



**OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE &
SERVICE TAX, N-5, TOWN CENTRE, CIDCO, AURANGABAD- 431 030**

F. No. VIII(Cus)03/ PN/2011

Dated 11th April 2011

PUBLIC NOTICE NO. 04 / 2011

Sub : **Forwarding of Customs Circulars - Reg.**

Copies of the Customs Circulars/notification/Guidelines pertaining to Handling of Cargo by the custodian are enclosed herewith for the information of Public, Trade & others.

Sr. No.	Circulars / Notification And Guidelines	Subject
1	Circular No.128/95-Cus; dated 14.12.95	Standard set guidelines for appointment of custodian of EPZs/ICDs/CFSs
2	Circular No.34/2002-Cus dated 26.06.2002	Standard set of guidelines for appointment of custodian of Sea Ports and Air Cargo Complex.
3	Letter F.No.450/105/2008-Cus.IV; dated 25.07.2008	Outsourcing/ Sub-letting/ Transfer of operations by CFS/ICD-Clarification.
4	Notification No.26/2009-Customs; (NT) dated 17.03.2009	Handling of Cargo in Customs Areas Regulations 2009
5	Circular No.13/2009-Customs; dated 23.03.2009	Handling of Cargo in Customs Areas Regulations 2009

-Sd/- 11.04.2011
(Madhu Mohan Damodhar)
Commissioner

Copy to:-

1. As per mailing list.
2. All Addl./Joint Commissioner, Customs & Central Excise, Aurangabad
3. All Divisional Deputy/ Assistant Commissioner & ICD's

F.No. 434/ 12/92- Cus. IV

Government of India
Ministry of Finance
Central Board of Excise & Customs, New Delhi

Subject: Standard set guidelines for appointment of custodian of EPZs/ ICDs/ CFSs.

The Government have decided that the private sector would also be involved in infrastructure development. Accordingly this sector has been allowed to open CFSs/ ICDs/ CPZs in addition to public sector agencies. The other intention of the Government has been to bring the Customs facilities to the doorstep of the exporting and importing community; therefore, many CFSs/ ICDs/ EPZs have been allowed to be opened in the interior, apart from port towns so as to decongest the ports.

2. To ensure smooth working of all the facilities, a need was felt to draw up a standard set of undertakings to be given by the custodians before they are so appointed under section 45 of the Customs Act or otherwise. To elicit suggestion from all Commissioners of Customs, a letter of even number dated 11.10.95 was circulated to all Chief Commissioner of Customs & Central Excise, all Commissioners of Custom and some Commissioners of Customs & Central Excise in whose Jurisdiction these facilities are being created. Sub-sequently, this was discussed as an Agenda point in the Conference of Commissioners held at Cochin on 20/21st October, 1995. As per the consensus arrived at in the said conference the set of undertakings has been revised. The revised set of guidelines is enclosed for your ready reference. It may be mentioned that the residential accommodation may be asked for in places where ICD/ CFSs are sanctioned in a newly developed area like Gandhi nagar or New Township created e.g. J.N. Port, and places where we do not have any accommodation.

3. It is necessary that the major aspirants for custodian ship, i.e. parties wanting to open CFS / ICD or EPZ may be appraised of these requirements through a Public Notice/ Trade Notice.

4. The need for CFS / ICD / EPZ is first felt by the trade before it is felt by the Department. The trade should also be informed through the Regional Advisory Committee that if they want to avail such opening of CFS /ICD / EPZ they may approach the Commissioner of Customs / Central Excise of the area concerned.

