Circular No. 42/2001.

31st July, 2001

F.No.494/15 /99 -CUS.VI

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs

Please refer to Board's instructions issued from F.No. 450/82/95-Cus.IV,dated 7th July, 1997 and Member (Customs)'s D.O. letter F.No. 450/82/99-Cus.IV, dated 2nd June, 2001, regarding time boundCustoms clearance of Cargo from Ports/Land Customs Stations/Air CargoComplexes, CFSs/ICDs.

2. In a recent judgment of Supreme Court of India in the matter of Shipping Corporation of India Ltd. Vs. C.L. Jain Woollen Mills

(2000)(129)ELT 561 (SC), the Hon'ble Apex Court has held that under the existing provisions of Customs Act, 1962, the Customs Authorities cannot compel the carriers/custodians not to charge demurrage charges the moment a detention certificate is issued. Section 45(2)(b) cannotbe construed to mean that it authorized the Customs to issue a detention certificate in respect of the imported goods which would absolve the importer from paying the demurrage and prevent the proprietor of the spacefrom levying any demurrage. No doubt, the Hon'ble Apex court has notchanged the majority judgement of the Court in Grand Slams International case (on the other hand it has endorsed the said judgement), and importers cannot in other cases claim immunity from levy of demurrage charges by the custodians - if the goods are not cleared promptly, the Apex Court did notfinally interfere with the orders of the High Court which had ordered for recovery of demurrage from Customs for its illegal detention etc., in the particular case.

3. In view of the aforesaid judgment, further special care will have to be taken by all Customs formations to avoid any unwarranted delays which could not be justified and which may lead to possible demurrage liability on Customs. In cases of dispute in future where the Department's action of seizure/confiscation is held as illegal,there is possibility that the importers may cite the aforesaid judgment and the lower courts may impose the liability of payment of demurrage/detention charges on the Customs Authorities. Board considers, therefore,that field formations must strictly adhere to its instructions dated7th July, 1997, as further recently elaborated and reiterated in Member (Customs) D.O. letter F.No. 450/82/99-Cus.IV, dated 2nd June, 2001.

4. You are requested to impress upon all the concerned officers working under your jurisdiction to process all Bills of Entries on most speedy basis and take steps to ensure that the time limits laid down for allowing release but for certain exceptional categories - on final or provisional basis with adequate safeguards are adhered to. This will obviate any disputes wherein Customs may be asked to bear any demurrage charge.Delay in the release of the

goods resulting in demurrage getting charged where importers or their agents are not responsible, and non compliance of the Board's instructions should be viewed seriously and action taken against the officers found negligent/guilty as already indicated in the latest instructions of the Board.

5. Board desires that regular monitoring of disposal and dependency of bills of entry/shipping bills be undertaken on daily basis not only by Additional Commissioner & Deputy Commissioner in charge of every Group, but even at Commissioner's level. The tendency of raising piecemeal queries should be severely curbed and even first query should not be raised without concerned AC/DCs approval. This monitoring must be ensured both for Bills of Entry & Shipping Bill on EDI or those processed on manual basis at present.

6. As instructed even earlier, serious view may be taken where the delays are on account of CHAs & steps should be taken to ensure that they realize their responsibilities under CHA regulations and expedite action where the Bills of Entry/Shipping Bill is returned to them - for giving reply to query/arranging examination of goods/payment of duty etc.

7. Where for justifiable reasons in certain types of exceptional situations as indicated on Members recent instructions, release of

consignments is not considered advisable even on provisional basis, options must be given by sending intimation in writing to the importers/exporters or their agents to keep the goods in ware houses in terms of Section 49 of the Customs Act. It should be made clear that if the facility is not availed and the goods incur any demurrage, the importers/exporters will be wholly responsible for its payment.

8. The Board is very keen for giving maximum facilitation and speedy clearances to trade in all genuine cases of imports/exports, as it brings down their transaction costs and also promote production/other economic activities., It is very essential that our officers must be made conscious of their responsibilities and become prompt and more alert in the matter of discharge of the duties assigned. Erring officers must be held accountable and responsible for any negligence/delayed action that comes to notice

despite clear instructions and laid down guidelines.