Circular No. 58/96-Cus.
dated 29/11/96

F.No. 442/1/96-Cus-IV

Government of India
Ministry of Finance
Department of Revenue.
Central Board of Excise & Customs

Subject: Procedure for identification of goods pilfered after the unloading in a customs area until they are cleared for home consumption or for warehousing or are transshipped, and recovery of duty thereon from the Custodians as laid down under section 45 of the Customs Act, 1962 - Regarding.

I am directed to refer sub-section 3 of section 45 of the Customs Act, 1962 inserted by clause 58 of the Finance Act, 1995 for recovery of duty from the custodians on goods pilfered after unloading in customs area.

2. In case the goods ae pilfered/ lost before unloading from the vessel or aircraft the person in charge of the conveyance is liable for action under section 116. However if any goods are pilfered / lost after unloading but before customs clearance there was earlier no provision for recovery of customs duty from the custodians. As a result of amendment of section 45 to custodians of the imported goods have become liable to pay customs duty on the goods pilfered / lost while under their custody.

3. For the purpose of recovery of duty under sub-section 3 of section 45 identification of the imported goods would involve following situations.

(i) where the importer has filed Bill of Entry and shortage is noticed by him;
(ii) where no Bill Entry has been filed by the importer but shortages are noted by MCD at the time of closing the IGM;
(iii) where the custodians themselves have noticed shortage before or after Bill of Entry is filed.

4. In case of situation at para 3(i) above, when the imported has filed a Bill of Entry, the shortage in goods unloaded but pilfered/ lost may be noticed at following two stages.

(i) In case of first check examination before payment of duty.
(ii) In case of second check examination after payment of duty.

In case of first check examination if the importer claims remission of duty on pilfered/ lost goods on the basis of shed Appraiser's examination report under section 13 of the Customs Act, 1962, the Group AO/ AC should immediately issue demand notice to the custodian of the goods before allowing remission of duty. He should mention demand notice No. on reverse side of duplicate Bill of Entry.

In case of second check examination, the importer is required to file claim with refund section for refund of duty on pilfered / lost goods. The AO/ AC of refund section should issue demand notice before sanctioning refund order & then should forward all documents to Group AC for further action. The particulars of demand notice should be mentioned in refund file.

5. In the situation at para 3(ii) above, where no Bill of Entry has been filed, AC(MCD) has to take action before closure of IGM. For the particular line numbers for which no Bills of Entry has been filed, AC(MCD) will inquire from the custodian as to whether the goods have been landed or not. He may call tally sheet and other document of verification. In case it is found that the goods were unloaded but pilfered / lost AC(MCD) will issue demand to the custodians for recovery of duty on pilfered / lost goods u/s 45(3).

6. In the third situation at para 3(iii) above where the custodians notice pilferage / shortage in goods which were unloaded, they will bring it to the notice of Commissioner of Customs who will forward it to AC (MCD) for issuing demand notice. AC (MCD) will issue demand irrespective whether Bills of Entry have been filed or not.

7. It should be the responsibility of AC(Group)/ AC(MCD) to ensure that the demands are issued to the custodians and the duty realised.

Sd/-
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