Circular No. 9 /2001-CUS

F.No.520/67/2000-Cus.VI
Government of India
Ministry of Finance
Department of Revenue

22nd February, 2001

Subject:-Import of goods in commercial quantity as baggage - Procedure for acceptance of Oral Declaration of passengers- Regarding.

It has been brought to the notice of the Board recently that goods in commercial quantities have been brought by the passengers and these have been cleared as part of baggage by improper declaration etc. Apparently there is no strict monitoring by the supervisory officers on duty and chances of commercial quantities getting cleared as part of baggage by declaration/non-declaration without or with the concurrence of lower staff on duty cannot be ruled out. It is also reported that in some cases, the involved person(s) are frequent short visit passengers and repeat offenders. The fines and penalties imposed in adjudication proceedings are apparently not sufficient as these have not deterred the unscrupulous passengers from bringing goods in commercial quantities repeatedly.

2 Board has taken serious note of such incidents. It appears instructions issued already are not being enforced by Commissioners in-charge of International Airports and supervisory officers are not showing the diligence and watch on passenger clearance process expected of them. They also do not appear to be taking enough deterrent action in the matter of imposition of fines & penalties and even initiating prosecution action in cases of habitual offenders involved in evasion of duties by misdeclaration/smuggling by concealment in baggage etc.

3 In this connection, attention is once again drawn to Boards instructions issued vide F.No.495/6/97-Cus.VI dated 6-5-96 and reiterated in letter F.No.495/19/99-Cus.VI dated 11.4.2000. It was clearly stated that the import of goods in commercial quantities would not be permissible within the scope of the Baggage Rules, even on payment of duty. It was also stated that suitable redemption fine/personal penalties would need to be imposed in all such cases, which apparently is not being done. It is once again emphasized that the redemption fine and personal penalties should be such that it not only wipes out the margin of profit but also acts as a strong deterrent against repeat offences. The guidelines mentioned in the Adjudication Manual may be followed strictly by the adjudicating authorities, and any lapse in this regard would be viewed seriously. In case of repeat offences, the prosecution guidelines contained in Board's instructions F.No 394/71/97-Cus(AS), dt 22.6.99 may be followed.

4 In addition to the above, the following steps may also be taken:

1. In respect of 'Red Channel' passengers the general practice is to record the Oral declaration (OD) on the Disembarkation Card without first making the passenger fill up the relevant entries. It may be ensured that every passenger reporting at Red Channel fill up a Disembarkation Card clearly mentioning therein the quantity and value of goods that he has brought, and hand over the Customs portion of the card to the officer on duty at the red Channel. In case the same is incomplete/not filled up, the proper Customs officer should help record the O.D of the passenger on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature.
2. At this stage, the Baggage officer must scrutinize the passport and other relevant travel documents to identify the short-visit passengers/frequent travelers. Where the case is put up for adjudication the fact of past visits and cases adjudicated etc must be brought to the notice of the adjudicating officer.
3. The supervisory officers must take care to ensure that the total material in excess of duty free allowance imported by the passenger is being declared/and charged to duty and is subject matter of adjudication for determining fines, penalties etc.
4. In case of genuine tourists where the baggage is marginally in excess of the bonafide baggage, the passengers may be allowed to clear the same, as per the existing practice, on payment of appropriate Customs duty. However, in all other cases such as short visit passengers/frequent visitors where the baggage is substantially in excess of the free allowance and in commercial quantity, the same should be deemed to be non-bonafide baggage and dealt with in the manner mentioned at paragraph 3 above.

It must also be ensured that where the 'Red Channel' facility is sought the valuation of items charged to duty is done properly. There should also be very careful check to find out whether it is a first offence or a case of repeat offence warranting more imposing deterrent penalties, apart from considering prosecution, as per guidelines. In their adjudication orders, the adjudicating

authorities must clearly mention wherever it is a case of repeat offence providing justification for imposition of high penalty, so that the offenders are not let off at the appellate stage on account of legal lacuna.

d. For the passengers walking through the Green Channel, the existing practice of collecting Disembarkation Card, containing the written declaration of the passenger about his baggage, at the Channel may continue

5. In offence cases viz. for misdeclaration or non-declaration, the aforesaid guidelines may be applied, in addition to any other guidelines/existing provision(s) of Law.

6 The Commissioner/Addl. Commissioner incharge of the Airport shall be responsible for ensuring strict compliance of the aforesaid instructions. The supervisory controls and surprise visits by senior officers must be stepped up and Asstt. Commissioner/Dy. Commissioner on duty remain ever vigilant to check against any abuse by unscrupulous passengers. It must also be ensured that no harassment is caused to genuine passengers. Strict action may be taken against any Customs officer, who fails to comply with the aforesaid instructions.

7 Kindly acknowledge the receipt. Difficulties, if any, in implementation of aforesaid instructions may be brought to the notice of the Board at an early date.

Yours faithfully,

(Dr. Vinayak Prasad)
Under Secretary to the Government of India.

F.No. 520/67/2000-Cus.VI. The Commissioner of Customs(Gen) IGI Airport has made a reference to the Board regarding problems faced by Customs in clearance of passengers coming from CIS Countries. It has been stated that some of the passengers who arrive at IGI Airport continue to sit in the arrival hall without coming to get Customs clearance sometimes for as long as 36 to 48 hours.

In order to take care of this problem he has suggested issue of a Notification under Section 81 (a) of the Customs Act, 1962 specifying the maximum time limit within which the passengers should make a declaration before Customs. Since this Notification will have implication for all the passengers coming at any of the Airport, the matter may be examined regarding the implication of the proposal; suggested time limit (4 hours or any other time frame); as also the type of penal provision that may be imposed for the failure to adhere to the condition.

2 Another problem pointed out relates to the passengers carrying goods in commercial quantity in excess of the permitted weight allowed by the Airlines (Generally 20 Kgs). It has been suggested that the Import Manifest (Aircraft) Regulation, 1976 should prescribe a separate passenger manifest form containing the details of all those baggage that are in excess of the permitted weight/free allowance. Alternatively, it has been suggested that the proper officer, say DC shift, be empowered to seek these details from the airlines so that there is accountability based checks of all passengers coming from any sensitive destination. However, before considering these amendments the Board has desired your considered views in the matter.

NTBT

(Dr. Vinayak Prasad)
Under Secretary (Cus.VI)