

F.No.450/179/2017-Cus. - IV
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes and Customs)

Room 227B, North Block
New Delhi, dated the 3rd December, 2018

To

All Principal Chief Commissioner/Chief Commissioner of Customs/Custom (Preventive),
All Principal Chief Commissioner/Chief Commissioner of Central Tax and Customs,
All Principal Commissioner/Commissioner of Customs /Custom (Preventive),
All Principal Commissioner/Commissioner of Central Tax and Customs.

Madam/Sir,

Subject: Procedure for disposal of un-claimed/un-cleared cargo under section 48 of the Customs Act, 1962, lying with the custodians –reg.

Kind reference is drawn to Board's Circular No. 50/97 dated 17.10.1997, 11/98-Cus. dated 11.02.1998, 5/2000-Cus. dated 13.01.2000, 7/2004-Cus. dated 28.01.2004, 50/2005-Cus. dated 01.12.2005, 52/2005-Cus. dated 09.12.2005 and 11/2006-Cus. dated 16.02.2006 regarding procedure and expeditious disposal of unclaimed/uncleared cargo under section 48 of the Customs Act, 1962.

2. Despite the issuance of many circulars, the feedback relating to disposal of unclaimed/uncleared cargo at all Customs locations has not been fully satisfactory. Sometime back, Central Vigilance Commission had appointed a committee of Chief Vigilance Officers to examine the reasons of delay in disposing of unclaimed/un-cleared cargo. The committee has observed inordinate delays, complete breakdown of system, substantial loss to the government revenue etc. Accordingly, Board has reviewed the procedure with regard to disposal of un-cleared/un-claimed cargo under section 48 of the Customs Act, 1962 in consultation with CONCOR. The revised procedure for disposal of such cargo shall be as under: -

3. Following procedure with regard to expeditious disposal of un-claimed/un-cleared cargo lying with custodians, whether in the private or public sector, under section 48 of the Customs Act, 1962, is prescribed:

- (i) The concerned custodian of the Customs Station shall prepare a list of cargo lying un-claimed/ un-cleared in the bonded area of the Customs Station for more than **30 days** from the date of arrival of such cargo in the Customs Station. This list shall be sent to the jurisdictional Commissioner of Customs to intimate as to whether listed goods/cargo can be taken up for disposal through public auction. The list will contain the following details:
 - (a) Bill of Lading No. and date
 - (b) Container number
 - (c) Description of goods
 - (d) Weight
 - (e) Name of the consignor (exporter) and consignee (importer).

These details will be furnished as per the information available from the IGM message of ICEGATE.

- (ii) The custodian shall simultaneously update the list with importer's name and address. In those cases, where the address of the importer is not mentioned in the IGM message from ICEGATE, a notice shall be sent to the respective Shipping Line requesting them to give address of the importer/consignee within one week of receipt of the notice.

The Shipping Line will be obliged to respond with the relevant details within 7 days of receipt of letter from the custodian. The Shipping line will also be requested by the custodian to contact the importer and ask him to clear the cargo from the concerned Customs Station.

