

Customs Cargo Service Providers

1. Introduction:

- 1.1 The Public Accounts Committee (PAC) in its 27th Report (2005-06) recommended formulating appropriate legal provisions and guidelines to control the activities of custodians. In pursuance of these recommendations, the Government inserted a new Section 141(2) to the Customs Act, 1962 and thereafter under its authority framed the Handling of Cargo in Customs Areas Regulations, 2009 (HCCR, 2009).
- 1.2 The HCCR, 2009 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.

2. Salient features of the HCCR, 2009:

- 2.1 The HCCR, 2009 apply to all 'Customs Cargo Service Providers' (CCSPs), who are persons operating in a Customs area and engaged in the handling of import/export goods. These include the custodians of imported/export goods and those handling such goods and all persons working on their behalf such as fork lift or material handling equipment operators, etc. Consolidators/ break bulk agents and other persons handling imported/export goods in any capacity in a Customs area are also covered.
- 2.2 The HCCR, 2009 indicate various responsibilities and conditions for different kinds of CCSPs. The conditions prescribed under its Regulation 5 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 persons who only provide certain services on their own or on behalf of the custodians.
- 2.3 Responsibilities prescribed in Regulation 6 of the HCCR, 2009 apply to both custodians and persons who provide various services, though certain responsibilities specifically apply to one or the other 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 an approved custodian who handled imported or export goods. 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 are aimed at expeditious clearance of goods, reduction of dwell time, transaction cost and safeguarding revenue.
- 2.4 As specified in Regulation 3 of the HCCR, 2009, 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, ICDs/CFSS and LCSs. Also, imported goods would cover goods under transshipment and all goods held under the custody of CCSP. However, these regulations do not apply to Customs bonded warehouse or to the warehoused goods covered by Chapter IX of the Customs Act, 1962.

- 2.5 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 authorized to function as custodians under their respective Acts and these regulations shall not impact their approval as a custodian. Thus, in terms of Section 45 of the Customs Act, 1962, 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 of the HCCR, 2009 for approval or renewal under these regulations. However, they would be required to discharge the responsibilities cast upon them as specified in its Regulation 6.
- 2.6 Regulation 5 of the HCCR, 2009 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. This contains an exhaustive list of infrastructure and operational requirements for efficient handling of imported or export goods, though sufficient discretion is provided for the Commissioner of Customs to decide on the nature of infrastructure and equipments required. Hence, it is to ensure that the facilities provided by the custodians are sufficient for efficient handling of cargo. 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. (the requirement may, of course, vary between Customs areas at different places in the country). The Commissioner of Customs can also specify general standards or requirements such as height of boundary wall, quantum and specifications of material handling and other equipments etc., to ensure the facilities are adequate for effective and efficient handling of cargo.
- 2.7 Under Regulation 5(1)(j) of the HCCR, 2009, 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. In addition, the custodian would undertake site preparation including civil works, electrical works, electrical fittings, air-conditioning, etc. and provide DG Set for power back up and link to the Customs EDI server. The networking, communication equipments, UPS, computers/personal computers/thin clients, servers, printers and other computer peripherals as may be specified by the Directorate General of Systems shall also be provided by the custodian.
- 2.7.1 Board has clarified that custodians already exempted from payment of cost recovery charges under Circular No.27/2004-Customs dated 6-4-2004 and Para 5.3 of Circular No.13/2009-Customs dated 23-3-2009 would continue to avail the exemption even after issue of Board Circular No.4/2011-Customs dated 10-1-2011.

2.7.2 Further, Commissioner of Customs, subject to his satisfaction, should not insist for residential accommodation for staff from CCSP in cases where concerned facility of CCSP is located in the city area. The underlying idea is to provide for residential facilities for staff deployment at Customs facilities located in far flung and remote areas where it is difficult to have appropriate residential facility and which can not be easily commuted by the officers. Therefore requirement of residential accommodation should not be insisted upon in cases where the location is commutable from the base town/city. Commissioner of Customs concerned should exercise due diligence before enforcing provisions of 5(1)(i)(b) of Notification No.96/2010-Customs (NT) dated 12.11.2010. The type of residential accommodation to be provided to Customs staff would be determined as per entitlement of the officer of Central Government.

[Refer Circular No.29/2011-Cus., dated 18-7-2011]

2.7.3 CCSPs are required to have weigh bridges installed at their facilities preferably near the entry/exit gate and all containers must be weighed.

[Refer Instruction F.No.450/81/2011-Cus.IV, dated 18-8-2011]

2.8 Regulation 5(2) of the HCCR, 2009 requires the custodian to pay cost recovery charges in respect of the Customs officers deployed at the ICD/CFS/port/airport etc., unless exempted by a specific order or a circular or instructions issued by the Ministry of Finance. Presently, payment of cost recovery charges in respect of ports and airports has been exempted for three categories of custodians, as follows:

- (i) Custodians notified under Section 45 of the Customs Act, 1962 prior to 26-6-2002 and there is no change in custodianship or area after 26-6-2002;
- (ii) Custodians notified prior to 26-6-2002 but part or whole of the same premises is transferred (on lease or otherwise) to new custodian on or after 26-6-2002 (e.g. AAI, custodian of Mumbai Air Cargo Complex prior to 26-6-2002 later transferred part custodianship to Air India); and
- (iii) Custodians notified prior to 26-6-2002 but premises extended after 26-6-2002 under the same custodianship.

