Circular No.3 / 2011-Customs

F. No.450/115/2009-Cus.IV

Government of India

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

North Block, New Delhi-1.
6th January, 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 (Appeals).
All Commissioners of Customs & Central Excise.
All Commissioners of Customs & Central Excise (Appeals).

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Subject: Import of edible / food products - regarding.

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Sir / Madam,

Attention is invited to Board Circular No.58/2001-Cus dated 25.10.2001 which provides detailed guidelines for examination and testing of food item prior to its testing and clearance by Customs officers under the provisions of Prevention of Food Adulteration Act, 1954 (PFA Act, 1954).

2. Further, in terms of Para 8 of Chapter I A (General Notes Regarding Import Policy) of the ITC (HS) Classification of Export and Import items, import of all such edible/food products including tea, domestic sale and manufacture of which are governed by Prevention of Food Adulteration Act, 1954, shall be subject to all the conditions laid down in the aforesaid Act. Import of all these products will have to comply with the quality and packaging requirements as laid down in the Act. Compliance of these conditions is to be ensured before allowing customs clearance of the consignment.

3. To consolidate the laws relating to food and to provide for a systematic and scientific development of Food Processing Industries, the government has enacted The Food Safety and Standards Act, 2006 (FSS Act, 2006). Under the Act, the Food Safety and Standards Authority of India (FSSAI) has been established to lay down standards and regulate/monitor the manufacturing, import, processing, distribution and sale of food. Section 97 of the FSS Act, 2006 provides that the existing Acts and Orders relating to food items such as PFA Act, 1954; Food Products Order, 1955; Meat Food Products Order, 1973; Vegetable Oil Products (Control) Order, 1947; Edible Oils Packaging (Regulation) Order, 1988; Solvent Extracted Oil, Deoiled Meal, and Edible Flour Control (Order), 1967; Milk and Milk Products Order, 1992 etc shall be repealed from a date to be notified.

4. The FSSAI has taken over PHO functions at select ports such as Nava Sheva and Mumbai with effect from 13.09.2010 with the stipulation that the existing rule and procedures will continue to be followed without any change till FSSAI regulations are notified. Thus, FSSAI has replaced PHO with its authorized officers at abovementioned ports in terms of section 47 (5) of the FSS Act, 2006.

5. Difficulties have been reported to Board by certain importers regarding delay in testing of samples and clearance of goods consequent upon implementation of FSS Act, 2006 at select ports.

6. It is also noted that vide Policy Circular 25(RE-2003)/2002-007 dated 28.01.2004 and 37(RE-2003)/2002-2007 dated 14.06.2004, the DGFT has modified the procedure for sampling of imported edible/Food Products.

7. Accordingly, the procedure of clearance of food articles has been revisited by the Board, and following modified procedure has been prescribed:

(a) All consignments of high risk food items, as listed in DGFT Policy Circular No. 37(RE-2003)/2002-2007 dated 14.06.2004 (as may be modified from time to time), shall be referred to Authorised Representative of FSSAI or PHOs, as the case may be, for testing and clearance shall be allowed only after receipt of the test report as per the instructions contained in the Customs Circular No. 58/2001-Cus, dated 25.10.2001.

(b) All consignments of perishable items like fruits, vegetables, meat, fish, cheese, etc., will continue to be handled in terms of the guidelines contained in Para 2.3 of the Board's Circular No.58/2001-Customs dated 25.10.2001.

(c) In respect of food items not covered under (a) and (b) above, the following procedure would be adopted in addition to the general checks prescribed under Para 2.1 of the Circular No. 58/2001-Cus, dated 25.10.2001:

(i) Samples would be drawn from the first five consecutive consignments of each food item, imported by a particular importer and referred to Authorised Representative of FSSAI or PHOs, as the case may be, for testing to ascertain the quality and health safety standards of the consignments.

(ii) In the event of the samples conforming to the prescribed standards, the Customs would switch to a system of checking 5% - 20% of the consignments of these food items on a random basis, for checking conformity to the prescribed standards. The selection of food items for random checking and testing would be done by the Customs taking into consideration factors like the nature of the food products, its source of origin as well as track record of the importers as well as information received from FSSAI from time to time.

(iii) In case, a sample drawn from a food item in a particular consignment fails to meet the prescribed standards, the Customs would place the import of the said consignment on alert, discontinue random checking for import of such food items and revert to the procedure of compulsory checking. The system of random sampling for import of such food items would be restored only if the test results of the samples drawn from the 5 consecutive consignments re-establish that the food items are in conformity with the prescribed standards.

8. Authorised Officers of FSSAI will ascertain that for the imported pre-packaged good items, the language and other major requirements of the label like mention of best before date, nutrition information etc. should comply the labeling provisions under PFA Rules, failing which sample may not be drawn from such consignment for testing.

9. It is also clarified that Risk Management System (RMS) module for import consignments of edible / food items, presently does not provide for random sampling as it is one of its CCR (Compulsory Customs Requirements) targets. Accordingly, Risk Management System (RMS) shall take necessary steps to modify the RMS module to conform to the new requirements. Till such time, this modification is carried out, Customs shall take appropriate decision to waive the CCR requirements in respect of food items not covered under Para 7 (a) and 7 (b) above and to the extent mentioned under Para 7 (c) above. In terms of Circular No.43/2005-Cus dated 24th November, 2005 such a course of action shall, however, be taken only with the prior approval of the jurisdictional Commissioner of Customs or an officer authorized by him for this purpose, who shall not be below the rank of Addl./Joint Commissioner of Customs, and after recording the reasons for the same. A brief remark on the reasons and the particulars of Commissioner/ADC/JC authorization should be made by the officer examining the goods in the departmental comments in the EDI system.

10. Further, as per Para 13 of Chapter I A (General Notes Regarding Import Policy) of the ITC (HS) Classification of Export and Import items, import of all such edible/ food products, domestic sale and manufacture

which are governed by PFA Act, 1954 shall also be subject to the condition that at the time of importation, the products are having a valid shelf life of not less than 60% of the original shelf life. Shelf life of the product is to be calculated based on the declaration given on the label of the product, regarding its date of manufacture and the due date for expiry. Therefore, Customs shall ensure that this condition is complied with before allowing clearance of such consignments.

11. It is clarified that at certain ports / airports / ICDs / CFSs where Port Health Officers (PHO) under PFA, 1954 or Authorised officers under FSS Act, 2006 are not available, the samples will be drawn by Customs and the same may be got tested from the nearest Central Food Laboratory or a laboratory authorized for such testing by DGHS or FSSAI.

12. RMD shall develop an application software that incorporates the stipulation of testing of imported foodstuff and alerts the Customs officer to the effect the number of past shipments already tested and found fit warrants future shipments need not ordinarily be tested. This should apply regardless of port of import so long as the importer, supplier and item of import do not change. In other words, if such a shipment is imported say, at Mumbai and the previous 5 shipments imported at, say, Delhi have passed the test, then the next shipment at Mumbai need not be tested. A suitable data base would also be prepared at each Custom House to indicate the compliance history of importers.

13. The Board Circular 58/2001-Cus dated 25.10.2001 stands modified to above extent.

14. These instructions may be brought to the notice of all concerned by way of issuance of suitable Public Notice / Standing Order.

15. Difficulties, if any, in implementation of these instructions may be brought to the notice of the Board

Yours faithfully,

(R. P. Singh)
Director (Customs)

Internal Circulation- As usual

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