

27

**NON-DISPOSAL OF UNCLEARED/
UNCLAIMED IMPORTED CARGO
IN ICDs/CFSs**

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**PUBLIC ACCOUNTS
COMMITTEE
2005-2006**

TWENTY-SEVENTH REPORT

FOURTEENTH LOK SABHA



सत्यमेव जयते

**LOK SABHA SECRETARIAT
NEW DELHI**

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Presented to Lok Sabha on 17-3-2006

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LOK SABHA SECRETARIAT
NEW DELHI

March, 2006/Phalgun, 1927 (Saka)

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* Shri Jairam Ramesh, MP ceased to be Member w.e.f. 29th January, 2006 on his appointment as Minister in the Union Government.

INTRODUCTION

I, the Chairman, Public Accounts Committee, as authorised by the Committee, do present this 27th Report relating to “Non-disposal of uncleared/unclaimed imported cargo in ICDs/CFSS” on Paragraph 3.7 of Report of C&AG of India for the year ended 31 March, 2004 (No. 10 of 2005), Union Government (Indirect Taxes – Cus.)

2. The Report of the C&AG of India for the year ended 31 March, 2004 (No. 10 of 2005), Union Government (Indirect Taxes-Cus.) was laid on the Table of the House on 6th May, 2005.

3. The Committee took the evidence of the representatives of the Ministry of Finance (Deptt. of Revenue) on the subject at their sitting held on 1st July, 2005. The Committee considered and finalised this Report at their sitting held on 14th March, 2006. Minutes of the sittings form Part – II of the Report.

4. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix to the Report.

5. The Committee would like to express their thanks to the officers of the Ministry of Finance (Deptt. of Revenue) for the cooperation extended by them in furnishing information and tendering evidence before the Committee.

6. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI;
14, March, 2006
23 Phalguna 1927 (Saka)

PROF. VIJAY KUMAR MALHOTRA,
Chairman,
Public Accounts Committee.

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REPORT

Introductory

Inland Container Depot (ICD)/Container Freight Station (CFS) is a common user facility offering services for handling and temporary storage of import/export laden and empty containers carried under customs transit. All activities related to clearance of goods for home use, warehousing, outright export etc. take place from such stations. The main function of ICD/CFS is receipt, dispatch and clearance of containerised cargo. The custodian after taking over goods from the carrier, arranges their proper storage and safety and allows clearance to importers after they fulfil customs formalities. An ICD is notified under Section 7 (aa) of the Customs Act 1962 by the Ministry of Finance. After the infrastructure for an ICD/CFS is developed, notification under Section 8 *ibid* declaring the facility as Customs area is issued by the jurisdictional commissioner of customs.

2. ICD/CFS were established to facilitate importers and exporters based in the hinterland, to come to gateway ports for clearance of import or export goods. These were to essentially function like a dry port. All activities relating to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, take place from such stations. CFS is essentially treated as an extension of a port/ ICD/air-cargo complex. However for importers and exporters all formalities like documentation and examination of cargo is carried out as at the ports/ICDs.

Provisions in the Customs Act/instructions regarding disposal of un-cleared/unclaimed imported cargo

3. According to the Ministry of Finance, customs duty is levied on the activity of importation and the duties are collected at the time of clearance of goods for home consumption. From the time of unloading of goods into the customs area, the imported goods remain under the custody of Custodians till these are cleared from ICD/CFS for home consumption or warehousing or transshipment. As per Section 48 of the Customs Act, 1962, if the importer does not clear the goods within 30 days of unloading of cargo at Customs Port or such extended period as the proper officer may allow, or on relinquishing the title by importer of the imported goods, the custodian may dispose off the goods after seeking permission from the Customs. When the goods are pending, unclaimed/ un-cleared beyond specified period they are liable for disposal and the sale proceeds are to be applied towards the import duty liability as provided in Section 150 of the Customs Act 1962.

4. For disposal of the un-cleared cargo the Board issues instructions from time to time. In the process of disposal of cargo, the custodian undertakes various processes which, *inter alia*, include preparation of detailed inventory, examining the status of each cargo, reasons for non-clearance, valuation of the cargo through approved valuer

and Customs, issuing pre-auction notice to the importer for taking his consent, preparation for auction, conducting auction etc. All the processes leading to auction of cargo involve detailed exercise on the part of the custodian to ensure that the goods are disposed off in a proper manner. Under the provision of the Customs Act, 1962 the only role of Customs in disposal of the cargo is to examine the status of cargo and give permission to the Custodian when sought for in terms of Section 48 read with Section 150 of the Customs Act, 1962.

5. In order to clear the pending Cargo, Central Board of Excise and Customs *vide* their circular No. 50/97 of October 1997 issued instructions which stipulated that :—

- (a) All goods that landed till 1 January 1994 and were lying un-cleared/unclaimed were to be taken up for disposal by the custodian even without No Objection Certificate (NOC) from Customs if there was no stay/court case.
- (b) For goods that landed between 1 January 1994 and 31 December 1996, custodian was to prepare a monthly list of cargo due for disposal and send it to Customs for NOC. If no intimation was received from Customs within 30 days, custodian was to presume that the former had no objection and could go ahead with the disposal.
- (c) For goods pending since 1997 a monthly list was sent to Customs for their permission to dispose off the cargo within 30 days, failing which the custodian would be free to dispose off these goods.

6. The details of the circular No. 50/97 dated 17th October, 1997 are given in Appendix-II.

7. Further *vide* their circular No.7/2004 issued on 28th January 2004, the CBEC had prescribed simplified procedure for disposal of unclaimed/ un-cleared cargo, landed upto 31.3.2003 and lying with custodian. The details of the circular are given in Appendix-III.

8. This Report is based on Paragraph 3.7 of the Report of C&AG of India for the year ended March 2004, No. 10 of 2005, Union Government (Indirect Taxes – Customs) relating to “Non-disposal of un-cleared/unclaimed imported cargo” which is reproduced as Appendix-I. Audit undertook a review on working of ICD/CFS by conducting test check of records of customs as well as custodians for three years from 2000-01 to 2002-03 in relation to transmission of import/export goods between ICD/CFS and gateway port, proper storage, safe custody and clearance thereof on payment of appropriate Customs duty to the Government. For this purpose, 37 ICD/CFS located in 13 Commissionerates were examined by Audit with the objective of seeking assessment that revenue due to the Government. *viz.* duty on un-cleared/unclaimed goods at ICDs had been recovered in time.

9. Audit Review highlighted that (I) Non-disposal of un-cleared/ unclaimed/ confiscated, import/export goods had resulted in blockage of customs revenue to the extent of Rs. 287.96 crore apart from notional loss of interest of Rs. 62.05 crore and (2) Delay in disposal of un-cleared/unclaimed and confiscated goods and injudicious decision of department had caused loss of Rs. 2.96 crore.

10. The Committee’s examination of some of the important aspects of Audit findings are dealt with in the succeeding paragraphs.

Non-disposal of un-cleared/unclaimed imported cargo

11. Audit scrutiny of records pertaining to 37 ICD/CFS in 13 Commissionerates revealed that goods worth Rs.540.47 crore imported between 1985 and March 2003 were awaiting disposal action for periods ranging from one to eighteen years resulting in blockage of duty amounting to Rs.192.81 crore apart from notional loss of interest of Rs. 58.41 crore.

12. Out of 37 ICD/CFS falling under the jurisdiction of 13 Commissionerates in respect of which Audit had scrutinized the records, a list of high money value cases pertaining to six customs Commissionerates had been culled out by the Audit, details of which are given as under:

(Amount in Rs. crore)

Commissionerate	No. of Containers	Value	Duty	Notional loss of interest	Period of Import
Chennai (Sea)	414	56.98	26.71	17.82	April, 94 to February, 03
Tiruchirapalli	1017	243.63	53.79	25.14	May,02 to February, 03
JNCH, Mumbai	1712	102.72	52.18	5.87	November, 93 to March,03
Pune (Customs)	63	70.70	35.92	6.73	January, 95 to September, 02.
Mumbai (Sea)	255	4.11	2.09	0.23	October, 2000 to March, 03
Delhi	1287	36.83	12.81	00	1985 to March, 03
Total	4748	514.97	183.50	55.79	

13. According to Audit, the aforesaid cases involved 95% of revenue blockage, *i.e.* Rs. 183.50 crore (from out of total revenue of Rs.192.81 crore).

