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Dated:24.05.2016

PUBLIC NOTICE No.76/2016

Subject: Amendment to Ch.IX of Customs Act, 1962 - Insertion of Section 58A - Clarification regarding transitional provisions relating to Duty Free Shops/Ship stores/Airline Stores/Diplomatic Stores-Reg.

Attention of all the Importers, Customs Brokers and the Members of the Trade is invited to the Board's Circular No.20/2016-Customs dated 20.5.2016 on the above subject.

2. The Finance Act, 2016 has inserted section 58 A in chapter IX of the Customs Act. Section 58 A reads as under:

SECTION 58A. Licensing of Special Warehouses - (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

(2)The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).

3. The Board has issued a notification under sub-section (2) of section 58A (66 / 2016 - Cus (NT) dated 14th May 2016) notifying the class of goods to which the provisions shall apply. The Board has also notified Special Warehouse Licensing Regulations, 2016 and the Special Warehouse (Custody and Handling of Goods) Regulations, 2016.

4. In order to facilitate the understanding of the transitional provisions by the trade, Commissionerates are advised to note the following:

a. Licensees operating warehouses under erstwhile section 57 or 58 and storing goods meant for duty free shops/ship stores/diplomatic stores must apply for a license under section 58A, if they propose to continue to store such goods beyond the transitional period of three months.

b. In order to ensure a smooth and orderly transition, existing warehouses engaged in supply of such goods are allowed to continue operations during the transitional period, under customs lock, for a period of three months.

c. The application under Special Warehouse Licensing Regulation, 2016 must be made within one month w.e.f. 14th May 2016.

d. Any licensee who does not make an application under Special Warehouse Licensing Regulation, 2016, shall not be permitted to store goods meant for the end use notified at serial no. (2) of notification 66/2016-Cus dated 14.5.2016 beyond the said three months.

e. Principal Commissioners / Commissioners are advised that the following time lines may be strictly followed in processing of applications by existing licensees:

(i) Application to be received from existing licensees within one month along with the certificate/undertakings mentioned in sub regulation (1) of regulation 3 of the Special Warehouse Licensing Regulations 2016;

(ii) Commissioners should process the applications within 15 days of receipt. Since the due diligence of existing licenses was carried out while granting the license, there would be no need for verifying compliance to the conditions under sub regulation (2) of regulation 3;

(iii) Licensee shall thereafter comply with the obligations enjoined under regulation 4 within the next fifteen days.

(iv) The license shall be issued immediately thereafter.

5. A question has been raised as to whether a Duty Free Shop in the airport is to be licensed as a warehouse or not. Attention is drawn to the erstwhile chapter IX of the Customs Act where section 62 stated:

SECTION 62. Control over warehoused goods. - (1) All warehoused goods shall be subject to the control of the proper officer.

(2) No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.

(3) The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.

(4) The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

5.1 Further, the erstwhile section 64 stated:

SECTION 64. Owner's right to deal with warehoused goods. - With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same

(a) inspect the goods;

(b) separate damaged or deteriorated goods from the rest;

(c) sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;

(d) deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;

- (e) show the goods for sale; or
- (f) -----

5.2 It may be noted that a duty free shop cannot meet the ingredients of sub-section (2) and (3) of erstwhile section 62 of the Customs Act, or currently, the provisions of section 58A. Similarly, the provisions contained in erstwhile section 64 or as it now stands, do not permit retail sales from a warehouse. From this it flows that a duty free shop located in a customs area should not be treated as a warehouse. In fact, it is a point of sale for the goods which are to be ex-bonded and removed from a warehouse for being brought to a DFS in the customs area for sale to eligible persons, namely, international passengers arriving or departing from India.

5.3 It is gathered that Duty Free Shop operators store goods in large warehouses in the city and / or in smaller warehouses in and around the precinct of the airport to act as a staging area for replenishing stocks in the duty free shopping area. These warehouses in the city and / or precinct of the airport qualify to be licensed as bonded warehouses as they are capable of being under the lock of customs.

6. It is also clarified that warehouses licensed under section 58A can belong to an importer of ship stores / airline stores / diplomatic stores / duty free shop stores (exclusive use). There could also be warehouses under section 58A which could be catering to several parties engaged in the business of ship stores / airline stores / diplomatic stores / duty free shop stores (non-exclusive). Since it is the end use which determines whether a warehouse is eligible for being licensed under section 58A, there shall be no restrictions on the type of goods that can be stored in such warehouses, as long as they are meant for the end use notified at serial no. (2) of notification 66/2016-Cus dated 14.5.2016.

7. Clarifications have also been sought regarding regulation 3 (1) (e) and the phrase 'recovery of costs'. Recovery of costs, accommodates both fee recovered under the Customs (Fees for Rendering Services by Customs Officers) Regulations, 1998 (Merchant Over Time) or Cost Recovery basis. To determine whether a Special Warehouse will require services of a customs officer on MoT basis or cost recovery basis, the Principal Commissioner / Commissioner will have to determine from the licensee the extent of requirements for services of a customs officer. Guidelines regarding determining where services are to be rendered on MoT basis or Cost Recovery basis are being issued separately.

8. It is requested that interactive sessions may be planned with owners/operators of ship stores / airline stores / diplomatic stores / duty free shops business to familiarize them with the new provisions and ensure a smooth transition.

9. A detailed circular relating to documentary processes with regard to duty free shops / ship & airline stores / diplomatic stores is being issued separately.
10. Difficulties, if any, should be brought to the notice of the undersigned

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(D. K. SRINIVAS)

Commissioner of Customs (NS-I & III),
JNCH, NHAVA SHEVA

COPY TO:

1. PA to the Pr. Chief Commissioner of Customs, Mumbai Zone-II, JNCH
2. The Pr. Commissioner / All the Commissioners of Customs, JNCH.
3. All the Addl. / Jt. Commissioner of Customs, JNCH.
4. All the Dy. / Asstt. Commissioner of Customs, All Groups, JNCH.
5. Notice Board and Website, JNCH.