

F.No. CBIC-50394/10/2021-Anti Smuggling Section-CBEC

Government of India

Ministry of Finance

Department of Revenue

Anti-Smuggling Unit (CBIC)

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Room No. 501, 5th Floor, Hudco Vishala Building,

R. K. Puram, New Delhi

**dated: 16.08.2021**

To,

All Pr. Chief Commissioners/ Chief Commissioners of Customs,  
All Pr. Chief Commissioners/ Chief Commissioners of Customs (P),  
All Pr. Chief Commissioners/ Chief Commissioners of Customs and GST,  
The Director General of Human Resource Development,  
Webmaster, CBIC.

Madam/Sir,

**Subject: De-notification of Inland Container Depots/Container Freight Stations/Air Freight Stations – reg.**

It has come to the notice of the Board that difficulties are being faced by the custodians of Inland Container Depots (ICDs) and Container Freight Stations (CFSs) when they intend to wind up the operations in the facility and approach Customs formations for de-notification of the same. Reportedly, there is inordinate delay in the de-notification in the absence of a specified procedure for de-notification. It is also reported that in such cases, the Customs field formations face challenges while ensuring timely payment of Cost Recovery Charges and disposal of un-cleared, seized and confiscated goods which are prerequisites for the de-notification.

2. The Board has examined the matter. The Circular No. 50/2020-Customs dated 05.11.2020 read with Circular No. 06/2021-Customs dated 22.02.2021 specifies the policy and guidelines for setting up of ICDs, CFSs and AFSs. Further, Circular No. 02/2021-Customs dated 19.01.2021 contains comprehensive guidelines in respect of posting of officers and staff on cost recovery basis and grant of exemption from payment of Cost Recovery Charges. In the context of de-notification of the ICDs/CFSs/AFSs, Circulars No. 50/2020-Customs dated 05.11.2020 and No. 02/2021-Customs dated 19.01.2021, inter alia, mention the following requirements:

***Circular No. 50/2020-Customs dated 05.11.2020:***

*“7.3. The ICDs not meeting the minimum prescribed threshold performance for four consecutive financial years will be considered for de-notification by the Board based on the recommendation of the jurisdictional Commissioner of Customs. As regards CFSs, jurisdictional Commissioner can de-notify the facility if it failed to meet the prescribed minimum threshold performance for four consecutive financial years. In the case of AFSs, the Board may analyse the performance of the facility and may consider the de-*

notification wherever necessary, based on the recommendation of the jurisdictional Commissioner of Customs.

7.4. Jurisdictional Zonal Commissioners of Customs can order for closure of a facility when requested by a custodian. Such request should be approved within six months subject to clearance of dues of cost recovery charges, disposal of detained/seized cargo & cases against CCSP if any. Jurisdictional Commissioner will take no due certificate and thereafter he may de-notify any CFS/AFS and in the case of ICD, he shall forward the proposal for de-notification to the Board.”

**Circular No. 02/2021-Customs dated 19.01.2021:**

**“11. Denotification and Cost Recovery Charges**

11.1. If the facility is required to be de-notified for any reason, the cost recovery charges should be payable until the date of such de-notification. The DGHRD may take necessary steps during this period to surrender the sanctioned/ regularized posts.

11.2. If a facility is de-notified in the middle of a quarter for which the cost recovery charges are deposited in advance, the actual cost recovery charges until the de-notification date shall be calculated on pro-rata basis, and excess deposit, if any, shall be refunded to the entity. It may be noted that such refund shall not be treated as the refund of duty under Section 27 of the Customs Act, 1962. Instead, General Financial Rules (GFRs) shall be applied in such cases.”

3. As seen, the power to de-notify a facility is derived from the power to notify it. In terms of Section 7(1)(aa) of the Customs Act, 1962, Board may notify ICDs and AFSs. Further, as per Section 8 of the said Act, the jurisdictional Principal Commissioner/Commissioner of Customs may approve proper places for the unloading and loading of goods and specify the limits of Customs area. Also, in terms of Section 45 of the said Act, the jurisdictional Principal Commissioner/Commissioner of Customs may approve the custodian of these facilities. Therefore, the Board is the competent authority for de-notification of ICDs/AFSs and the jurisdictional Principal Commissioner/Commissioner of Customs can revoke the approvals granted under Sections 8 and 45 of the said Act for these facilities.

4. In the case of CFSs, the Inter-Ministerial Committee (IMC) gives the approval for setting up of the facility. Thereafter, the jurisdictional Principal Commissioner/Commissioner of Customs grants approvals under Sections 8 and 45 of the said Act. Therefore, these approvals which would be akin to de-notification can be revoked by the jurisdictional Principal Commissioner/Commissioner of Customs without referring to the Board. However, post revocation of these approvals, an intimation shall be sent to the Board in this regard within a week of such revocation.