- (iii) Jurisdictional Commissioner of each customs station shall issue instructions to the officers and staff posted at the station to ensure that details of all goods/shipments which are put on hold for investigation or otherwise by DRI/Preventive/SIIB or any other agency are furnished to the Disposal branch of the customs station and the concerned custodian immediately, under proper receipt and acknowledgement. This will ensure that the Disposal branch and custodian are at all times aware of the goods/shipments/containers for which 'No Objection Certificate' from the concerned agency would be required before initiating disposal process.
- (iv) From the said list, Customs will segregate shipments which are disputed/stayed shipments required to be retained for investigation/adjudication/court procedure etc. Customs shall also segregate shipments containing motor vehicles or other goods requiring Licence/Permission/ Certification from DGFT or any other Department. Customs will furnish to the custodian **within 10 days** of the receipt of the said list, the details of shipments not to be included in the auction process. Customs shall also choose 10% shipments from the list of shipments segregated for inclusion for the auction process for which detailed inventory shall be made in their presence for sample check. This will be conveyed to the concerned custodian along with the list of shipments/containers which are required to be retained.
- (v) (a) Based on the intimation received from Customs, the concerned custodian will issue a notice to importer under Section 48 of the Customs Act 1962 advising him to clear the goods within **10 days** from the date of issue of the notice failing which the goods will be placed in public auction. Notice will be sent to the importer on the address as given in IGM message available with the custodians, or the address ascertained from the shipping lines in terms of the para 3 (ii) above.
(b) A copy of the notice issued to the importer under section 48 of the Customs Act, 1962 shall also be affixed on the notice board of the Customs Station.
- (vi) The concerned custodian, in the next **20 days** shall prepare a detailed inventory of the shipments which are not required to be retained by Customs for any purpose. In doing so, they will associate the Customs in 10% of the consignments for which Customs has already intimated that inventory has to be drawn in their presence for sample check.
- (vii) Within **7 days** of drawing up of inventory, the concerned custodian shall approach the jurisdictional Customs authorities along with the said inventory seeking No Objection Certificate (**NOC**) in respect of all containers which are to be taken up for auction through the e-auction/tender. The inventory should have a detailed description of the items, to enable Customs to easily identify the regulatory requirements in respect of the consignments mentioned in the inventory and it shall clearly indicate variation in description of goods with respect to description of goods mentioned in the list already forwarded as per para 3 (i), above.
- (viii) Customs shall examine the list and within **15 days** of receipt of such request, intimate to the custodian, details of the listed shipments which can straightway be taken up for auction as they do not require any regulatory clearances (NOC from FSSAI, Drug Controller, BIS etc.), or do not need any chemical analysis to identify the contents and fitness for consumption/usage. The consignments for which such unconditional NOCs are issued by Customs, shall be taken up for auction by e-auction through MSTC to ensure maximum outreach and participation. In order to ensure quick and regular turnover, the concerned custodian shall attempt to hold at least one auction each month. In case the list is incomplete and does not have the complete details for Customs to clearly pinpoint the regulatory requirements, Customs shall indicate the deficiencies in the list, within this period of **15 days**.

