# Handling of Cargo in Customs Areas Regulations, 2009

**[Notification No. 26/2009- Cus (NT), Dated 17-03-2009, amended by Corrigendum F. No. 450/55/2008-Cus-IV, dt.2.04.2009, Notification No. 96/2010- Cus. (N.T.), dated 12-11-2010, 43/2012-Cus. (N.T.), dated 16-05-2012, 104/2012-Cus. (N.T.), dated 16/11/2012]**

In exercise of powers conferred by sub-section (2) of section 141 read with section 157 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations, namely:-

### 1. Short title and commencement.-

(1) These regulations may be called the Handling of Cargo in Customs Areas Regulations, 2009.

(2) They shall come into force on the date of their publication in the Official Gazette.

### 2. Definitions.-

(1) In these regulations, unless the context otherwise requires, -

(a) "Act" means the Customs Act, 1962 (52 of 1962);

(b) "Customs Cargo Services provider" means any person responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export goods and includes a custodian as referred to in section 45 of the Act and persons as referred to in sub-section (2) of section 141 of the said Act;

(c) "specified" means specified by a notification or an order issued under the provisions of the Act;

(2) the words and expressions used herein and not defined but defined in the Act shall have the same meanings respectively assigned to them in the Act.

### 3. Application.-

These regulations shall be applicable to the handling of imported and export goods in ports, airports, inland container depots, land customs stations and in customs areas approved or specified under section 8.

### 4. Retrospective Application.-

Any action taken or anything done in respect of appointment of Customs Cargo Service providers, immediately preceding the coming into force of these regulations, shall be deemed to have been done under the corresponding provisions of these regulations. Customs Cargo Service providers already approved on or before the date of coming into force of these regulations shall comply with the conditions of these regulations within a period of three months or such period not exceeding a period of one year as the Commissioner of Customs may allow from the date of coming into force of these Regulations.

### 5. Conditions to be fulfilled by CustomsCargo Service provider

The Customs Cargo Service provider for custody of imported goods or export goods and for handling of such goods in a customs area shall fulfill the following conditions, namely:-

(1) Provide the following to the satisfaction of the Commissioner of Customs, namely:

(i) Infrastructure, equipment and adequate manpower for loading, unloading, stacking, handling, stuffing and de-stuffing of containers, storage, dispatch and delivery of containers and cargo etc., including:-

(a) standard pavement for heavy duty equipment for use in the operational and stacking area;

(b) free of cost or rent fully furnished office accommodation for Customs, Customs Electronic Data Interchange (EDI) Service Centre, with required amenities and facilities and residential accommodation and transportation facilities for customs staff;

(c) premises for user agencies with basic amenities and facilities;

(d) storage facility, separately for imported, export and transshipment goods;

(e) gate complex with separate entry and exit;

(f) adequate parking space for vehicles;

(g) boundary wall;

(h) internal service roads;

(i) electronic weigh-bridge and other weighing and measuring devices;

(j) computerized system for location and accountal of goods, and processing of documents;

(k) adequate air-conditioned space and power back up, hardware, networking and other equipment for secure connectivity with the Customs Automated system; and for exchange of information between Customs Community partners;

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(l) facilities for auction, including by e-auction, for disposal of uncleared, unclaimed or abandoned cargo;

(m) facilities for installation of scanning equipment;

(n) security and access control to prohibit unauthorized access into the premises, and

(o) such other facilities as the Commissioner of Customs may specify having regard to the custody and handling of imported or export goods in a customs area;

(ii) safe, secure and spacious premises for loading, unloading, handling and storing of the cargo for the projected capacity and for the examination and other operations as may be required in compliance with any law for the time being in force;

(iii) insurance for an amount equal to the average value of goods likely to be stored in the customs area based on the projected capacity, and for an amount as the Commissioner of Customs may specify having regard to the goods which have already been insured by the importers or exporters.

(2) Undertake to bear the cost of the Customs officers posted, at such customs area, on cost recovery basis, by the Commissioner and shall make payments at such rates and in the manner prescribed, unless specifically exempted by an order of the Government of India in the Ministry of Finance;

(3) Execute a bond equal to the average amount of duty involved on the imported goods and ten *per cent* of value of export goods likely to be stored in the customs area during a period of thirty days and furnish a bank guarantee or cash deposit equivalent to ten *per cent* of such duty:

Provided that the condition of furnishing of Bank guarantee or cash deposit shall not be applicable to ports notified under the Major Ports Act, 1962 (38 of 1963) or to the Central Government or State Governments or their undertakings or to the Customs Cargo Service provider authorised under Authorised Economic Operator Programme.