14. When asked about the action taken by the Department/Board to clear the pendency and the amount of revenue realized, the Ministry in a Post-evidence reply stated the position as under:

“(i) **Chennai (Sea):**— Total No. of containers lying un-cleared is 436 as against 414 reported by audit. 140 containers have been disposed of for Rs. 6.38 crores. Break up of remaining 296 pending containers is as follows:—

PENDING WITH	NO.OF CASES	NO. OF CONTAINERS	VALUE (In Crore)
Pending due to Court case, CESTAT	13	118	36.31
Under BIFR action	7	91	3.35
Under Investigation	26	32	4.17
Others (under disposal)	39	55	2.14
Total	85	296	45.97

As detailed above, only 55 containers involving 39 cases valued at Rs. 2.14 crores are pending for disposal. Chief Commissioner of Customs has issued direction to monitor their disposal immediately.

(ii) Tiruchirapalli:— A Public Limited Company M/s Nagarjuna Oil Corporation Ltd. had imported 1017 containers in two lots, one consisting of 663 containers during November 1999 – September 2000 and the other part of 354 containers during April 2001 at Chennai. The goods were bonded between April – July 2001 (354 containers) and on 4.8.2004 (663 containers). In respect of 354 containers, on expiry of warehousing period of one year, initial extension of 6 months was granted by the Commissioner of Customs and further extension on two occasions of 1 year each by the Chief Commissioner of Customs subject to the condition they would have to pay the interest at the time of clearing the goods from the warehouse. Further extension was sought on 20.8.2004, which was rejected on 14.3.2005. The Commissioner has initiated action under Section 72 of the Customs Act, 1962 for disposal of the goods.

As regards the 663 containers, these were initially landed at Chennai Sea Port for ultimate transshipment to their project site. The transshipment of these containers from Chennai Port to ICD Pondicherry was under the specific permission granted and extended from time to time by the Commissioner of Customs, Custom House, Chennai Sea Port. The receipt of these containers at ICD Pondicherry was acknowledged under OC No. 286/2003 dated 7.4.2003 and 627/2003 dated 9.7.2003. After inspection of these containers at ICD Pondicherry the same were transported to their project site for detailed examination. The process of examination was completed in April 2004 and after the receipt of re-validated license with Transfer Release Advice dated 10.6.2004, and assessment of the said cargo, it was bonded during August, 2004. The goods are under bonding period for a period of one year.

In this connection, it is submitted that the goods imported and bonded are second hand oil refinery equipment, *i.e.*, they are tailor-made. Further, 30% of the equipment is yet to be imported. However, as the goods are in nature of specific equipment for refinery, it was viewed by the department that disposal action may not fetch revenue which otherwise would be paid by the importer as duty and interest.

(iii) JNCH, Mumbai:— Out of 1712 containers, 1207 containers valued at Rs. 36.21 crores have been disposed involving duty of Rs.10.86 crore. The break up of pending 505 containers is as follows:—

Reasons for Pendency	No. of TEU*s	Period
Supreme Court Cases	53	96-98
Under investigation by DRI, SIIB and others	119	00-02
Under process	333	00-03
Total	505	

*Twenty feet equivalent units.

(iv) Pune (Customs):— Out of 63 TEUs, 21 TEUs of goods valued at Rs.14.62 crores involving duty of Rs.5.68 crores have been disposed of. The Commissionerate is having difficulty in disposal of balance goods as jurisdictional Municipal authorities are insisting on charging of octroi on the original landed cost of goods and not on the actual sale value. The issue was taken up by the department and custodian with the municipal authorities.

(v) Mumbai (Sea):— The Audit had pointed out that the imported goods of a total value of Rs. 410.63 Lakhs (reserve price) in 255 TEUs, which had arrived at CFS, Mulund during the period from October 2000 to March 2003, were pending for disposal till March 2004. The duty involved on such cargo was worked out to Rs. 208.59 Lakhs. It has been verified from the Custodian *i.e.* CONCOR and it was found that the actual pendency of unclaimed/uncleared cargo arrived during the period from October 2000 to March 2003 consisted of only 111 TEUs + 43 LCL Cargo of total value of Rs. 2.33 crores. Out of this, auction was conducted during 2004-2005 and 44 TEUs and 19 LCL consignments were disposed fetching a total sale proceed of Rs. 1.43 crores and duty to the tune of Rs. 0.44 crore was realized. However, in respect of balance 67 TEUs + 24 LCL lots were put to auction but could not be disposed off.

(vi) Delhi:— Audit had pointed out that 1287 containers involving a value of Rs. 36.83 crores and duty of Rs. 12.81 crores were pending disposal with ICD, Tuklagabad (TKD). However, from the statement provided by audit for the para 3.7. , it is seen that the goods are contained only in total number of 815 containers and 472 packages of de-stuffed cargo.

It was verified by the Commissionerate and it is found that actual numbers of containers involved are only 854 for ICD-TKD and 28 for ICD-Patparganj (PPG). Out of these 251 containers have been disposed of, 384 containers goods pertain to hazardous waste which is a subject matter of litigation wherein Hon'ble Supreme Court has appointed a Monitoring Committee for examining issue of disposal of such cargo in a safe manner. Of the balance, it is found that 94 containers in ICD –TKD and 9 containers in ICD-PPG were ripe for disposal and No Objection Certificate was already issued for all such containers. Balance 144 containers are pending due to court case and adjudication proceedings.”

14A. When asked whether any specific instructions were issued to the concerned Commissionerate/officer for disposal of goods on a case to case basis with particular reference to above high money value cases the Ministry in a written reply stated as under:

“While no specific instructions have been issued to the Commissionerates mentioned above, the Board had issued several instructions from time to time addressed to all Commissioners to speed up disposal of uncleared cargo. In this connection, Board have issued instructions *vide* circular No. 50 of 1997 dated 17.10.1997, 11 of 1998 dated 11.2.1998, 77 of 1998 dated 22.10.1998, 21 of 1999 dated 7.5.1999, 5 of 2000 dated 13.1.2000, 7 of 2004 dated 28.1.2004 and 35 of 2004

dated 20.5.2004 to enable expeditious disposal of unclaimed/uncleared cargo lying with custodians of ICD/ CFS in ports/ air cargo complexes pending for long time.”

15. The analysis of non-disposal of goods in 16 ICD/CFS by Audit revealed that for 1466 containers which were valued at Rs. 301.55 crore in Chennai(Sea), Tuticorin, Tiruchirapalli and Coimbatore, the reasons for non- disposal were stated to be as under :—

- (i) Clearance of 115 containers valued at Rs.35.00 crore involving custom duty of Rs. 16.44 crore, were locked up in court cases.
- (ii) Twenty five containers valued at Rs.1.21 crore involving custom duty of Rs. 0.47 crore were pending as the cases were referred to Board for Industrial and Financial Reconstruction (BIFR).
- (iii) One hundred and eleven containers valued at Rs.10.04 crore were detained by Special Investigation and Intelligence Branch (SIIB)/Directorate of Revenue Intelligence (DRI)/Dock Intelligence Unit (DIU) and customs duty amounting to Rs. 4.75 crore was blocked due to delay in adjudication.
- (iv) One thousand two hundred and fifteen containers of goods valued at Rs. 255.31 crore were free from litigation, yet were delayed in clearance leading to blockage of customs duty of Rs. 59.27 crore.

16. According to the Audit the delays in above cases had ranged from 9 to 105 months, involving a notional loss of interest of Rs. 43.03 crore.

17. Of 1215 containers which were free from litigation, the Department of Revenue was reported to have stated that the goods contained in 33 containers were disposed off and duty amounting to Rs. 10.96 lakh was realized (March/April 2004). In another case the importer cleared the goods in June 2004 on payment of duty of Rs. 1.83 lakh.