- (ix) In case regulatory clearances from agencies other than Customs are required such as NOC from FSSAI, Drug Controller, BIS etc., or samples of the consignment are required to be chemically analysed to identify the contents and fitness for consumption/ usage, Customs shall identify such requirement and intimate to the concerned custodian within **15 days** of the receipt of complete list. The concerned custodian will then approach the jurisdictional Customs officer for assistance in obtaining the said regulatory clearance. If in this process, chemical analysis is required, Customs shall draw the samples and forward the same to the respective agency for testing. The required testing fees or such other charges required to be paid to the concerned agency, shall be paid directly by the concerned custodian to the said agency. The concerned testing agency will be required to submit the test reports within 15 days of receipt of the samples.
- (x) NOC for such consignments shall be issued by Customs only after receipt of the required clearance/result of chemical analysis from the concerned agency, without which the concerned custodian shall not put the said consignment for auction.
- (xi) In case the result of chemical analysis, or report from FSSAI, Drug Controller, Plant Quarantine etc. indicate that the sample is not fit for consumption/usage, Customs shall inform the concerned custodian about the need for destruction of the same and the concerned custodian shall arrange to destroy the same at their expense, after obtaining the requisite environmental and other clearances as per law. Date of the proposed destruction shall be intimated to Customs at least 15 days in advance, to enable the representative of the Customs to witness the same, should the need for the same be felt.
- (xii) The value of the shipment/lot included in the auction list shall be fixed in next 7 days by a panel of Govt. approved valuers appointed by the concerned custodian which shall include an expert on the product line without involvement of the local Customs authorities. The values assessed by the approved valuers appointed by the custodians shall form the “reserve price”.
- (xiii) The concerned custodian shall fix a date immediately after assessment of value of such shipment/lot, for holding the auction/tender and communicate such date to the jurisdictional Commissioner of Customs and the Assistant/Deputy Commissioner, Disposal branch of the Customs Station. The Assistant/ Deputy Commissioner shall nominate, if necessary, an officer not below the rank of Superintendent/Appraiser to witness the auction/tender. Customs shall not withdraw any consignment at the last moment from the auction/tender except with the written approval of the jurisdictional Commissioner of Customs.
- (xiv) The shipment/ lot in respect of which NOC has been given by Customs, shall be taken up for auction. All bids of value equal to or more than the reserve price, or those up to 5% less than the reserve price, shall be treated as successful bids for sale of goods. Remaining shipments/ lots of the list shall again be taken up for second auction against the same reserve price. In case, shipments or lots, where bids are not received up to the reserve price, shall again be taken up for third auction against the same reserve price. Unsuccessful shipments/ lots of third auction, in respect of which three auctions have already taken place, shall be considered for fourth auction against the reserve price fixed before the first auction of such shipments/lots, however, in the fourth auction such shipments/lots are to be necessarily sold for the highest bid regardless of the reserve price fixed. In the event of the shipments/ lots not being disposed of in the first auction, subsequent auction/ tender should be conducted in a time bound manner and such shipments/lots should be taken up in the next auction. Custodian shall furnish shipment/ lot wise bids received in respect of each auction to the jurisdictional Commissioner of Customs for approval.
- Further, if these goods remain unsold and pass into the category of landed-more than one-year prior, the concerned custodian can sell the same following the independent procedure as detailed in para 3 of CBIC Circular No. 50/2005-Cus. dated 01.12.2005 without any reference to Customs, and adjusting the number of auctions/ tenders to which the lot was already subjected to against the prescribed number of four such auctions/ tender. However, even for such goods the requisite NOC from Customs will be obtained by the concerned custodian following the procedure laid down in paras above.
- (xv) After the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the

concerned custodian for clearance of the goods as per Section 46 of the Customs Act 1962 read with Un-Cleared Goods (Bill of Entry) Regulations, 1972 (Regulation 2 & 3).

(xvi) (a) The proper officer of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of the Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.

(b) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.

4. The above procedure shall be applicable to cargo, which are unloaded at a Customs Station after being brought from outside India on or after 01.04.2018 and which fall in the category of 'unclaimed/un-cleared' in terms of section 48 of the Customs Act, 1962. It would also be applicable to all unclaimed/un-cleared goods brought from outside India before 01.04.2018 (unclaimed/ un-cleared for a period not exceeding one year) in respect of which:

(a) auction process has not started yet; or

(b) list of cargo proposed for auction has been sent to Customs by the custodian but Customs has not yet provided the necessary information as referred in the para 3 (i) and 3 (iv) above.

5. The sale proceeds of the auction shall be disbursed as per Section 150 of the Customs Act 1962.

6. In case the entire process of auction is not concluded within 180 days of the commencement of auction, the custodian shall inform the bidder about further extended time which may be required to conclude the auction process. Where ever, the bidder indicates his unwillingness to wait further, his successful bid will be cancelled and the earnest money, if any deposited with the custodian by the bidder will be returned to the bidder under intimation to Customs. Otherwise, the auction process shall be concluded within the extended time conveyed to the bidder.

7. Wherever, any amount of earnest money is deposited by the bidder with the custodian, the same shall be refunded to the bidder within one week of announcement of auction results where the bid fails to succeed in the auction.

8. The above instructions may be brought to the notice of all concerned immediately through appropriate Public Notice. You are also requested to issue suitable standing order, for guidance of the officers. Difficulty, if any, in implementation of the above directions may be brought to the notice of the Board.

9. Hindi version will follow.

Yours faithfully



(Zubair Riaz)

Director (Customs)