5. There can be two situations where de-notification of an ICD/AFS can be initiated namely, (a) on application from the custodian and (b) on the report of the jurisdictional Principal Commissioner/Commissioner of Customs in terms of the para no. 7.3 of Circular No. 50/2020-Customs dated 05.11.2020. Likewise, the custodian of a CFS can seek de-notification or the jurisdictional Principal Commissioner/Commissioner of Customs can de-notify such facility Customs in terms of the said para no. 7.3.

6. A custodian intending to wind up the operation shall submit an application to jurisdictional Principal Commissioner/Commissioner of Customs in the format prescribed in the **Annexure-I**. Where a facility has not been exempted from payment of Cost Recovery Charges in terms of Circular No. 02/2021-Customs dated 19.01.2021, all pending payments, if any, of Cost Recovery Charges shall be paid upto the date of de-notification. Also, in terms of relevant guidelines prescribed vide Circular No. 02/2021-Customs dated 19.01.2021 jurisdictional Principal Commissioner/ Commissioner of Customs are required to assess the workload and accordingly deploy the required number of officers/staff and the payment of Cost Recovery Charges shall be for such number of officers/staff only. This guideline may be especially relevant to facilities to be de-notified due to the reduction in the work load. The application for de-notification should clearly mention that the payment of Cost Recovery Charges is up-to-date as on the date of application as well as for the subsequent period till the date of de-notification, as it is prescribed in general that such payment must be made in advance.

7. On the date of de-notification, there shall be no pending consignment of un-cleared cargo in the facility beyond the time stipulated under the said Act. Thus, the custodian should have taken all the efforts to dispose of the un-cleared cargo by following the procedure prescribed vide Circular No. 49/2018-Customs, dated 03.12.2018. However, it may so happen that the un-cleared cargo could not be disposed for want of no-objection certificates (NOC) from Customs or for any other reasons including impending auctions as per the extant guidelines. Further, there may be goods detained, seized or confiscated by various agencies lying in the facility. Even Customs office equipment, records etc. may be present in the facility. Thus, the application for de-notification shall be accompanied by three lists of goods that may be present in the facility, as per the format in **Annexure-II**.

- i. List 1: Uncleared goods pending disposal for want of Customs NOCs;
- ii. List 2: Uncleared goods pending disposal for completion of required number of auctions; and
- iii. List 3: Goods detained, seized or confiscated by various agencies and pending disposal.

8. Upon receipt of an application for de-notification, which shall be duly acknowledged, the jurisdictional Principal Commissioner/Commissioner of Customs would nominate a nodal officer of the rank of a Deputy/Assistant Commissioner of Customs to facilitate the de-notification exercise. Such nodal officer shall act as single point of contact for the custodian during the entire process of de-notification.

9. The nodal officer, who could also be the officer in-charge of the facility, shall tally the lists of goods aforementioned with the records maintained in the facility in terms of Handling of Cargo in Customs Areas Regulations, 2009 (HCCAR). S/he shall also actively coordinate with all the agencies concerned for speedy disposal of the un-cleared, detained, seized or confiscated goods, if any. S/he shall also ensure, to the extent possible, that all the goods that are ripe for disposal are disposed of by following due procedure within four months from receipt of the application. S/he shall immediately bring any difficulty or lack of response from any agency to the notice of the jurisdictional Principal Commissioner/Commissioner of Customs for taking remedial action.

10. The nodal officer shall take stock of other goods such as goods detained, seized or confiscated by any agency of CBIC, samples, office equipment, furniture, office records etc.

that are to be removed from the premises to be de-notified. The jurisdictional Principal Commissioner/Commissioner of Customs shall make necessary arrangements for disposal/removal of these items expeditiously.

11. The custodian shall, take all steps to speedily dispose all uncleared goods as per law. The facility shall not be de-notified till the disposal is completed in terms of the Circular No. 49/2018-Customs dated 03.12.2018. However, if for any substantive reason the goods are not disposed even by the end of third month of application for de-notification, the custodian would have the option to apply to the Principal Commissioner/Commissioner of Customs to allow the shifting of these uncleared goods to its own or some other facility (ICD/CFS/AFS) within the same jurisdiction. This option would be available only in exceptional cases as ordinarily the goods should be disposed after maximum four auctions. This option would be available subject to the conditions that the custodian shall get a 'no objection' in this regard from the custodian receiving the consignments; the receipt of goods by the receiving facility shall be acknowledged and accounted properly; the safe transfer and receipt of goods shall be the sole responsibility of the custodian of the facility being de-notified; and the legal responsibility of disposal of the said uncleared goods shall remain with the custodian of the facility being de-notified unless it is legally and wholly transferred to the custodian of the transferee facility with the latter's explicit acceptance to the satisfaction of the jurisdictional Principal Commissioner/Commissioner of Customs.