Sd/-
(Vijay Kumar)
Under Secretary to the Govt. of India

Annexure

Guidelines on undertaking to be given by the custodians before being appointed as custodians of ICDs / CFSs / EPZs

- (1) The custodian should provide safe, secure and spacious premises for loading/unloading/storing of the cargo. The infrastructure for loading / unloading and storage operations should be designed to handle a minimum traffic of at least 10 TEU per day (two-way). The premises should be so designed that there should be provision for expansion of storage space, office accommodation, handling space, etc. for a period of 10 years.
- (2) Customs shall provide sufficient modern handling equipment in operational condition for handling the containers and cargo in the area;
- (3) No alteration of the plan in the accommodation, boundary wall and building, etc. shall be made without the concurrence of the Commissioner of Customs;
- (4) Insurance of all goods held in the ICD / CFs shall be made by the custodian;
- (5) Custodian shall abide by all the rules and regulations under the Customs Act;

- (6) For proper discharge of duties the custodian shall execute a bond equal to the value of the goods likely to be stored in the premises for a period of 30 days, supported by a bank guarantee or a government bond or cash deposit equivalent to 10% of the value of goods;
- (7) The custodian shall bear the duty on the goods lost or pilfered from the CFS / ICD;
- (8) The custodian shall give separate bond with sufficient bank guarantee of the value of the bond towards the duty element of the Export goods transported from the customs area to the gateway port/ any other customs area for export/ transshipment. Custodian would also be held responsible for the duty and for other penalties leviable for the goods lost during transshipment from the said customs area to the gateway port/ other customs area;
- (9) Security of the premises shall be the responsibility of the custodian subject to the prior approval of the Commissioner of Customs of the arrangements. The cost for the security has to be borne by the custodian;
- (10) custodian shall bear the cost of the Customs staff, posted for the ICD/ CFS/ EPZ. The commissioner of Customs shall decide the number of staff which is required to be posted in the facility considering the workload in the station;
- (11) Custodian shall provide free furnished office space for the Customs Department;
- (12) Residential accommodation for the customs staff posted in the area shall be provided for by the custodian, wherever requisitioned by the Commissioner of Customs;
- (13) Free suitable transport from the nearest railway-head or suitable point shall be provided for the customs staff by the custodian;
- (14) In the ICD/ CFS / EPZ the custodian shall make adequate arrangements for sanitary facilities, water supply and other allied facilities, including canteen facility, for the officers working in the area;
- (15) Custodian shall not charge any rent/ demurrage on the goods detained by Customs Department under the Customs Department shall pay the rent to the custodian after the Customs Department shall pay the rent to the custodian after the ownership of the goods vests in the Government after confiscation. The rate of rent for such goods shall be fixed by the Commissioner in consultation with CPWD or local Revenue or Rent Control authorities;
- (16) In case the custodian wants to sublet any to the functions inside the customs area or connected with the customs area, the same should be done with prior approval of the Commissioner of Customs and the custodian shall remain responsible for the omissions and commissions of the said agency;
- (17) Duration of the appointment shall initially remain for 5 years and subject to the satisfaction of the Commissioner of Customs. Commissioner of Customs shall have the right to terminate the appointment at any time after assigning specific reasons and giving an opportunity for the customs to explain his case. The appointment shall be reviewed after every 5 years thereafter.

Circular No.34/2002-Cus.
26th June, 2002

F.No.434/12/92-Cus.IV
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs

Subject: Standard set of guidelines for appointment of custodian of Sea Ports and Air Cargo Complexes.

In the recent past, a number of new ports and Aircargo Complexes have been developed by public sector as well as private sector agencies and many more such facilities are in pipeline. In this connection, a point that has been made that the Board vide Circular No.128/95-Cus., dated 14.12.1995, had prescribed a set of guidelines for appointment of custodians of EPZs/ICDs/CFSSs, but no guidelines have been prescribed for appointment of custodians of ports and Aircargo Complexes. Absence of guidelines for appointment of custodians of ports and Aircargo Complexes results in disparity in practice at field level.