18. The illustrated cases out of 1215 containers are as under:—

- (a) A second-hand blast furnace plant imported by M/s. Kitti Industries Limited in January 1999 was transhipped partly to a CFS, in Chennai and balance retained in Port Trust, Chennai. Due to non-payment to the supplier, Chennai, High Court restrained the removal of cargo. No action was initiated by the Department for lifting the restrictions on sale of goods and the same remained un-cleared (December 2003) for five years causing blockage of customs duty of Rs.15.67 crore with notional loss of interest of Rs.11.16 crore.
- (b) Eighteen consignments of cold store equipments imported during 1995-96 at a public CFS could not be cleared owing to importer’s financial constraints. Duty amounting to Rs. 33.75 lakh remained blocked for more than seven years apart from notional loss of interest of Rs. 39.23 lakh.
- (c) Capital goods valued at Rs.3.97crore imported (February 1999) under export promotion of capital goods scheme (EPCG) at a private CFS in Chennai were detained by the Department, as the importer did not fulfil conditions of

import on earlier occasion under the same scheme. The case was adjudicated in July 2002 whereby benefit of EPCG scheme was disallowed. However, the goods lay un-cleared (December 2003). Delay in adjudication and disposal of goods led to blockage of customs duty of Rs.1.86 crore for more than 58 months apart from notional loss of interest of Rs.1.33 crore.

- (d) Five consignments of dewatering equipments worth Rs.1.80 crore imported in 1995- 96 at a public sector CFS in Chennai were placed for auction in 2002-03 after the Department permitted the custodian to auction the goods. However, in October 2002 customs department intimated the custodian that the goods were liable for confiscation and should not be auctioned. They remained un-cleared (December 2003). The inordinate delay in disposal of goods caused blockage of duty of Rs. 90.36 lakh apart from notional loss of interest of Rs.1.05 crore.
- (e) A public limited company, imported (November 1999 to September 2000), 663 containers of second hand refinery equipment valued at Rs.144.92 crore at a private CFS at Chennai. The Department did not take action to dispose off the goods in terms of Section 48 of Customs Act,1962. On the request of the importer, the containers were transhipped (January 2003) to factory premises at Cuddalore through ICD Sattva, Pondicherry after obtaining permission from Chennai customs. The goods remained un-cleared (December 2003), causing blockage of duty of Rs. 31.59 crore for 39 months apart from notional loss of interest of Rs.17.65 crore. Further, 354 containers of the same goods valued at Rs. 98.72 crore imported (April 2001), through Chennai Sea customs, were transhipped to the bonded warehouse of the importer through the same ICD, after obtaining permission. The goods remained un-cleared (December 2003) in the bonded warehouse causing blockage of customs duty of Rs. 22.20 crore and interest thereon amounting to Rs.7.49 crore.
- (f) In CFS (CWC/Kolkata and Haldia), 74 consignments of goods of perishable nature valued at Rs. 4.44 crore were lying undisposed for a period ranging from 10 months to six years (December 2003) contrary to instructions issued in this regard resulting in loss/blockage of revenue of Rs. 1.45 crore.

19. During evidence, the Committee sought to know the reasons for not disposing these goods especially when they were free of litigation. Enumerating the reasons Chief Commissioner of Customs, Chennai *inter alia* deposed as under:—

“.....As regards the illustrative cases that have been pointed out by the Audit, there are reasons why they could not be disposed of. These 1215 containers, which have been pointed out and which are free from litigation, have still not been disposed of. Now, in one case itself, 1017 containers belong to the import by one oil refinery — Nagarjuna Oil Corporation Limited. They have not been cleared because they have been warehoused. We prefer that the importer clears the goods himself and in which case, we get the full amount of duty because if we have to dispose it off, the realization is very poor. I have a case

right now which took place just three months' back. Standard Motors Company, Chennai imported an equipment in 1998 costing Rs. 188 crore. It went into liquidation and the goods have been disposed of as scrap. We got just Rs. 4 crore. So, what I am trying to say is that in Customs, we try to see if the importers themselves take clearance of the goods, it will fetch us the price. Now, I come to Nagarjuna Oil Corporation and these 1017 containers, etc. It is valued at something like Rs. 200 crore. If we were to sell it off, yes, we can sell it. It will fetch us scrap value.... They are having talks with the financial institutions which had backed them up but, suddenly withdrew their support. The goods have landed for the last six years and they are not able to clear it because they have no money to pay the duty. They are in discussion with the financial institutions. Yes, it is hoped — and there is a record to say that — that there are chances of its being allowed to clear all that. So, if this disposal has not taken place in this particular case, the reason is that, maybe, they are able to clear. Otherwise, it is very easy to just sell it off as scrap and get some scrap value.”

The witness further added :—

“.....This equipment is specific for an oil refinery. I do not think this can be cleared by any other alternate buyer or anyone else. It has to be finally disposed off as scrap only. We have two ways. Either we wait for some more time in the hope that it will be cleared at its normal price or sell it as scrap and recover something.....”

20. When enquired whether it was not prudent to dispose the equipment when it could fetch some value to the Department instead of waiting for years together and then dispose it of at a reduced price, the representative of Department of Revenue replied as under :—

“.....We should dispose it of when we first get a near-about reserved price. But, as far as these 1000 containers are concerned, where the value is Rs. 250 crore or something like that, it is a subjective judgement whether we should wait for the clearance to be effected by the original importer or whether we should sell and get the scrap value.”

21. The Committee sought to know whether any time limit or any guidelines have been fixed/framed in all such cases where the importer could not clear the goods due to financial difficulties etc. In reply, the Secretary, Department of Revenue during evidence deposed as under :—

“We can certainly look into this issue. I would like to say that the Task Force would certainly look into this issue. Basically, he has to take a decision locally whether he is likely to get more revenue by waiting or by disposing it of. In this particular case, I feel that he was quite clear that nobody was going to buy it. It was going to be just scrap value. It did not have any other value. He waited for it. Regarding the issue whether there should be a cut-off period of one year or two-years, I think that is something which we should decide.”

22. In their Post-evidence reply, the Ministry have furnished the following status in respect of disposal of all the 1215 containers lying uncleared/ unclaimed:—

“The reported number of 1215 containers consist of 163 containers of Chennai (Sea), 35 Containers of Tuticorin ,1017 Containers of Trichy and one case belong to Coimbatore. The actual number of containers in respect of Chennai Commissionerate is 157 out of which action for disposal was taken in respect of 102 containers and 55 containers are pending for disposal.

In respect of 35 containers belonging to Tuticorin Commissionerate, the cargo imported in 30 containers were disposed of in March 2004, 3 containers in April 2004 and 1 in March 2005 through public auction after following the due process of law. In respect of the remaining 1 container which was imported on 25.1.2003, the importer cleared the goods on 25.6.2004 on payment of duty by filing a Bill of Entry No. 05197 dated 13.8.2003.

In respect of 1017 containers, it is submitted that a Public Limited Company M/s Nagarjuna Oil Corporation Ltd. had imported all these containers consisting of second hand refinery equipment.

In respect of case of Coimbatore Commissionerate, it is submitted that there were 22 consignments of un-cleared imported goods lying at ICD, Singanallur during the period from Feb, 1999 to November 2001 valued at Rs.16.97 lakhs involving duty amount of Rs. 9.03 lakhs. Out of the 22 cases of seized, confiscated goods and unclaimed and uncleared cargo pending disposal, 18 cases have been disposed off.”

When asked whether periodical information relating to pendency of goods is obtained by the Board/Department from the field formations and whether any specific directions were issued to overcome the prolonged pendency in disposal of the unclaimed goods, the Ministry in a written reply stated as under:—

“Custodians are submitting the list of uncleared/ unclaimed goods pending with them periodically to jurisdictional Customs authorities office and the same is monitored by the jurisdictional Commissioner of Customs. These Commissionerates also issue necessary directions to subordinate field formations for expediting disposal of cargo and liquidate pendency.”

Internal Audit

23. When asked whether internal audit was conducted in respect of ICD/CFS, the Ministry in a written reply stated as under:—

“Internal audit wing does not undertake the audit of ICD/ CFS. Their role is confined to auditing of statutory records, relating to clearance of goods and payment of duty on imports and exports, being maintained by the department. Auditing of records of custodian for uncleared/ unclaimed cargo is also not done by the internal audit wing.”

Action against custodians for non-disposal/delay in disposal of goods

24. As per section 45 of the Customs Act, 1962, the Commissioner of Customs approves a custodian under whose custody all the imported goods, unloaded in

a customs area shall remain until they are cleared for home consumption, warehoused or transshipped.

