unrealistic fixation of the reserve price on customs.

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5. The above instructions may be brought to the notice of all concerned immediately through appropriate Public Notice.

6. Receipt of this Circular may kindly be acknowledged.