(4) Execute a separate bond for an amount equal to ten percent of value of export goods with a bank guarantee for an amount equal to ten percent of the value of the bond, towards the export goods transported from the customs area to any other customs area for export or transshipment, as the case may be;

(5) Undertake to comply with the provisions and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

(6) Undertake to indemnify the Commissioner of Customs from any liability arising on account of damages caused or loss suffered on imported or export goods, due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling.

### 6. Responsibilities of Customs Cargo Service provider:

(1) The Customs Cargo Service provider shall -

(a) keep a record of imported goods, goods brought for export or transshipment, as the case may be, and produce the same to the Inspector of Customs or Preventive Officer or Examining Officer as and when required;

(b) keep a record of each activity or action taken in relation to the movement or handling of imported or export goods and goods brought for transhipment;

(c) display or make available in any other manner, information of process or movement or handling of imported or export goods and goods brought for transhipment;

(d) demarcate separate areas for unloading of imported goods for their storage with respect to the category of importers, nature of goods, place of destination, mode of transportation or any other criterion as the Commissioner of Customs may specify having regard to the custody and handling of imported goods in a customs area;

(e) demarcate separate areas for loading of export goods for their storage with respect to categories of exporters, nature of goods, examined and sealed containers or other criterion as the Commissioner of Customs may specify having regard to the custody and handling of export goods in a customs area;

(f) not permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the Superintendent of Customs or Appraiser;

(g) not permit any export cargo to enter the customs area without a shipping bill or a bill of export having been filed with the Deputy Commissioner or Assistant Commissioner of Customs;

(h) not permit any import cargo to enter the customs area or be unloaded therein without the import report or the import manifest having been filed with the Deputy Commissioner or Assistant Commissioner of Customs;

(i) be responsible for the safety and security of imported and export goods under its custody;

(j) be liable to pay duty on goods pilfered after entry thereof in the customs area;

(k) be responsible for the secure transit of the goods from the said customs area to any other customs area at the same or any other customs station in accordance with the permission granted by the Deputy Commissioner or Assistant Commissioner of Customs;

(l) subject to any other law for the time being in force, shall not charge any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or Appraiser or Inspector of Customs or Preventive officer or examining officer, as the case may be;

(m) dispose off in the manner specified and within a time limit of ninety days, the imported or export goods lying unclaimed, uncleared or abandoned:

Provided that the period of ninety days may be extended by the Commissioner of Customs by such further period as may be allowed, on sufficient cause being shown for delay in the disposal;

(n) not make any alteration in the entry or exit points or boundary wall without the permission of the Commissioner of Customs;

(o) shall bear the cost of the customs officers posted by the Commissioner of Customs on cost recovery basis and shall make payments at such rates and in the manner specified by the Government of India in the Ministry of Finance unless specifically exempted by an order of the said Ministry;

(p) shall observe the Central Government holidays as followed by the jurisdictional Customs formations and in case of any variation in the working days, intimate the same to Commissioner of Customs and the trade, at least seven days in advance, and

(q) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

(2) The Customs Cargo Service provider approved for custody of imported or export goods and for handling of such goods shall not lease, gift, sell or sublet or in any other manner transfer any of the premises in a customs area; or sub contract or outsource functions permitted or required to be carried out by him in terms of these regulations to any other person, without the written permission of the Commissioner of Customs.

(3) The Customs Cargo Service provider shall publish and display at prominent places including website or webpage of the Customs Cargo Service provider the schedule of charges for the various services provided by him in relation to the imported goods or export goods in the customs area.

### 7. Power to relax and regulate:

(1) if the Commissioner of Customs is satisfied that in relation to the custody and handling of imported or export goods in a customs area, the Customs Cargo Service provider, for reasons beyond his control, is unable to comply with any of the conditions of regulation 5, he may for reasons to be recorded in writing, exempt such Customs Cargo Service provider from any of the conditions of regulation 5.

Provided that no exemption shall be granted in respect of any of the conditions referred to in regulation 5, where the overall safety and security of the premises are likely to be affected thereby.

(2) The Commissioner of Customs may regulate the entry of goods in a customs area for efficient handling of such goods.

### 8. Commencement of operations:

The Customs Cargo Service provider approved for custody of imported or export goods and for handling of such goods shall not commence any operations in a customs area for the first time unless the Commissioner of Customs is satisfied that all the requirements of the Act have been fulfilled and grants permission to commence the operations by an order in writing.

### 9. Application for approval of Customs Cargo Service provider:

(1) An application to act as a Customs Cargo Service provider for custody of imported or export goods and for handling of such goods in a customs area shall be made in the form of a letter to the jurisdictional Commissioner of Customs containing details as prescribed in**Form A'.**

(2) The Commissioner of Customs shall dispose of the application within forty five days of the receipt of the application.

