

Disposal of Unclaimed/Uncleared Cargo

1. Introduction:

- 1.1 Imported goods are allowed to be cleared for home consumption by the Customs, if there are no restrictions or prohibitions, assessment formalities have been completed, and duty leviable has been paid. However, it is often the case that the importer files the Bill of Entry but does not clear the goods due to various reasons such as financial problems, lack of demand for the goods, etc. Such goods are called 'uncleared goods'. In some cases, the importer does not even come forward to file the Bill of Entry for clearance of goods. Such goods are known as 'unclaimed goods'.
- 1.2 In terms of the provisions of the Customs Act, 1962, the duty is leviable on imported goods, regardless of whether they are cleared by the importers or not. Similarly, dues of other agencies, such as, carriers and custodians for carriage and storage of goods respectively, may also arise. Where the importers do not come forward to make payment of such dues, the Customs duty and other dues can be recovered by selling the unclaimed/uncleared goods.

2. Legal provisions:

- 2.1 As per Section 48 of the Customs Act, 1962, if any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within 30 days from the date of unloading thereof at a port, such goods can be disposed of by the custodian. The Act, however, stipulates that the goods can be sold only after a notice is issued to the importer and the permission from Customs is obtained. The provisions relating to manner of disposal of unclaimed/uncleared goods and apportionment of sale proceeds thereof are contained in Sections 48 and 150 of the Customs Act, 1962.

3. Procedure for sale of unclaimed/uncleared goods:

- 3.1 The Board has laid down a comprehensive procedure for disposal of unclaimed/uncleared goods. The salient features of the procedure in respect of disposal of unclaimed/uncleared cargo falling in the category of 'landed more than one year' is as follows:
 - I. The custodian will furnish the list of items to be considered for disposal to Customs. The list will contain complete particulars such as Bill of Lading/Airway Bill number, description of goods, weight, name of the consignee/consignor, etc. The custodian will simultaneously issue a notice to the consignee at his known address and also display the same on the custodian's notice board stating that if the goods are not cleared within 15 days they shall be sold under Section 48 of the Customs Act, 1962.

- II. Customs shall scrutinize the custodian's list with their own files/records and intimate the custodian the goods not to be disposed viz. (a) disputed or stayed consignments or (b) consignments required to be retained for any investigation/ adjudication/court proceedings, (c) motor vehicles or (d) negative list items. If no such intimation is received from the Customs within 15 days, the custodian shall go ahead with the disposal of the goods.
- III. The responsibility for disposal shall exclusively be with the custodian who shall fix a reserve price arrived at by their appointed panel of Government approved valuers (irrespective of value, if any, arrived at by the Customs Appraisers earlier), which should include an expert on the product line.
- IV. The Customs will not insist on complete and detailed inventory of the contents of the consignments to be drawn in their presence. They shall, instead choose 10% consignments for which detailed inventory shall be made in their presence for sample check.
- V. The goods shall be disposed by public auction/E-auction/tender and its date should be adequately publicized in advance through national newspapers (both in English and Hindi), departmental website as well as in at least one newspaper in the local language.
- VI. The values assessed by the approved valuers appointed by the custodians shall form the "reserve price". The maximum number of auctions/tenders to which a lot is subjected should be four, with the goods necessarily sold for the highest bid in the last auction/tender regardless of the reserve price fixed. In the event of the goods not being disposed of in the first auction, subsequent auctions/tender should be conducted in time bound manner.
- VII. Guidelines issued by the Central Vigilance Commission as available at CVC website <http://www.cvc.nic.in>, particularly letter No.98/ORD/1, dated 18-12-2003 should be kept in view.
- VIII. The custodian should fix a date for holding the auction/tender and communicate such date to the concerned Customs officer and the concerned Assistant/Deputy Commissioner who would, if necessary, nominate, an officer not below the rank of Superintendent /Appraiser to witness the auction/tender. Customs shall not withdraw any consignments at the last moment from the auction/tender except with the written approval of the Commissioner of Customs.
- IX. The bidding shall be on cum-duty price and duty shall be back-calculated from the sale price [local taxes like Sales Tax etc, will however have to be charged/recovered extra from the buyer].
- X. For each consignment which is sold, the custodian will file a consolidated Bill of Entry, buyer-wise, for assessment of the effective rate of duty by the Customs in terms of Unclaimed Goods (Bill of Entry) Regulations, 1972. Auctioned goods will be allowed out of charge only after the duty assessed is paid by the custodian.

XI. The sale proceeds shall be shared as per the provisions of Section 150 of the Customs Act, 1962.

- 3.2 The procedure of disposal of uncleared cargo in the 'landed less than one year category' is that the custodian would get the reserve price fixed by their appointed panel of Government approved valuers and the Customs shall not associate itself with the valuation of such goods. However, both reserve price and bids would be approved by the Customs. Further, if these goods remain unsold and pass into the category of 'landed-more-than-one-year-prior', then the custodians can sell the same following the independent procedure for such category without 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.

[Refer Circular No.50/2005-Cus., dated 1-12-2005]

4. Disposal of hazardous cargo:

- 4.1 The disposal of hazardous cargo is to be carried out in accordance with the directions dated 14-10-2003 of the Hon'ble Supreme Court in WP No. 657/95. Basically, the Apex Court has directed that such wastes are to be categorized as either those that are banned or those that are regulated. The wastes in the banned category should be either re-exported, if permissible, or destroyed at the risk, cost and the consequence of the importer. The wastes in the regulated category are permitted for recycling and reprocessing within the permissible parameters by specified authorized persons having the requisite facilities under the rules. However, before allowing clearance for recycling and domestic use, clearances should be obtained from the Monitoring Committee on Hazardous Waste Management. Further, where the importer of any of the categories is not traceable, the consignments shall be dealt with at the risk, cost and consequences of the importer. The disposal/auction shall be carried out under the supervision of the Monitoring Committee on Hazardous Waste Management.

[Refer Circular No.31/2004-Cus., dated 26-4-2004]

5. Compliance with restrictions/prohibitions under various laws:

- 5.1 The disposal of cargo which is subject to restrictions/prohibitions under any law for the time being in force, can only be made in terms of the relevant statutes.

6. Mechanism for interaction between custodians and Customs:

- 6.1 There would be a formal mechanism for interaction and a quarterly meeting between the custodians and Customs to review the pendency of uncleared cargo and to reconcile/update the status of pending consignments by matching the pendency with the custodian with the figures of uncleared consignments as per Customs records.

[Refer Circulars No.31/2004-Cus., dated 26-4-2004; No.50/2005-Cus., dated 1-12-2005; No.52/2005-Cus., dated 10-12-2005; No.11/2006-Cus., dated 16-2-2006; and Instruction F.No.450/97/2010-Cus.IV, dated 22-7-2010]