Circular No.13/2009-Customs

F.No.450/55/2008-Cus.IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

159A, North Block, New Delhi - 1.
23rd March, 2009.

Subject: "Handling of Cargo in Customs Areas Regulations, 2009"- regarding.

***

A reference is invited to Notification No.26/2009-Customs (N.T.) dated 17.3.2009 bringing into effect the "Handling of Cargo in Customs Areas Regulations, 2009" (referred in short as 'regulations'). The regulations provide for the manner in which the imported goods/ export goods shall be received, stored, delivered or otherwise handled in a customs area. The regulations also prescribe the responsibilities of persons engaged in the aforesaid activities. It may be recalled that the Public Accounts Committee (2005-06) in its twenty-seventh report had recommended for formulating appropriate legal provisions and guidelines to control the activities of custodians. In pursuance of the recommendations made by the Public Accounts Committee (PAC), the Government had inserted a new sub - section (2) to section 141 of the Customs Act, 1962. These Regulations have been framed by the Department in pursuance of the recommendations of the PAC and consequent to the amendment of the Customs Act, 1962 as aforesaid. The salient features of the regulations are indicated in the following paragraphs.

Internet

2.1. The regulations shall be applicable to all 'Customs cargo service providers' (CCSPs) that is to say all persons operating in a customs area and engaged in the handling of import/export goods. These include the Custodians holding custody of import / export goods and handling such goods and all persons working on behalf of such custodians such as fork lift or material handling equipment operators, etc. The regulations would also cover consolidators/ break bulk agents and other persons handling imported / export goods in any capacity in a customs area. The regulations provide for various responsibilities and conditions for different kinds of CCSPs. The conditions prescribed under Regulation 5 would apply to the CCSPs who desire to be approved as custodians of imported / export cargo and thus handle goods in customs areas. These conditions shall not apply to those persons who only provide certain services on their own or on behalf of the custodians referred above.

2.2. Responsibilities prescribed in Regulation 6 on the other hand apply to both categories of persons i.e. all Custodians and persons who provide various services as above. Certain responsibilities specifically apply to one of the category. For example,

the responsibility for safety and security, pilferage of goods under their custody, disposal of uncleared, unclaimed or abandoned goods within the prescribed time limit, payment of cost recovery charges of the customs officers posted in the facility are applicable to the persons who handle imported or export goods in the capacity of an approved custodian. On the other hand, responsibilities for publishing or display of the schedule of charges for the activities undertaken in respect of imported/ export goods shall apply to both categories of persons. These responsibilities have been specified with the overall objective of expeditious clearance of goods, reduction of dwell time, transaction cost and to safeguard revenue.

3. As specified in Regulation 3, these regulations shall apply to handling of imported goods and export goods in customs area specified under section 8 of the Customs Act, 1962. This would cover all customs facilities such as ports, airports, Inland Container Depots (ICDs), Container Freight Stations (CFSs) and Land Customs Stations (LCSs). Imported goods would cover goods under transshipment and all goods held under the custody of CCSP. However, these regulations shall not apply to Customs bonded warehouse or to the warehoused goods which are covered under Chapter IX of the Customs Act, 1962.

4.1. It may be noted that in view of the transitional provisions under Regulation 4, the existing appointments of custodians under section 45 of the Customs Act, 1962 shall continue and there would be no disruption in their operations. However, the existing custodians would be required to provide facilities and fulfill the conditions mentioned in Regulation 5 and 6, as applicable, within the specified time period. On fulfillment of the prescribed conditions, approval letters shall be issued to the existing custodians approving the facility for a period of five years and its renewal thereafter, as per Regulation 13.

4.2. Further, major ports notified under the Major Port Trusts Act, 1963 and airports notified under the Airports Authority of India Act, 1994 will continue to be authorised to function as custodians under their respective Acts and these regulations shall not impact their approval as a custodian. In this regard, it may be noted that section 45 of the Customs Act, 1962, which provides for approval of custodians makes an exception to these custodians who are otherwise approved under any law for the time being in force. Accordingly, the Port Trusts of the notified major ports and the Airports Authority of India shall not be required to make an application under Regulation 4 or 9 for approval or renewal under these regulations. However, they would be required to discharge the responsibilities cast upon them as specified in Regulation 6.