### 10. Approval of appointment of a Customs Cargo Service provider and review thereof:

(1) Where the Commissioner of Customs is satisfied that the applicant has fulfilled the conditions prescribed in regulation 5, he may approve such an applicant as a Customs Cargo Service provider, for a period of two years from the date of issue of such approval.

Provided that a Customs Cargo Service provider already approved on or before the date of coming into force of these regulations, shall be deemed to be approved as a Customs Cargo Service provider under these regulations for a period of five years from the date of compliance with the conditions of these regulations as stipulated in regulation 4.

(2) The Commissioner of Customs shall review the approval granted under sub regulation (1) before the expiry of the initial period of approval of two years or five years, as the case may be, and may extend such approval to a further period of five years at a time.

Provided that the Commissioner of Customs, for reasons to be recorded in writing, may order for review of the approval granted to any Customs Cargo Service provider before the completion of the period of approval.

Provided further that in case of Customs Cargo Service provider authorised under Authorised Economic Operator Programme', the approval granted under sub-regulation (1) may be extended for a further period of ten years at a time.

### 11. Suspension or revocation of approval for appointment of a Customs Cargo Service provider:

(1) The Commissioner of Customs may, subject to the provisions of these regulations, suspend or revoke the approval granted to the Customs Cargo Service provider subject to the observance of procedure prescribed under regulation 12 and also order for forfeiture of security, if any, for failure to comply with any of the provisions of the Act and the rules, regulations, notifications and orders made thereunder;

(2) Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the approval granted to a Customs Cargo Service provider where an enquiry against such Customs Cargo Service provider is pending or contemplated.

### 12. Procedure for suspension or revocation of approval and imposition of penalty:-

(1) The Commissioner of Customs shall issue a notice in writing to the Customs Cargo Service provider stating the grounds on which it is proposed to suspend or revoke the approval and requiring the said Customs Cargo Service provider to submit within such time as may be specified in the notice not being less than thirty days, to the Assistant Commissioner or Deputy Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Customs Cargo Service provider desires to be heard in person by the said Assistant Commissioner or Deputy Commissioner of Customs.

(2) On receipt of the written statement from the Customs Cargo Service provider, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), the Assistant Commissioner or Deputy Commissioner of Customs may inquire into such of the grounds as are not admitted by the Customs Cargo Service provider.

(3) The Assistant Commissioner or Deputy Commissioner of Customs shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings and he may also put any question to any person tendering evidence, for or against the Customs Cargo Service provider, for the purpose of ascertaining the correct position.

(4) The Customs Cargo Service provider shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings and where the Assistant Commissioner of Customs or Deputy Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the aforesaid inquiry, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall prepare a report of the inquiry recording his findings.

(6) The Commissioner of Customs shall furnish to the Customs Cargo Service provider a copy of the report of the Assistant Commissioner or Deputy Commissioner of Customs and shall require the Customs Cargo Service provider to submit within the specified period not being less than thirty days any representation that he may wish to make against the findings of the Assistant Commissioner of Customs or Deputy Commissioner of Customs.

(7) The Commissioner shall, after considering the report of the inquiry, and the representation thereon, if any, made by the Customs Cargo Service provider, pass such orders as he deems fit.

(8) If any Customs Cargo Service provider contravenes any of the provisions of these regulations, or abets such contravention or who fails to comply with any provision of the regulation with which it was his duty to comply, then, he shall be liable to a penalty which may extend to fifty thousand rupees.

(9) Any Customs Cargo Service provider aggrieved by any decision or order passed under this regulation, may appeal under section 129A of the Act to the Customs Central Excise and Service Tax Appellate Tribunal established under sub-section 1 of section 129 of the Act.

### 13. Renewal of approval for appointment of Customs Cargo Service provider:

The Commissioner of Customs may on application made by the Customs Cargo Service provider before the expiry of the validity of the appointment under regulation 10, renew the approval for a further period of five years from the date of expiration of the original approval granted under regulation 10 or of the last renewal of such approval, as the case may be, if the performance of the approved Customs Cargo Service provider is found to be

satisfactory with reference to his obligations under any of the provisions of the Act and the rules, regulations, notifications and orders made thereunder.

EXPLANATORY MEMORANDUM

Handling of Cargo in Customs Area Regulations, 2009 provide for a comprehensive mechanism for handling of goods in a customs area and set out the terms and conditions for all facilities where customs cargo is handled. It also provides for the conditions and responsibilities of the persons handling import or export cargo in Inland Container Depot (ICD) or Container Freight Station (CFS) or seaport or airport or Land Customs Stations (LCS) and provide adequate control over the cargo handling entities to ensure that the adequate infrastructure is set up at such facilities for efficient handling of import or export goods. This also fulfills the recommendation made by the Public Accounts Committee (2005-2006) for the Government to formulate appropriate provisions in this regard.

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**Application Form for approval / renewal of Customs cargo service provider**

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