25. According to the Ministry of Finance disposal of goods lying uncleared is in fact more of a recovery of various charges accruing on account of services provided by the custodian and accordingly it is the custodian who undertakes disposal of unclaimed cargo and it is in the larger interest of the custodian to undertake such disposal to recover their dues. Despite this, there is a mechanism whereby the field formations monitor the disposal of uncleared cargo lying with the custodian on a monthly basis and suitable action is taken to expeditiously dispose of the same. This is done by means of a statement submitted by the custodian to the Customs formations.

26. Elaborating the role played by custodian in disposal of goods the Chairman, CBEC during evidence stated as under:—

“The basic responsibility for disposal of goods lies with the custodian..... In case of ICDs, it is CONCOR. There are different types of confiscated and uncleared cargo. The liability in respect of uncleared cargo is not only of the customs but other charges pertaining to other agencies such as the landing charges levied by ports. Then there is a liability of financial institutions also. Our involvement is only to the extent of duty of customs due on the goods. There is a separate procedure for disposal of uncleared goods which is covered under section 150 of the Customs Act. As the goods have not come to the stage of assessment and clearance and dues of multiple agencies are involved it is the custodian who is solely responsible for disposal of uncleared cargo as difference from confiscated goods. After confiscation, the property vests with the Central Government. Then customs have all the powers to deal with the goods. As long as the goods are not confiscated, they remain the property of the citizen who imported the same. The custodian of the goods is the second in line who could deal with the goods. Section 48 has empowered the custodian alone to dispose the goods. Our job is only to monitor and see that they do so expeditiously and properly.”

27. Since the custodian is empowered by the customs rules, the Committee, during evidence enquired whether CBEC really has the authority to take action against the custodian for not fulfilling his duties in expeditious disposal of uncleared/unclaimed goods. Thereupon, the Secretary, Department of Revenue responded as under:—

“You are absolutely right because the custodian is also acting on our behalf.”

28. When asked whether any action has been taken by the Department against the custodians for their failure to dispose the unclaimed/uncleared goods, the Ministry of Finance in a post-evidence reply have stated that there are no rules formulated to take action against custodians for non-fulfillment of their obligation. However the Commissioner of Customs can take action including cancellation of approval to operate CFS/ICD, against the custodian if the conditions and guidelines specified by Circular No.128/95 – Cus. Dt.14.12.1995 are violated.

29. Further, when asked if any responsibility had been fixed on the officials who did not follow the statutory provision and instructions relating to disposal of goods leading to large pendency, the Ministry in a written note stated as under:

“The responsibility for disposal of such uncleared/ unclaimed cargo lies with the custodian. No action has been initiated against any departmental officer for failure to comply with statutory provisions and instructions relating to disposal of goods leading to large pendency. However, all the Chief Commissioners have been asked to examine the reasons for delay in disposal of uncleared goods and if there is any delay which is unjustified and involves any lapse on the part of any officer, to initiate action in such cases.”

30. In a written reply, the Ministry have furnished the latest position with regard to the six illustrative cases given by Audit where the consignments containers of goods were free from litigation as under:—

(i) Case No. 1:— M/s. Kitti Industries Ltd., Bobbili, Andhra Pradesh, India imported Second hand blast furnace plant in 92 x 20' container and 50 cases of break bulk cargo and filed Bill of entry in February 1998. On receipt of specific information to the effect that the importer has mis-declared the value of the second hand machinery, an investigation was initiated by the Department. A reference was made on 28.4.1999 to A.C Central Excise, Vizaiyanagaram, to ascertain the status of the importer. In response, AC Central Excise, Vizaiyanagaram, *vide* his lr. dt.24.5.1999 has stated that the request of the importer to issue EOU Licence was rejected by them. At the request of the party, the cargo was permitted to be warehoused at MAC CFS. Meanwhile, the CHA had requested to cancel the subject Bill of Entry filed by the importer, as they could not contact the importer. The importer was summoned by the department to take up the valuation of the goods. The importer did not respond to the Department proceedings.

In the meanwhile, the overseas supplier had filed a Civil Suit against the buyer viz. the importer in C.S.NO.144/99 before the Hon'ble High Court of Madras, with a prayer to issue an ad-Interim Injection restraining at Respondent/ Defendants from clearing/removing the cargo. The Hon'ble High Court of Madras passed an interim injunction on 05.07.1999. Further the Hon'ble High Court of Madras in its order dt.13.01.03 in C.S.No.441/99 had allowed carrying out the inspection of the bonded goods by M/s. Mecon (India). The Hon'ble High Court of Madras *vide* its order dated 24.06.2005 permitted the consignor to sell the consignment to the prospective buyer and submit the compliance report to the Court. It is ascertained from the custodian (Sical CFS) that the Hon'ble Madras High Court has given time to the importer till 30.07.2005 to clear the imported cargo. Further time has been allowed by the Hon'ble Madras High Court till 13.08.2005.

(ii) Case No. 2:— The Importer M/s. Somkan Marine Foods Ltd., Hyderabad Imported a consignment of Shrimp/Fish Processing equipment *vide* B/E No. 8417 dt. 16.02.1996 in 7 x 40 ft container and freezer room component goods *vide* B/E No. 9530 dt. 24.02.1996 in 18 x 40 ft container and 2 containers of line freezers imported during 1995-96. They were assessed to nil duty (100 % EOU) and the

cargo was lying uncleared in the CONCOR CFS since 1995. The CONCOR CFS issued a notice u/s 48 of Customs Act 1962 to the importer on 31.12.96 to clear the consignment. Subsequently Uncleared Cargo Cell section also issued notice u/s 48 of Customs Act 1962 on 30.07.98 giving 30 days time to clear the consignment failing which it will be auctioned. The importer sought time till 30.09.98 stating financial crisis. On 25.11.98 a final notice was issued but returned undelivered. However the importer did not clear the same. CONCOR CFS as per CBEC Guidelines issued, during 18.12.98 and 1.3.99 put up the consignment for auction. On 18.12.1998 auction bidding was very low. Re-auction was held on 01.03.1999 the highest auction bidders were 38 lakhs and 40 lakhs respectively and kept subject to approval by the customs.

In the meantime the said importer had filed W.P.3435/99 and W.M.P.4912 & 4913/99 dated 17.6.99 in the Madras High Court restraining the CONCOR CFS from disposing the goods through public auction as the company has been referred to BIFR and any further action could be taken only after obtaining orders from BIFR. In the said W.P. 3435/99 The Container Corporation of India was 1st respondent, the Customs department was 3rd respondent. On 17.06.99 the Hon'ble Madras High Court had dismissed W.M.P 4912 & 4913/99 (stating that "in view of the fact that Matter is pending before the BIFR the case has been closed") without deciding W.P.3435/99. Further proceedings are pending in BIFR No. 235/98 dated 28.08.1998, New Delhi. The CONCOR CFS is pursuing the case with BIFR for early disposal and the Department is also taking necessary steps to make a claim before BIFR for the duty amount.

(iii) Case No. 3:— M/s. Sathi International Ltd, Mumbai, had imported two consignments covered under B/e No. 1170 & 1171 dated 18.01.1999 for clearance of the goods under EPCG Scheme. Under EPCG Scheme, only the capital goods for the manufacturing of readymade garments (including knitwear) are eligible for exemption from the levy of 10% CVD. The importer executed a PD Bond and cleared the consignment on provisional basis pending amendment to the Licence. Even though the importer was in possession of a EPCG licence for the total value of Rs. 41.57 Crores, their total import was only to the extent of Rs. 12.03 crores. Thereby they did not utilize the licence to the minimum threshold limit of Rs. 20 crores stipulated in the Exim Policy. At the time of finalisation of Bond, the importer was asked to produce installation certificate as per the Exim Policy. The importer did not respond to the department despite several reminders.

The case was adjudicated by the Deputy Commissioner of Customs on 25.07.2002 and a demand of Rs. 1.2 crores for the CVD duty and Rs. 5.73 crores for the duty foregone amount under EPCG scheme vide notification 29/97 dated 01.04.1997 was raised. Against the O-in-O, the party filed an appeal before the appellate Commissioner without complying the demand raised by the department. The same was dismissed by the Appellate Commissioner vide order No. C3/600/D/2002 dated 24.09.2003.