4.3. It is clarified that the normal time within which the existing custodians are required to comply with the conditions of these regulations has been stipulated as three months from the date of coming into force of these regulations. However, this can be extended by the Jurisdictional Commissioner of Customs in deserving cases for a further period not exceeding nine months. Thus, the total period within which the custodians are required to comply with the requirements of these regulations shall not exceed a total period of one year.

5.1. Regulation 5 provides the conditions to be fulfilled by an applicant who wishes to be appointed as a custodian of the imported/ export goods in a customs area (ICD/CFS etc.). An exhaustive list of infrastructure and operational requirements for efficient handling of imported or export goods has been provided. Further, it may be noted that

IndiaCode

sufficient discretion has also been provided for the Commissioner of Customs to decide on the nature of infrastructure and equipments required to be installed at the premises of CCSP. Hence, it may be ensured that all the facilities provided by the custodians are sufficient for efficient handling of cargo. It is clarified that the facilities required for handling cargo at a particular ICD/ CFS etc. need not be the same as at any other ICDs/ CFSs/ other customs areas at another place in the country. However, the facilities should be sufficient to enable efficient handling of the cargo having regard to the volume of containers/ cargo and its nature, etc. required to be handled at the particular ICD/CFS/ customs area. In some of the conditions in the regulations where it has been so specified, the Commissioner of Customs can lay down certain general standards or requirements such as height of boundary wall, quantum and specifications of material handling and other equipments etc., to ensure that the facilities are adequate for effective and efficient handling of cargo.

5.2. As regards the requirement of the Customs EDI Systems under Regulation 5(1)(j), the infrastructure required to be provided by the custodian shall include the Civil and electrical infrastructure including properly air-conditioned office space, cabins with proper furniture, power backup facilities, hardware, networking and secure connectivity to customs data centres for customs officers and service centres specified by Customs. Facilities required for secure exchange of electronic information between the custodian and Customs shall also be provided. The technical requirements shall be as per the specifications prescribed by the Directorate General of Systems & Data Management. In addition to the above, the requirements as specified vide Board's Circular No.94/2003-Customs dated 31.10.2003 to bring uniformity in automation and to expedite automation process at ICDs / CFSs, shall continue to apply.

5.3. The charges in respect of the Customs officers deployed at the customs clearance facility (ICD/CFS/port/airport etc.) are required to be paid by the Custodian, unless these have been exempted for an individual custodian by an order issued by the Ministry of Finance or by a circular or instructions issued by the Ministry of Finance [Regulation 5(2)]. Payment of cost recovery charges in respect of ports and airports has been exempted for three categories of custodians specified in Circular No.27/2004-Customs dated 6.4.2004. It is clarified that these specified categories of custodians at ports / airports would continue to be exempt from the payment of charges for the customs officers deployed therein.

5.4. In terms of the Greenfield Airports Policy framed by the Government and notified by the Ministry of Civil Aviation for setting up of private greenfield airports, it has been specified that in case of an international airport, the applicant for setting up of a greenfield airport will obtain clearance from the Department of Revenue for provision of Custom services. The cost of providing these services will have to be borne by the Airport Company. Hence, such custodians shall also be required to pay cost recovery charges in terms of the extant policy.

5.5. As regards ICDs / CFSs, Government had taken a decision to waive the requirement of cost recovery charges to be paid by ICD / CFS, if they fulfill the laid down norms and are in existence for a consecutive period of two financial years. These norms include parameters such as the total number of import or export containers handled, the customs declarations filed for import or export, etc. Board's instructions vide D.O. letter F.No.A.11018/12/2008-Ad.IV dated 2.7.2008 refer in this regard. Accordingly, the eligible ICDs / CFSs which fulfill the laid down criteria are being

considered for exemption from payment of cost recovery charges and specific orders in individual cases are issued by Ad.IV Section. These orders are being referred to as the orders issued by the Ministry of Finance under the Regulation 5(2).

5.6. Imported or export goods lying unclaimed, uncleared or abandoned in ICDs / CFSs / customs area shall be disposed of within the specified time by the CCSP who is holding custody of the such goods. [Regulation 6(1)(m)]. Accordingly, it may be ensured that the existing Board's instructions for proper and timely disposal of unclaimed, uncleared or abandoned goods as per Circular No.50/2005-Customs dated 1.12.2005 as amended, are properly followed.