2. To ensure smooth working of ports and Aircargo Complexes, a need was felt to draw up a standard set of undertakings to be given by the custodians before they are so appointed under section 45 of the Customs Act, 1962. In this connection, it may be noted that ports or Aircargo Complexes are functionally similar to ICDs/CFSSs and therefore, the guidelines prescribed vide the said Circular for appointment of custodians of EPZs/ICDs/CFSSs with minor modification can be made applicable for appointment of custodians of ports or Aircargo Complexes.

3. In view of above, a set of guidelines for appointment of custodians of ports/Aircargo Complexes is enclosed as Annexure to this Circular, which needs to be applied while appointing a custodian of port or Aircargo Complexes.

4. These instructions may be brought to the notice of all concerned by issuing suitable Public Notice or Standing Order.

5. Difficulties, if any, in implementation of the Circular, may be brought to the notice of the Board. Kindly acknowledge receipt of the Circular.

ANNEXURE

Guidelines on undertaking to be given by the custodians before appointed as custodians of Sea Ports and Air Cargo Complexes

(1) The custodian should provide safe, secure and spacious premises for loading/ unloading / storing of the cargo. The infrastructure for loading / unloading and storage operations should be designed to handle the projected traffic of the port or Aircargo Complex. The premises should be so designed that there should be provision for expansion of storage space, office accommodation, handling space, etc. for a period of 10 years;

(2) The custodian shall provide sufficient modern handling equipment in operational condition for handling the containers and cargo in the area;

(3) No alteration of the plan in the accommodation, boundary wall and building, etc. shall be made without the concurrence of the jurisdictional Commissioner of Customs;

(4) Insurance of all goods stored in the Sea Port and Air Cargo Complexes shall be made by the custodian;

(5) The custodian shall abide by all the rules and regulations under the Customs Act;

- (6) For the proper discharge of duties the custodian shall execute a bond equal to the value of the goods likely to be stored in the premises for a period of 30 days, supported by a bank guarantee or a Government bond or cash deposit equivalent to 10% of the value of goods. However, all Central Government and State Government Undertakings shall be exempt from the requirement of furnishing bank guarantee or cash deposit;
- (7) The custodian shall bear the duty on the goods lost or pilfered from the Sea Ports and Air Cargo Complexes;
- (8) The custodian shall give separate bond with bank guarantee as prescribed by the Board from time to time towards the duty incentive involved in the export goods transported from the customs area to the gateway port / any other customs area for export / transshipment. The custodian would also be held responsible for the duty and for other penalties leviable for the goods lost during the transshipment from the said customs area to the gateway port / other customs area;
- (9) Security of the premises shall be the responsibility of the custodian subject to the prior approval of the Commissioner of Customs of the arrangements. The cost for the security has to be borne by the custodian;
- (10) The custodian shall bear the cost of the Customs staff posted at the Sea Ports and Air Cargo Complexes. The Commissioner of Customs shall decide the number of staff, which is required to be posted in the facility considering the workload in the station;
- (11) The custodian shall provide free furnished office space for the Customs Department;
- (12) Residential accommodation for the Customs staff posted in the area shall also be provided for by the custodian, wherever requisitioned by the Commissioner of Customs;
- (13) Free suitable transport from the nearest railway head or suitable point shall be provided for the customs staff by the custodian;
- (14) In the Sea Ports and Air Cargo Complexes, the custodian shall make adequate arrangements for sanitary facilities, water supply and other allied facilities, including canteen facility, for the officers working in the area;
- (15) The custodian shall not charge any rent / demurrage on the goods detained by Customs Department under the Customs Act or any other Act for the time being in force;
- (16) In case the custodian wants to sublet any of the functions inside the customs area or connected with the customs area, the same should be done with the prior approval of the Commissioner of Customs and the custodian shall remain responsible for the omissions and commissions of the said agency;
- (17) Duration of the appointment shall initially remain for 5 years and subject to the satisfaction of the Commissioner of Customs. The Commissioner of Customs shall have the right to terminate the appointment at any time after assigning specific reasons and giving an opportunity for the custodian to explain his case. The appointment shall be reviewed after every 5 years thereafter.

Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

159A, North Block, New Delhi.
Dated the 25th July, 2008.

To

All Chief Commissioners of Customs.
All Chief Commissioners of Customs & Central Excise.
All Commissioners of Customs
All Commissioners of Customs & Central Excise.
All Directorates General / Directorates under CBEC.
The Comptroller & Auditor General of India.

Subject: Outsourcing / Sub-letting / Transfer of Operations by CFS/ICD – Clarification - reg.

Sir / Madam,

It has been brought to the notice of the Board that in certain cases, violation of licensing conditions by CFS/ICD operators have been noticed and clarification has been sought as to how such violations of conditions of licensing or approval by CFS/ICD operators should be dealt with.

2. In this regard, it is stated that the jurisdictional Commissioner of Customs is the appropriate authority for approval of any place as 'Customs Area' and to approve / appoint a custodian under section 8 & 45 of the Customs Act, 1962 respectively. In terms of the section 16 of the General Clauses Act, 1897, powers vested with an authority for any appointment include the power to suspend or dismiss the person so appointed. Hence, the Commissioner of Customs also has the authority to de-notify or take away the custodianship in case of non-compliance by observing the principles of natural justice.

3. The approval of the Government for setting up an ICD / CFS is given to the person who had applied for the same and hence, trading in custodianship, in full or in part, is against the principle of custodianship vested on the person to whom approval for setting up of an ICD / CFS and Letter of Intent was given. Hence, transfer of custodianship by way of lease, gift, sale or transfer in part or in full is not permissible. However, activities such as aggregation of cargo at ICD / CFS by bulk buyers abroad or segregation or similar operation, provision of fork lifts and other material-handling equipments, cleaning and housekeeping etc. which do not take away the primary responsibility of a custodian and the chain of custody of goods shall be permissible to be outsourced subject to prior approval of the jurisdictional Commissioner of Customs.

4. In view of the above, it is clarified that the jurisdictional Commissioner of Customs is the competent authority to decide in a specific case whether subletting / outsourcing of any of the functions of CFS/ICD should be permitted and to give approval or reject the same after taking into account the concerns of the revenue for safeguarding the duty on imported goods and ensuring that the custodian duly appointed by the Commissioner on the approval of Inter-Ministerial Committee (IMC) continues to be held responsible for proper discharge of his functions including the ones that have been outsourced with prior permission.

5. Board had also noted that earlier, in case of violations of the conditions / guidelines prescribed under the Circular No.34/2002-Customs dated 26.6.2002, some of the Commissioners had taken action against the erring custodians imposing penalty under the Customs Act, 1962.

6. As such, cases of 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 concerned and they may be requested to verify the existing position in various CFS/ICDs under their jurisdiction and initiate necessary action against the erring CFS / ICD accordingly under the Customs Act, 1962.

Yours faithfully,
Sd/-

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

NOTIFICATION No. 26 / 2009 - Customs (N.T.)

NEW DELHI, THE 17th MARCH, 2009.
26 PHALGUNA, 1930 (SAKA).

G.S.R. _____(E) - 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 customs areas as specified under section 8 of the Act.

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 an applicant for custody and handling of imported or export goods in a customs area. –

Any person who intends to be approved as a Customs Cargo Service provider for custody of imported goods or export goods and for handling of such goods, in a customs area, hereinafter referred to as the applicant, shall fulfill the following conditions, namely:-

- (1) The applicant shall 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) building for Customs office, Customs Electronic Data Interchange (EDI) Service Centre and user agencies with basic amenities and facilities;
- (c) storage facility, separately for imported, export and transshipment goods;
- (d) gate complex with separate entry and exit;
- (e) adequate parking space for vehicles;
- (f) boundary wall;
- (g) internal service roads;
- (h) electronic weigh-bridge and other weighing and measuring devices;
- (i) computerized system for location and account of goods, and processing of documents;-
- (j) 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;

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

(l) facilities for installation of scanning equipment;

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

(n) 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) The applicant shall 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) The applicant shall 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;

(4) The applicant shall also 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) The applicant shall 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. 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 proper 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 transshipment;
- (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 transshipment;
- (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 proper officer;
- (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 proper officer;
- (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 proper officer;
- (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 proper officer;
- (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 proper officer;
- (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 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.