In the meantime, the unit became defunct and the properties were taken over by the Debts Recovery Tribunal on the basis of appeal filed by M/s. IDBI vide OA No. 2016/2000. The Department raised a claim on the duty due to DRT with a copy endorsed to the Official Receiver.

Meanwhile, the department detained the third consignment of the importer covered under B/E No. 2544 dated 04.02.1999, under Section 142 of the Customs Act, 1962, as they did not respond to the demand raised by the department. The goods were auctioned and a total amount of Rs. 3,82,05,000/- was recovered (*i.e.* on 03.11.2004 a sum of Rs. 38,20,500/- as predeposit and the balance amount of Rs.3,43,84,500/- on 20.1.2005).

(iv) Case No. 4:— M/s Square D Biotech Ltd. (M/s DSQ Bio – Tech Ltd) CHENNAI, also known as Origin Agrostar Ltd., (formerly known as Usha –Te- Biotech industries Ltd.,) had imported maize processing plant equipment *vide* 9 containers, *i.e.* 5 containers in cargo in CONCOR CFS, 2 Containers cargo in Sanco CFS and 2 container cargo in CWC Virugambakkam in the month of Dec. 1995.

In respect of the 2 containers at Sanco CFS the importer had filed Bill of Entry for the clearance of I and II stage determination mill (Maize Processing Plant Equipment) *vide* B/E 59600/ 5.12.95 through container 4297230 (1 x 20) and 59642 dtd. 05.12.95 containing Decanter for Gluten concentration (Maize Processing Plant Equipment) through container FRSU 8448053 (1x40). The goods were assessed on 11.12.95 with an assessable value being Rs. 1,35,62,679/- and Rs.1,69,32,763/- with the duty of Rs. 71,27,187/- and Rs. 88,98,166/- respectively. The goods were not cleared and taken up for auction in 1997. On 01.1.1997 auction u/s 48 of customs act, 1962 was initiated and a notice was issued to the importer. The said importer in their letter dated 26.9.97 addressed to the department stated that due to delay in getting the relevant documents and funds from their bank they could not clear the cargo and they were making alternative arrangements to procure the loan and requested not to auction their cargo. Hence, they had been given time till 15.01.1998 and clearly informed that in case of their failure to pay the duty the said cargo would be included in the auction list.

Further the supplier of the above cases M/s Rasio group PLC, Finland had filed O.A. No. 749/2002 in the Madras High Court and *vide* O.A. 750 /2002 to take possession of the goods for non payment. Presently, the subject cargo was attached and taken into custody by the Hon'ble Principle District Judge, Chengalpattu *vide* E.P. No. 14/5 dt. 02.06.2005 in another dispute and left with Sanco CFS. In respect of cargo in other 5 containers at CONCOR CFS, the same was also attached by the Hon'ble Principle District Judge, Chengalpattu and cargo taken into custody *vide* E.P.No.13/5 dt. 02.06.2005.

As the party is covered under BIFR the Department is not in a position to take effective steps in respect of the remaining 2 containers of cargo lying at Virugambakkam CWC. The matter was taken up before ASGI by the Department for vacating the attachment order issued by Principle Judge, Chengalpattu.

(v) Case No. 5:— In this case the Public Limited Company M/s. Nagarjuna Oil Corporation Ltd., had imported 663 containers during November, 1999 – September, 2000 and 354 containers during April 2001 at Chennai. The goods were bonded between April-July 2001 (354 containers) and on 4.8.2004 (663 containers).

Provisional assessment of the consignment was done on the basis of the value provided by Chartered Engineer. Due to financial constraints, the importer could not pay the duty and the goods were bonded. The 663 containers were part of their consignments and were moved to their project site at Cuddalore and warehoused.

(vi) Case No. 6:— Out of 74 containers 39 containers have been disposed off. 11 containers are lying pending at Haldia and 22 containers lying uncleared at CWC Kolkata. Chief Commissioner of Customs has been directed to make efforts to dispose off the pending cargo.”

31. Asked about the latest status in respect of other cases of uncleared/unclaimed cargo viz (i) locked up in court; (ii) referred to Board for Industrial and Financial Reconstruction (BIFR); and (iii) those detained by SIIB/DRI/DIU, the Ministry in their post-evidence reply stated as under:

“The total no. of containers lying uncleared were 436 as against 414 reported by audit. The category-wise break up of these 436 containers in 159 cases, is as below:

Sl. No.	Reason for non-disposal	No. of containers
1.	Pending due to Court case	118
2.	Under BIFR action	50
3.	Under investigation	111
4.	Others (under disposal)	157
Total		436

Out of the 436 containers, 140 containers have already been disposed off. The present pendency position in respect of 296 containers in 85 cases is furnished below:

Pending with	No. of Cases	No. of Containers	Value (In Crore)
Pending due to Court case, CESTAT	13	118	36.31
Under BIFR action	7	91	3.35
Under Investigation	26	32	4.17
Others (under disposal)	39	55	2.14
Total	85	296	45.97

32. On being asked about the latest status with regard to clearance/disposal of unclaimed/uncleared/confiscated/export goods which involved blockage of customs revenue to the extent of Rs. 287.96 crore and the revenue realised, the Ministry in a written reply had stated that goods worth Rs. 70.29 crore have been disposed off and customs duty of Rs. 26.32 crore was collected.

33. Asked about the initiatives taken at the field level for expeditious disposal of uncleared/unclaimed goods, the Ministry in a written note stated as under:

“Some of the actions taken by the commissionerates, for expeditious clearance of unclaimed/uncleared goods are :

- Review meetings with custodians for expeditious disposal action.
- In Delhi during the last four years 19 auctions were conducted involving sale of 651 containers and collecting Rs.13.05 crore and realizing duty of Rs. 2.58 crore.
- Chennai customs has launched internet based auction cum tender of confiscated goods and uncleared cargo from 8.12.2003. So far 20 such e-auctions have been conducted and more than Rs. 7 crore value of goods have been disposed upto June, 2004.
- Monthly verification of containers outstanding beyond 30 days period by customs and issue of No Objection Certificate to enable disposal of goods immediately.
- Electronic auction to facilitate a time bound and efficient mechanism for disposal of cargo while at the same time eliminate cartelization in auction procedure.”

Task Force on expeditious clearance of cargo lying undisposed/uncleared/unclaimed or confiscated etc.

34. Acknowledging the need to identify all long-pending consignments and devise appropriate monitoring mechanisms for disposal of different categories of such goods, the Secretary, Department of Revenue, during evidence deposed as under:

“Recognising the fact that there is a problem and following the audit paragraph on this subject and the interest so kindly taken by the hon. Committee, we have set up now a Task Force consisting of field level officers and Chief Commissioners headed by the Delhi Chief Commissioner and the Task Force is to give a report within 8 weeks. The terms of reference of the Task Force is to identify the reasons for delays, suggest administrative measures to address these problems and sort out glitches so that clearance of cargo lying undisposed, uncleared or unclaimed beyond specific period of time could be expedited by effective use of IT resources and appropriate deployment of man power.....”

35. The Task Force consisted of following officers:

- (i) The Chief Commissioner of Customs, New Delhi- Chairman
- (ii) The Chief Commissioner of Customs, Mumbai-I, Member
- (iii) The Chief Commissioner of Customs, Mumbai-II, Member
- (iv) The Chief Commissioner of Customs, Kolkata, Member
- (v) The Chief Commissioner of Customs, Chennai, Member
- (vi) The Chief Commissioner of Customs (Preventive), Delhi, Member
- (vii) The Joint Secretary, Customs, CBEC, Member (Secretary)

The role, scope and functions of the above Task Force were as follows:

- (i) Examine the issues arising out of the audit review and suggest administrative measures including monitoring mechanism for clearance of cargo lying undischarged/undischarged/undischarged or confiscated beyond specific periods of time, in an expeditious manner, by effective use of IT resources, appropriate deployment of manpower etc. and provide suitable mechanism for time bound clearance of long pending accumulated cargo.
- (ii) Examine all possible problems, cause and effect in the area of disposal of undischarged, undischarged cargo or confiscated cargo pending for disposal including existing procedure and suggest to the Government the measures to be taken with time lines for streamlining the same and for implementation.
- (iii) The Task Force would specifically examine the existing procedure of fixation of price by Joint Pricing Committee and Circulars issued by Board in the area of disposal of undischarged, undischarged cargo or confiscated goods.”