[Refer Circular No.27/2004-Cus., dated 6-4-2004]

2.9 The Greenfield Airports Policy framed by the Government and notified by the Ministry of Civil Aviation specifies that the applicant for setting up of a greenfield airport will obtain clearance from the Department of Revenue for provision of Custom services and the cost of providing these services will be borne by the Airport Company.

2.10 Cost recovery charges to be paid by ICD/CFS may be waived if they fulfill the laid down norms and are in existence for a consecutive period of two financial years. Accordingly, in respect of the eligible ICDs/CFSs specific orders in individual cases for grant of exemption from the payment of cost recovery charges are issued by Ad.IV

Section of the Board. As per the existing instructions, the cost recovery posts at ICD/ CFS which have been in operation for two consecutive years with following performance benchmark for past two years will be considered for regularization of cost recovery posts. The waiver of cost recovery charges would be prospective with no claim for past period. Criteria would be applicable on actual performance of ICDs / CFSs.

(i) No. of containers handled by ICD	7200 TEUs per annum
(ii) No. of containers handled by CFS	1200 TEUs per annum
(iii) No. of B/E processed by ICDs / CFSs 1200 for CFSs.	7200 per annum for ICDs and 1200 for CFSs.
(iv) Bench mark at (i) to (iii) shall be reduced by 50% for these ICDs / CFSs exclusively dealing with exports as per staffing norms.	

[Refer instructions F.No.434/17/2004-Cus-IV, dated 12-9-2005]

- 2.11 Regulation 6(1)(m) of the HCCR, 2009 deals with disposal of imported or export goods lying unclaimed, uncleared or abandoned in ICDs/CFSs/Customs areas by the CCSP who is holding custody of the such goods. Proper and timely disposal of unclaimed, uncleared or abandoned goods is to be ensured.

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

- 2.12 It is clarified that all cases of lease, gift, sale or subletting or transfer of the premises in any other manner, in a customs area by major ports may be firstly examined to see whether required permission from the Central Government/ Ministry / Cabinet Committee has already been obtained or not. In cases where appropriate authority has already given permission for such lease or transfer of premises, then necessary written permission may be given by the Commissioner for such lease or transfer. On the contrary, if no approval of the Government has been obtained, then appropriate action may be initiated against the erring Custodian under the said Regulations and the Customs Act, 1962. This has been decided on account of certain references received in the Ministry that further permission from the Commissioner of Customs should not be required in respect of PPP projects approved by the Government / PPA Appraisal Committee or Cabinet Committee on Infrastructure

[Refer Circular No.54/2011-Cus., dated 29-12-2011]

- 2.13 The power to exempt the conditions required to be fulfilled by CCSPs is provided under Regulation 7 of the HCCR, 2009 to the Commissioner of Customs. 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 this requirement becomes a necessity, 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.

- 2.14 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) of the HCCR, 2009. 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.
- 2.15 In terms of Regulation 9 of the HCCR, 2009, at the time of submission of applications for acquiring custody and handling of imported/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. Further, the projected capacity of the cargo or container proposed to be handled at the premises, would form the basis for determining the adequacy of the infrastructural facilities and 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. As regards X-Ray scanning equipment, 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.
- 2.16 Only such CCSPs who wish to be appointed as custodian of imported/ export goods need to take approval as specified in Regulation 10 of the HCCR, 2009. CCSPs who either operate on behalf of the custodian or with his permission, do not require any approval. However, custodian will be responsible for fulfillment of the conditions of these regulations by such CCSPs.
- 2.17 The procedure for approval of appointment, renewal, suspension or revocation of CCSP as per Regulations 10 to 13 of the HCCR, 2009 is based upon transparency and objectivity. 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. Further, action would 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 value and loss of revenue etc.

[Refer Instructions F.No.450/105/2008-Cus.IV, dated 25-7-2008]

- 2.18 All the CCSPs are required to publish a schedule of charges associated with various services in relation to imported or export goods in the Customs area and its display at

prominent places including webpage or website of the CCSP. It has also been clarified that no exemption is available to existing custodians / CCSPs in so far as the provisions of facilities and fulfillment of prescribed conditions in Regulation 5 & 6, as applicable, within the specified limits are concerned.

- 2.19 Custodians under the Major Port Trusts Act, 1963, and Airports Authority of India Act, 1994 shall not be required to make an application under Regulation 4 or 9 for approval or renewal under these regulations, but they are required to necessarily discharge the responsibilities cast upon them in terms of Regulation 5 and 6.
- 2.20 The CCSP will also undertake to indemnify the Commissioner of Customs from any liability arising on account of damages caused or loss suffered on imported or export goods, due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling by furnishing an indemnity bond.
- 2.21 No relaxation or exemption from requirements on safety and security of premises shall be allowed by the Commissioner of Customs to the custodians or CCSPs in terms of provisions of Regulation 7 of HCCR, 2009. also keeping in view the paramount importance of overall safety and security of imported / export goods, detailed guidelines have been prescribed in order to ensure that all concerned persons ensure that suitable arrangements are put in place for safety and security of premises relating to imported or export goods.
- 2.22 The HCCR, 2009 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 impact the past proceedings against the custodian, if any, where necessary action has been initiated against erring custodians.

[Refer Circulars No. 52/97-Cus., dated 17-10-1997; No.80/98-Cus., dated 26-10-1998; No.27/2004-Cus., dated 6-4-2004; No.13/2009-Cus., dated 23-3-2009; No.18/2009-Cus.,dated 8-6-2009; No.21/2009-Cus., dated 4-8-2009; and No.4/2011-Cus., dated 10-1-2011]