

Circular No. 40/2016-Customs

F.No.450/55/2008-CusIV (Pt. III)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

227B North Block,
New Delhi dated the 26th August, 2016

To,

Principal Director General/ Director General, DRI
All Principal Chief Commissioners/ Chief Commissioners of Customs/Customs
(Preventive)
All Principal Chief Commissioners/Chief Commissioners of Customs & Central Excise
All Principal Commissioners/Commissioners of Customs/Customs (Preventive)
All Principal Commissioners/Commissioners of Customs & Central Excise

Sir/Madam,

Subject: Guidelines on safety and security of premises where imported or export goods are loaded, unloaded, handled or stored-reg.

Attention is invited to the Board's Circular No.4/2011-Cus dt.10.1.2011, wherein, vide Annexure-A appended to the circular, CBEC has prescribed comprehensive guidelines on safety and security of premises where imported or export goods are loaded, unloaded, handled or stored. It has been specifically provided that imported goods or export goods which are hazardous in nature shall be stored at the approved premises of the customs cargo service provider (CCSP) in an isolated place duly separated from other general cargo, depending upon classification of its hazardous nature such as explosives, gases, flammable liquids, flammable solids, poisonous and infectious substances, radioactive material or any hazardous chemicals defined under respective rules.

2. It is further provided that the space allocated for storage of hazardous cargo within the notified premises should be of proper construction including appropriate heat or fire resistant walls, RCC roofing, flooring. Such area shall be situated at a minimum distance of 200 metres away from main office, administrative, customs office building so that the storage of hazardous cargo is in such a manner that it does not endanger the people working in the premises.

3. M/s. CFS Association of India had filed W.P. No.3651/2011 in the High Court of Judicature at Bombay inter-alia challenging the CBEC Circular No. 4/2011-Cus, Public Notice No. 8/2011 dated 4.2.2011 issued by the Commissioner of Customs Raigad, Maharashtra. While disposing off the said WP, the Hon'ble Bombay High Court observed:

In the exercise of its jurisdiction under Article 226 of the Constitution, this Court has to be mindful of the fact that issues such as the maintenance of a safe distance between general and hazardous cargo are matters of scientific expertise where the Court would place a degree of deference on the decision which is taken by the Commissioner of Customs. The Commissioner of Customs is an authority which is vested with the jurisdiction and obligation to take such a decision under the Regulations of 2009. Unless there is

something arbitrary, the Court would not be inclined to interfere. The communication which has been issued by the Central Board of Excise and Customs on 6th April, 2011 clarifies that the matter has now been referred to the Union Ministry of Environment and Forests and to the Union Ministry of Shipping. Obviously, in such matters a decision which is once taken is capable of being altered having regard to the requirements of safety and security and after taking into account practical concerns which are expressed by trade and industry. The concerns of safety and security need continuous monitoring and evaluation. A standard once laid down is not immune to change. In our view, it would be appropriate, since a process of re-examination has been initiated by the Central Board of Excise and Customs, if the Competent Authority in that regard is left to take a considered decision after considering all the requisite facets of the case. We accordingly would expect that the concerned Ministries of the Union Government which are seized of the issue namely, the Union Ministry of Finance (Department of Revenue), the Union Ministry of Environment and Forests and the Union Ministry of Shipping will undertake a collaborative exercise and arrive at a decision, based on the views of experts and the need to maintain safety and security. Nothing arbitrary in the decisions impugned before the Court is shown. With these observations, we accordingly dispose of the Petition. No order as to costs.

4. Pursuant to the decision of the High Court in the Writ Petition No. 3651/2011, a joint Technical Committee comprising of Members from MoEF, Ministry of Shipping, CBEC, Port Trust, etc., was constituted to give recommendations on the distance(s) to be maintained between the hazardous cargo and the general cargo in the customs area on one hand and between the hazardous cargo and the administrative building on the other.

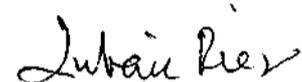
5. The Committee has submitted its recommendations which have been accepted in the MoEF & CBEC. Accordingly, the guidelines in so far as prescribing the distance to be maintained between hazardous cargo including explosives and general cargo or administrative building in a Customs area would be as follows:

- a. Among the various hazardous goods imported or exported, explosives have to be considered separately in view of the severity of hazard, safety procedure and skill etc. required in their handling and storage.
- b. The safe distances between buildings and hazardous cargoes other than explosives varies from 3 meters to 30 meters, in various rules and practices, in other ports outside the country. In order to have uniformity, the distance of 30 meters is prescribed to be maintained between hazardous cargo (other than explosives) and administrative buildings. However, the distance of 200 meter as mentioned in CBEC Circular No.4/2011 would be observed between the hazardous cargo (explosive in nature) and the administrative buildings. The distance to be maintained between hazardous cargo and general cargo would be as prescribed in IMDG (International Maritime Dangerous Goods) Code for storage in port areas.
- c. The safe distance for storing hazardous goods including explosives on land i.e Container Depot, CCSP area, Customs notified area etc. (other than port area) for

which specific rules exist shall be guided by said rules i.e Gas Cylinder Rules, 2004; the Explosive Rules, 2008; Petroleum Rules, 2002; Static and Mobile Pressure Rules, 1981 etc., as applicable.

- d. In case of anomaly, between port rules and respective specific rules governing storage of a particular hazardous good, the provision of specific rules shall over ride the port rules.
6. The guidelines contained in Annexure-A of CBEC circular No.4/2011 dated 10.1.2011 shall stand modified to the above extent.
7. Suitable Public Notice be issued by the field formations.
8. Difficulties, if any, in implementation, be brought to notice of the Board.

Yours faithfully,


(Zubair Riaz)
Director (Customs)