36. The Task Force had submitted its Report in September, 2005. The gist of some of the findings of the Task Force are given as under:

- “(i) The Task Force was of the unanimous opinion that the existing departmental instructions on the valuation and disposal by the sale of undischarged, undischarged and confiscated goods (including time-expired warehoused goods) were clear and unambiguous, and required no major revision or modification.
- (ii) Had these instructions reiterated in Ministry’s latest instructions [F.No. 711/39/2004-Cus. (AS) dated 17.9.2004], and Ministry’s Circular No. 7/2004 dated 28.01.2004 been strictly followed by the customs and the custodians, the position should have been that no ripe for disposal confiscated goods older than about 6 months, and no undischarged goods landed earlier than 31.3.2003, would be lying unsold as on date.
- (iii) The picture however is otherwise, especially in relation to confiscated goods lying unsold in customs auctions where even lots of 1969 and 1986 vintage are still figuring in the unsold lists of Kolkata and Mumbai Custom Houses. There is no reason why 731 lots of undischarged cargo valued at about Rs.192 crores, with the oldest of them relating to 1991-92, should remain unsold as on date in Mumbai Port Trust inspite of the special dispensation having been given for goods landed upto 31.3.2003.
- (iv) It appears untenable that inspite of the instructions on valuation being so unambiguous and the disposal by sale conditions being so liberal, the accumulation of unsold cargo has remained unconscionably high on both the customs and custodians and accounts.
- (v) The procedure laid down in the last Circular dated 28.01.2004 should be put in place as a permanent measure. However, the procedure should be made

applicable only to unclaimed/uncleared cargo landed at least one year prior to the date on which the list of goods for customs “no objection” is prepared. Also the total number of auctions/tenders to which a lot is subjected should be four, with the goods to be necessarily sold for the highest bid in the last auction/tender regardless of the reserve price fixed. For goods landed within one year, the erstwhile procedure of having both the fair price (to be re-defined as “reserve price”) and the bids approved by customs should apply.

- (vi) All other Custom Houses should mandatorily introduce e-auctions utilizing the software developed by Chennai Custom House within 100 days of the Task Force report being approved by the Board. The physical auctions should be altogether discontinued once the e-auction has become operational. Such e-auctions would not only cover goods confiscated by Customs or time-expired warehoused goods but also to uncleared/unclaimed cargo lying with the custodians required to be disposed off under Section 48.
- (vii) The Customs Act, 1962 should be amended to provide that if the importer does not avail of the option given to him for taking delivery of the goods on a provisional basis, the Department may offer the goods for sale in public auction after giving a notice of say 30 days to the importer. The sale proceeds should be kept in a fixed deposit with the nationalized bank until the case is decided and the proceeds be disposed off depending on the final outcome.

36A. In pursuance of the recommendations made by Task Force the CBEC *vide* their circulars issued on 1 & 9 December, 2005 prescribed a revised procedure for disposal of unclaimed/uncleared/confiscated goods. The details of circular are given in Appendix- IV.

Electronic Auction (e-auction)

37. With a view to provide time efficient, transparent procedure for disposal of cargo, the Ministry of Finance have issued direction *vide* letter dated 21st January, 2004 to introduce e-auction mechanism at field level.

38. Elaborating on the e-auction system adopted by the Ministry, the Secretary, Department of Revenue, during evidence deposed as under:

“A new initiative has been taken and this has been introduced in Chennai Port and that is e-auction, electronic auction of uncleared cargo. This was introduced, I think, in December, 2003 by Chennai Customs and at the very first inaugural session we got bids of more Rs. Two crore accepted. This looks like a very promising method and in January, 2004 the Board had asked other Chief Commissioners also to follow the same method of quick disposal of uncleared goods. It is now being implemented in Chennai and Bombay-II and will be extended to other Customs Commissionerates in a phased manner, further fine tuning it with experience gained.”

39. When asked about the status of implementation of e-auction system the Ministry in a post-evidence reply stated that introduction of e- auction had helped facilitate a

time bound and efficient mechanism for disposal of cargo while at the same time eliminated cartelization in auction procedure. The e-auction software was implemented in Chennai, Mumbai-II and Bangalore commissionerates and was being replicated at other Customs Commissionerates in a phased manner.

Delay in disposal of uncleared/unclaimed cargo

40. Audit's test check of records in eight ICDs/CFS located in three Commissionerates had revealed that goods valued at Rs.7.53 crore were disposed off after periods ranging from six months to fifteen years of their importation. This delayed disposal had resulted in loss of duty/notional loss of interest of Rs.1.78 crore. In support of their contention Audit has given the following illustrative cases:

Case 1

- (i) Four consignments of machinery imported at a private CFS in Chennai (March 1996) were not cleared by the importer. The machinery was placed for auction for the first time in June 2001 after a lapse of five years though the subject goods were free from litigation. They were sold in auction in September 2001 and customs duty of Rs.16.51 lakh was realised in November 2001. Audit concluded that delay in disposal of cargo had led to postponement of revenue of Rs.16.51 lakh for more than five years apart from notional loss of interest of Rs.13.61 lakh.

In the written information furnished to the Committee, the Ministry of Finance had explained their position as under:

“The subject goods were disposed off by way of auction and the revenue has been realized. The delay in disposal of the goods was due to the fact repeated auctions had to be conducted to dispose off the goods. Despite the fact that the department took measures the goods could not be disposed off earlier. Further since this was unclaimed cargo, the question of levy of interest in cases of disposal by auction remains notional.”

Case 2

- (ii) In five cases of PSWC Ludhiana where un-cleared cargo arrived between 1997 and 2001, the goods were auctioned by custodian for Rs. 72.15 lakh (between March 2002 and March 2003) and duty of Rs. 28.20 lakh was realised. Delay in disposal led to postponement of revenue realisation causing notional loss of interest of Rs.8.46 lakh.

The Ministry in their post-evidence reply have stated as under:

“In 5 cases pointed out by audit, the goods were received between 22.11.97 to 2.8.2001. However, these goods were disposed off by the custodian by placing in open auction on 28.3.2002, 3.1.2003, 10.1.2003, and 21.3.2003 by following the prescribed procedure. In this regard, the department had also provided No Objection certificates to custodians for disposal of goods on 16.1.2001, 18.1.2001 and 14.11.2002.

Since these were un-cleared cargo, the custodian was required to take suo-motu action for disposal of these goods in terms of section 48 of the Customs Act, 1962 and the relevant Board's circulars. It may kindly be noted that the department has provided assistance to the custodian, for fixation of value. The goods were finally disposed off and duty of Rs.28,20,260/- was deposited by the custodian after filing Bill of Entry in this regard."

41. Explaining the factors that contribute to delays in disposing the goods, the Chairman, CBEC, during evidence deposed as under:

".....In the first place as duty is involved, the custodian has to take our approval. We have now done away with it because it was contributing to delays. At the second stage as we have to see that correct duty is realized, and we have to approve the prices. Now we have decided that prices of the goods be fixed by authorized valuers. Then there will be many auctions leading to delay and consequent deterioration in quality of goods. Now, we have restricted the number of bids. We have, however, emphasized that widest publicity be given in all corners of the country including through internet so that no cliques are formed at local levels."

Non-disposal of confiscated goods

42. According to Section 126 of the Customs Act, 1962, ownership of confiscated goods vests in the Central Government who is required to promptly dispose them to avoid loss of revenue due to deterioration in quality, commercial value of the goods, excess expenditure incurred in the maintenance of the goods besides rent liability to the custodian.

43. Audit scrutiny had revealed that in eight Commissionerates goods valued at Rs.27.23 crore (involving duty of Rs.10.74 crore) were confiscated between 1991 to 2003. The same were awaiting disposal for periods ranging from eight months to twelve years resulting in consequential loss of interest amounting to Rs. 3.64 crore to the Government. Also six cars confiscated in May 2001 were awaiting disposal in Overseas Warehousing Limited, Ludhiana till May, 2004.