12. The jurisdictional Principal Commissioner/Commissioner of Customs shall make best efforts to ensure removal/disposal of goods detained, seized or confiscated by any agency of CBIC, samples, office equipment, furniture, office records etc. If for some reason the disposal is not possible, steps would be taken to transfer these goods to some other secure location. Such transfer of location shall be carried out by taking all the precautions to ensure that all the relevant laws are complied with, interest of revenue is safeguarded and prosecution cases, if any are not jeopardized. The disposal/transfer shall be timed such that the facility is vacated before the end of four months from the receipt of the application. It is emphasized that the de-notification of a facility shall not be held up on account of delay on the part of the Customs to dispose/remove the goods for which it is responsible including goods detained, seized or confiscated by any agency of the CBIC.

13. Thus, to sum up, a facility will become ripe for de-notification if the following conditions are met, namely,

- i. The application for de-notification is complete in all respects,
- ii. There are no dues, including the duties on the uncleared goods that are eventually sold, pending to be recovered from the custodian,
- iii. All the uncleared goods lying at the facility have been cleared from the facility by disposal and/or shifting to any other facility in the jurisdiction of the Commissionerate,
- iv. All the detained/seized/confiscated goods lying at the facility are disposed and/or shifted out of the facility to another location for safe custody, and
- v. All the other items belonging to Customs such as office records, furniture etc. are removed from the facility.

14. In order to ensure undue cost overruns are avoided and the custodian intending to get the facility de-notified is not put to hardship, the jurisdictional Principal

Commissioner/Commissioner of Customs, shall facilitate the de-notification of a facility within maximum of four months from the date of receipt of application or from the date of de-notification requested by the custodian, whichever is later. Also, it shall be ensured that there shall be no disruption in the Exim operations, if any, at the facility while the while the formalities of de-notification are being completed.

15. The jurisdictional Principal Commissioner/Commissioner of Customs shall, after satisfying herself/himself that the facility is ripe for de-notification shall:

- i. revoke the approvals granted under Sections 8 and 45 of the said Act;
- ii. forward a proposal to Director General of Human Resource Development (DGHRD), CBIC so that the sanctioned/regularized posts are surrendered in time; and
- iii. forward (in the case of ICD and AFS) a proposal to the Board for de-notification of the facility at least two weeks before the expiry of four months from the date of application.

16. The custodian's bond and security (such as bank guarantee), if any, shall be kept live by the Customs till the resolution of disputes (show cause notice, adjudication, appeal or court case or any other liability), if any, against the custodian. Further, before cancellation of the bond and return of the security, it must be ensured that all the goods for which the custodian has taken responsibility to dispose are duly disposed as per law.

17. The Circulars No. 50/2020-Customs dated 05.11.2020 and No. 02/2021-Customs dated 19.01.2021 stand modified to the extent detailed above. All the pending requests for de-notification may be processed accordingly.

18. The above guidelines may be circulated among the stakeholders and public and the field formations may be sensitized suitably.

19. Any difficulty in the implementation of these guidelines may be brought to the notice of the Board immediately.

Yours faithfully,

  
(Sharad Srivastava) 821

Director (Anti-Smuggling)  
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Telefax-26177-328/572/543

**Application for De-notification of Inland Container Depots/Container Freight Stations and Air Freight Stations**

To  
The Principal Commissioner/ Commissioner of Customs

Sir,

**Sub: De-Notification of \_\_\_\_\_ - Reg**

We, M/s \_\_\_\_\_ hereby apply for the de-notification our facility, the details of which is given as under.

1.	Name of the facility	:	
2.	Address	:	
3.	Relevant notification/approvals: (enclose a copy)		
	(i) Notification under Section 7 of the Customs Act, 1962	:	
	(ii) Approval under Section 8 of the Customs Act, 1962	:	
	(iii) Approval under Section 45 of the Customs Act, 1962	:	
4.	Reason for seeking de-notification	:	
5.	Whether exempt from payment of cost recovery charges?	:	Yes/No
(i)	If yes, the reference no. and date of such exemption	:	
(ii)	If no, whether cost recovery charges have been paid upto date?	:	Yes/No
6.	Whether any uncleared/detained/seized/confiscated goods are lying at the premises?	:	Yes/No
(i)	If yes, whether lists of goods lying at the premises is enclosed in terms of Para 6 of the Circular?	:	Yes/No
7.	Whether any case(s) under the Customs Act, 1962 or any other law in force is pending against the facility and/or its personnel?	:	Yes/No
(i)	If yes, enclose the details of the case(s)	:	

We request that the facility may be de-notified with effect from \_\_\_\_\_.

Enclosure: Lists of goods.

Place:.....  
Date:.....

Signature of the Authorised Signatory  
Name:.....  
Designation:.....

**Formats for submission of Lists of goods lying at the ICD/CFS/AFS**

<b>List Type</b>	<b>List -1/ List -2/ List -3</b>		
S.No	Container No. (FCL)/Lot No. (LCL)	Date of receipt	Reason for pendency

श्रीरंजीतसिंह