(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.

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.

[F.No.450/55/2008-Cus.IV]

(M.M. Parthiban)
Director (Customs)

Form – A
[see regulation 9 (1)]

To

The Commissioner of Customs,
..... (Address)

Subject: Application Form for approval / renewal of Customs cargo service provider under the Handling of Cargo in Customs Areas Regulations, 2009 issued under Section 141(2) of the Customs Act, 1962 (52 of 1962).

Sir

/

Madam,

I/we, the undersigned hereby submit the following details for approval as a Customs cargo service provider under the Handling of Cargo in Customs Areas Regulations, 2009:

1. Name and address of the Applicant in full (Block Letters) :-

(a) Name of the Applicant _____

(b) Full Address (Registered Office, in case of limited Companies & Head Office for others)

(c) Tel. No. _____

(d) Fax No. _____

(e) Permanent E-Mail Address _____

(f) Name and address of each of the Directors/Partners/ Promoters, as the case may be _____

2. Nature of the applicant Firm or Company:

(a) Public Limited Company

(b) Private Limited Company

(c) Proprietorship

(d) Partnership

(e) Others (please specify)

Note:- Copy of certificate of incorporation along with Article of Association and Memorandum in case of companies and partnership deed in case of partnership firms may please be attached.

3. Extent of the proposed premises, giving details of area allocated for unloading / loading, operational and stacking area, storage area, delivery, Customs Automated System, Customs office premises, service centre, other user agencies etc. (Map to be provided).

4. Whether the applicant holds a valid Letter of Approval given by the Inter-Ministerial Committee of the Ministry of Commerce or any other Government Body for setting up of Customs cargo service facility at the premises applied for? If so, provide details thereof.

5. Projected capacity of the cargo / container proposed to be handled in the proposed premises.

6. Details of infrastructure and equipment put in place for handling of cargo in the proposed premises. (Details to be given separately for loading / unloading, stacking, storage and delivery).

7. Details of security system installed for entry / exit of cargo and other safety and security measures.

8. Details of electronic weigh bridge, other weighing, measuring devices.

9. Details of the computerized system put in place for location of cargo / container, processing of documents.

10. Whether any exemption from payment of cost recovery charges for posting of Customs officers is claimed. If so, furnish the details of the order issued in this regard by the Ministry of Finance.

11. Whether the applicant is already functioning as Customs cargo service provider. If so, details of the premises along with the respective jurisdiction of the Commissioner of Customs.

12. Whether the applicant had earlier applied for approval to act as Customs cargo service provider and whether such application was approved / rejected:-

(i) within the jurisdiction of the Commissioner of Customs to whom application has been made;

(ii) outside the jurisdiction of Commissioner of Customs referred at (i) above.

13. Whether the applicant has been penalized, convicted or prosecuted under any of the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force. (If so, the details thereof).

14. If the application is for renewal, details of original approval granted under regulation 9, along with the date of its expiration or the date of last renewal of such approval.

15. List of documents furnished along with this application.

16. Declaration:

I am / we are authorized to make the following declarations:

I / We declare that all particulars given herein are true and correct.

I/We hereby affirm that I/we have read the Handling of Cargo in Customs Areas Regulations, 2009 and agree to abide by them.

I/We hereby undertake to intimate any change in respect of the information provided in the aforesaid application within a period of 30 days.

Date:

Signature and name
of the applicant(s)
or authorised signatory

Place:

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.

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.

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

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)