44. The following illustrative cases were given by Audit in support of their contention:—

- (a) Forty two cargo containers (medical equipments, fruit juice, organic chemicals, oil seeds etc.) valued at Rs. 2.52 crore (involving duty of Rs. 82.42 lakh) confiscated between April 1996 and February 2003 in Kolkata Commissionerate were awaiting disposal for periods ranging from eight months to seven years (December 2003). Their non disposal would result in deterioration in quality and commercial value.

In their written reply furnished to the Committee the Ministry of Finance had clarified that out of 42 containers valued at Rs. 2.52 crores in Kolkata Commissionerate, it has been reported that 18 containers have been disposed off. Out of the remaining 24 containers, in 7 cases, the reasons for their non-disposal were stated to be due to non-action by custodian. In 2 cases the containers were pending due to Court cases. 8 containers were pending with apprising disposal unit and in respect of 7 containers, the same were pending disposal due to their adjudication .

- (b) Four hundred and sixty bales of synthetic rags imported in October/November 1998 and lying un-cleared on account of delay beyond 30 days in terms of section 48 of the Customs Act, had been confiscated in July 2000 on termination of appointment of the custodian of CFS, Thammanam (Cochin). However, no action was taken by the Department for its disposal even after two years, which resulted in blockage of revenue amounting to Rs. 36.30 lakh apart from notional loss of interest of Rs. 21.78 lakh (December 2003).

Explaining the reasons for the non-disposal of the goods, the Ministry of Finance in their Post evidence reply submitted as under:

“460 bales of synthetic rags could not be disposed off earlier because the importer filed a writ petition in December 1998, challenging the direction of the customs authorities to undertake mutilation of the goods before release. The petition filed by the importer was dismissed in December 1999. However, the importer again challenged the order passed by the adjudication authority in February 2000. This case was decided by the Tribunal (CESTAT) in January 2003, giving option to the importer to get release of the goods. However, the importer failed to redeem the goods. Finally, the goods were disposed off in March 2004, realizing an amount of Rs. 19.45 lakh.”

45. During their study visit to Kolkata in January, 2006, the Committee held informal discussion with Chief Commissioner of Customs and other officials of Customs Department of Kolkata region on para 3.7.2(a) of Audit Report No. 10 of 2005 regarding Non-disposal of confiscated goods, with special reference to the case illustrated by the Audit in relation to Kolkata Commissionerate.

46. In the course of the discussion, the Committee enquired about the reasons for the inordinate delay in disposal of goods; the present policy relating to disposal of all pending goods and whether any time-frame has been fixed for their disposal. In a written reply furnished to the Committee, the Chief Commissioner of Customs, Kolkata, stated as under:—

“Goods valued at Rs. 2.02 crore which are still awaiting disposal, fall under the category of seized/confiscated goods, the disposal of which are governed under the procedure laid down in the Commissioner of Customs (Port)’s Standing Order No. 5/03 dated 10.03.2003..... As a follow-up action to the Task Force Report, (constituted by the CBEC to deal with the subject of expeditious disposal of un-claimed and un-cleared imported cargo and also seized/confiscated goods) Ministry has issued Circular No. 50/2005-Cus. Dated 1.12.2005 and Circular No. 52/2005-Cus. Dated 9.12.2005..... streamlining the procedure for expeditious disposal of the un-cleared/un-claimed cargo under Section 48 of the Customs Act, 1962. In pursuance to the above Circulars, Commissioner of Customs (Port) has already issued Public Notice No. 31/05 dated 13.12.05 for disposal of the said goods expeditiously. In so far as the delay in disposal is concerned, in addition to legal encumbrances faced, there has been a lack of persistent follow up in the matter. The disposals of the remnant goods will now be given the highest priority.

In so far as the time frame is concerned, the entire gamut of goods can be divided into two categories. First, are the perishable or hazardous goods or goods prone to depreciation with the passage of time, where the procedure set out under Section 110(1A) applies, requiring the goods to be inventorised in the presence of a Magistrate and disposed of immediately. In the other category, are the goods, seized for violation of various provisions of law; these goods, however, can be taken up for disposal only after the prescribed procedures of adjudication is completed resulting into confiscation of the goods. After confiscation also, the Department is required to wait for the appeal period to be over and only if either the party has filed no appeal or the Department has won the appeal filed, if any, or on finalisation of Court proceedings, if any, the goods can be taken up for disposal. In other words, in this category of goods, unless the goods have become ripe for disposal, the process of disposal cannot be commenced. As regards, time frame in respect of such goods although no specific time frame has been prescribed, but the moment such goods become ripe for disposal, they need to be disposed of expeditiously with minimum delays. Through Monthly Technical Reports, the position in respect of confiscated ripe for disposal goods is brought to the notice of the senior supervisory officers so that proper and effective watch is kept on the progress of disposal of such goods.”

47. When asked about the value and the duty involved in respect of 18 cases of goods that had been disposed off, the Kolkata Commissionerate stated that the value and the duty involved in 18 cases are Rs. 49.94 lakhs and Rs. 27.22 lakhs respectively. An amount of Rs. 27.22 lakhs has been realized on disposal of these 18 cases.

48. The Committee were given to understand that files in respect of certain cases of goods that were pending disposal in the Kolkata Commissionerate were missing. When asked whether any action has been taken by the Department against the officers found responsible, the Kolkata Commissionerate in their written reply had stated that the officers responsible for misplacing the files are being identified.

Goods sold below reserve price

49. As per the instructions issued by the Ministry of Finance on 7 September 1961, the reserve price fixed by Joint Pricing Committee would be the absolute minimum price below which for legal or other reasons a consignment cannot be sold. However, Audit highlighted a case where the goods put for auction were sold at price below the reserve price. In the instant case the goods were sold for Rs. 91.34 lakh against the reserve price of Rs. 1.39 crore fixed by the Pricing Committee, thereby resulting in short realization/loss of revenue to the extent of Rs. 47.62 lakh.

50. When asked whether the custodian with the permission of the competent authority could accept a bid below the reserve price, the Ministry in their post-evidence reply stated as under:

“The Board circular No.50/97 –Customs dated. 17.10.97 prescribe the flexibility and scale of reduction in reserve price, within which the goods could be auctioned. The Board has also given responsibility to the custodians for examination, valuation and disposal of uncleared/ unclaimed goods by Board’s Circular No. 7 of 2004 dated 28.1.2004.”

51. On being asked whether the Department ensured the adequacy of the price at which the goods were sold, the Ministry in a written reply stated as under:

“The department ensures the adequacy of price by fixing reserve price after conducting market enquiry, assessing the commercial value of goods, physical condition of goods etc.”

52. Asked whether any second check was exercised by the Department over deviations in the sale price which had resulted in loss of revenue, the Ministry replied as under:

“When the reserve price is not fetched in the first auction, it is revised by a pricing committee which keeps check and ensure adequacy of price. The extent of flexibility in arriving at the price for disposal is set out in detail in Board’s circular 50/97 dated 17.10.1997.”

Injudicious decision of custodian resulting in loss of Customs Duty

53. As per disposal guidelines contained in chapter-21 (para 6) of Customs Law Manual 2002-03, in the event of goods not being disposed off at the reserve price (or within the permissible margin) in the first auction, the reserve price be reduced according to prescribed scale in the subsequent auction.

54. In a case illustrated by audit it was revealed that in Delhi Commissionerate (ICD-TKD) imported goods such as brass dross/eckart ink were put for auction (March 2002) with reserve price of Rs. 31.96 lakh. The highest bid received was Rs.29 lakh (9.26 per cent less than reserve price). The bid was not accepted and in the next four auctions the highest bid did not cross the limit of Rs.13.51 lakh. Goods remained uncleared and after the fifth auction the Department restrained the custodian from disposing off the goods on the ground of their being restricted items. According to Audit non-disposal of the goods resulted in loss of customs duty to the extent of Rs. 9.77 lakh (applicable at the first auction value).