6.1. The power to exempt from the conditions required to be fulfilled by CCSP provided under Regulation 7 is required to be exercised by the Commissioner of Customs carefully. For example, the requirement of sufficient facilities for installation of scanning equipment may not be an immediate requirement in respect of ICD / CFS who have established their operations as new custodian. However, when the requirement of scanning becomes a necessity at such places, then these conditions may have to be fulfilled by such custodian at that point of time. Hence, the Commissioner of Customs needs to examine individual cases where exemptions are sought to be given to the custodian and record the reasons in writing before providing exemptions.

6.2. In order to overcome situations where clearances of imported/ export goods are getting affected by congestion at a particular customs facility (e.g. CFS), it has been provided that the Commissioner of Customs may consider regulating the entry of goods in that particular CFS for a temporary period, say, 15 days, in terms of Regulation 7(2). In such cases, the Commissioner of Customs may not allow any import/ export cargo to be received and handled in the facility or may allow such reduced quantity as considered sufficient for being handled efficiently for such temporary period till the congestion is cleared and the delay in clearance of goods is sorted out.

7. In terms of Regulation 9, at the time of submission of applications for acquiring custody and handling of import / export goods, the applicant shall provide complete details of the facility such as extent of the area, equipment, infrastructure etc. for receiving, unloading / loading, stacking, storage, delivery of imported/ export goods including the map. As regards the projected capacity of the cargo or container proposed to be handled at the premises, adequate care should be taken to see that the specific details are obtained as this would form the basis for determining the adequacy of the infrastructural facilities and for determination of bond or bank guarantee, wherever applicable. For example, in respect of containers, the volume in terms of Twenty feet Equivalent Units (TEUs) may be ascertained. In so far as X-Ray scanning equipment is concerned, the custodians are expected to provide for suitable land and other site requirements, but the actual scanning equipments would be installed by the Customs department subject to conditions as may be prescribed.

8. Only such of CCSPs who wish to be appointed as custodian of imported/ export goods need to take approval as specified in Regulation 10. Other CCSPs who either operate on behalf of the custodian or with his permission, do not require any approval under these regulations. It may however be clarified that custodian will be responsible for fulfillment of the conditions of these regulations even in respect of CCSPs working on their behalf or with their permission.

9.1. The procedure for approval of appointment, renewal, suspension or revocation of CCSP has been given in detail under Regulations 10 to 13, so as to provide for transparent and objective procedure in the appointment and cancellation. Cases involving outright transfer of custodianship, leasing of premises without informing Customs, subletting, sub-contracting, outsourcing, gift or lease of any of the services of CFS/ICD have to be dealt by the jurisdictional Commissioner of Customs. In case of violations of the conditions or obligations prescribed under the regulations, necessary action may be taken against the erring CCSP including imposition of penalty. Board's instructions issued vide F.No.450/105/2008-Cus.IV dated 25.7.2008 may also be referred to in this regard. Further, action would also need be initiated against the CCSP, wherever lack of infrastructure facilities is noticed leading to deterioration in services or damage of imported or export goods, loss of its value and loss of revenue etc.

9.2. The provisions for suspension etc., apply prospectively with effect from the date of implementation of the regulations. These regulations also provide for levy of penalty in case the CCSP contravenes any of the provisions of the regulations or fails to comply with the regulations. However, these provisions do not interfere with the proceedings against the custodian, in respect of past cases where necessary action to be taken against erring custodians, has already been initiated by the field formations.

10. These regulations notified vide Notification No.26/2009-Customs (N.T.) dated 17.3.2009 are issued in exercise of the powers conferred to the Board under sub section (2) of section 141 read with section 157 of the Customs Act, 1962. It supersedes the instructions issued vide Board's Circular No.128/95-Customs dated 14.12.1995 and Circular No.34/2002-Customs dated 26.6.2002 as amended. Other circulars and the instructions on the subject which are not inconsistent with the provisions of these regulations would, however, continue to apply.

11. The Commissioner of Customs may issue a Public Notice bringing to the notice of the trade and industry about the publication of these regulations and the need to comply with the provisions of these regulations by the existing custodian within a period of three months as provided in Regulation 4. In this regard, the Commissioner of Customs shall issue individual letters to the respective custodians in his jurisdiction for initiating action and seeking compliance of the regulations within the stipulated time.

12. Any difficulties in implementation of these Regulations may be brought to the notice of the Board immediately.

Yours faithfully,

(M.M. Parthiban)
Director (Customs)