55. The Committee sought to know as to how an item can be declared as a restricted item, when the same was earlier cleared four times for auction. Admitting their lapse the Ministry in a written note furnished to the Committee stated as under:

“As per the relevant licensing note of Foreign Trade Policy, for the relevant period import of “brass dross is allowed only to units registered with Ministry of Environment and Forests, Government of India, and by the actual user only. However, initially when NOC was given by Customs for auction this aspect was inadvertently overlooked. Since the goods could not be auctioned in the first instance because the reserve price could not be reached, the error in not intimating the custodian of the actual user condition was rectified and the same was intimated when the goods came up for auction on fifth time. Subsequent to this the goods were disposed off at the prices indicated in the audit para. It is also submitted that if the goods had been sold at the first auction in March, 2002, the amount of duty realized at a bid price of Rs. 29 lakh would have been Rs. 7.26 lakh as against the amount of duty realized *i.e.*, Rs. 3.49 lakh in the subsequent auction at October, 2003, at the bid price Rs. 12.5 lakh. Thus the notional loss of

customs duty works out to Rs. 3.77 lakh only as against the loss of Rs. 9.77 lakh indicated by the audit.”

Non disposal of export cargo

56. According to the Ministry’s instructions (May 1984), seized, confiscated goods were to be disposed off within the time frame prescribed for each category according to preservation periodicity *i.e.* goods prone to rapid decay — immediately after seizure, goods having short span of life — within six months from the date of seizure, and goods liable to rapid depreciation in value immediately after adjudication.

57. Audit’s test check of records of four Commissionerates revealed that non-compliance of aforesaid instructions had resulted in non-disposal of export goods worth Rs. 67.92 crore for periods ranging from one to eighteen years.

57A. The following cases were illustrated by Audit:

- (i) In Delhi Commissionerate export goods *i.e.* ready-made garments, compact disc, hand tools and electronic goods worth Rs. 63.15 crore entered for export between 1985 and 2003 were lying in the export shed as unclaimed/detained/confiscated/seized. Non-disposal as required in the aforesaid instructions, of such items having short span of life, within appropriate time limit resulted in their commercial value being lost leading loss of revenue amounting to Rs. 49.88 crore apart from blocking of revenue amounting to Rs. 13.27 crore on other goods.

In a written note furnished to the Committee the Ministry have clarified their position as under:

“the quoted instruction of May, 1984 relates to disposal of seized and confiscated goods. However, all the goods as above are not seized or confiscated goods. In case of ICD, Tughlakabad of the 24 containers for which FOB value of Rs. 18.51 crore was declared, no goods are confiscated. Of the above, 14 containers are connected with investigation by Customs and Directorate of Revenue Intelligence (DRI), Remaining 10 containers are abandoned export goods over which Customs have no claim.

As regards ICD, Patparganj, of the 432 (Less than full Container Load) LCL consignments, 96 are under investigation by Customs/DRI. The remaining 336 consignments are abandoned export goods over which Customs have no claim. No customs duty is leviable on any of the above goods and therefore there is no revenue loss.”

- (ii) In another case illustrated by audit it was stated that in Chennai (Sea) and Tuticorin Commissionerates, of 11 consignments, 4 cases valued at Rs. 2.27 crore were confiscated but not sold for 33 months. Show cause notices were issued in six cases involving value of Rs. 1.76 crore. Delay in adjudication of these cases was for 31 months.

Audit have stated that the Tuticorin Commissionerate had reported that they had disposed one export cargo in June, 2004 for Rs. 6.40 lakhs. These goods

valued at Rs.1.03 crore were brought to CFS in November, 2001 and confiscated in December, 2003. Thus the delay in adjudication and disposal led to loss of revenue of Rs. 96.60 lakh.

In a written note, the Ministry of Finance have stated their position as under:

“Out of 11 consignments, 10 relates to Chennai (Sea). The cases are investigated by DRI, SIIB, Docks and related to misdeclaration of description of goods, over invoicing, smuggling of sandal woods under the guise of normal export goods etc., In view of the investigation initiated by the Department, it was possible to avert revenue loss by availment of excess drawback by over invoicing. The forest products namely sandalwood was taken up for disposal based on the Supreme Court’s direction. In a no. of cases the exporters are not coming forward to redeem the goods. In these cases there is no loss of revenue. As already stated earlier, it was possible to avert wrong claim of drawback in these cases and to check illegal export of precious forest resources. So, any notional loss of revenue and interest does not arise in these cases.

Remaining one case cited in audit para refers to export consignment of Tuticorin Commissionerate. In this case, against 14 Shipping Bills dated 9.11.2001, 400 cartons of banians were mis-declared as 100% Cotton Knitted Men T-Shirts and over-valued at Rs. 1.03 crores by M/s Abarna Clothing Company, Coimbatore, with the intent to get higher drawback. The goods were therefore seized on 12.11.2001 and the investigation got underway. In the course of investigation itself the exporter admitted that the actual value was between Rs. 10 – 12 lakhs only and he had mis-declared the same to avail excess drawback of Rs. 13.40 lakhs. The case was finally adjudicated on 17.12.2003. The goods were disposed of in public auction conducted on 24.6.2004 and Rs. 6.4 lakhs was realized a sale proceeds.

From the above, it will be seen that by detection of this case, Rs. 13.40 lakhs, which would have been wrongly granted as drawback has been safeguarded and sale proceeds (Rs. 6.4 lakhs) are also not significantly lower than the admitted value of Rs. 10 lakhs. Thus it can be said that there is no real loss of revenue in this case.”

OBSERVATIONS/RECOMMENDATIONS

58. An Inland Container Depot (ICD) or Container Freight Station (CFS) is a common user facility which offers services for handling and temporary storage of import/export goods. They were established in order to facilitate the clearance of import and export goods of importers or exporters based in hinterland and were to function as a dry port. Under Section 45 of the Customs Act, 1962, the Commissioner of Customs approves a Custodian under whose custody all the imported goods unloaded in a customs area remains till they are cleared from ICDs/CFSs for home consumption, warehoused or transshipped. The clearance/disposal of uncleared and unclaimed goods is to be initiated and carried out by the Custodian as per the instructions in vogue.

59. The Committee's examination of the subject is based on the Audit Review on the working of Inland Container Depots (ICDs)/ Container Freight Stations (CFSs) in relation to clearance/disposal of uncleared/unclaimed cargo on payment of appropriate customs duty to the Government. For this, Audit had conducted test-check of records of customs as well as custodians i.e. ICDs/CFSs located in 13 Commissionerates for three years i.e. from 2000-01 to 2002-03 with the objective of assessing whether Revenue due to the Government viz. duty on uncleared/unclaimed goods at ICDs was recovered in time. The Committee's examination of the subject has revealed a number of deficiencies in the system. There have been instances where the prescribed rules/regulations and procedures have not been followed in respect of disposal of uncleared/unclaimed goods leading to inordinate delay in their disposal and consequent non-recovery/delay in recovery of customs duty on auctioned goods etc. The existing monitoring mechanism in the Ministry/Department in respect of functioning of ICDs/CFSs, also seem to be very weak and ineffective. These issues have been discussed in detail in the succeeding paragraphs.

60. As per the extant instructions of Central Board of Excise and Customs (CBEC) contained in their Circular No.50/97 of October, 1997 in respect of disposal of unclaimed/uncleared goods lying with Custodians, all goods that landed till 1.1.1994 and were lying uncleared/unclaimed were to be disposed off by Custodians even without NOC from Customs. For goods that landed between 1.1.1994 and 31.12.1996, it was prescribed that a monthly list of Cargo due for disposal was to be prepared and sent to Customs for NOC and if no intimation was received from Customs within 30 days Custodian was to presume that the former had no objection and could go ahead with disposal. Further, according to these instructions in respect of goods pending since 1997 a monthly list was to be sent to Customs for their permission to dispose off cargo within 30 days failing which the Custodian would be free to dispose off these goods. The Board *vide* their Circular No.7/2004 dated 28.1.2004 further simplified the procedure for disposal of unclaimed/uncleared cargo landed upto 31.3.2003, wherein the waiting period for customs clearance/NOC has been reduced from 30 to 15 days.

Notwithstanding the simplified procedure prescribed by the Board from time to time, Audit scrutiny of records of 37 ICDs/CFSs in 13 Commissionerates had revealed that goods worth Rs. 540.47 crore imported between 1985 and March 2003 were awaiting disposal for periods ranging from one to eighteen years resulting in blockage of duty amounting to Rs. 192.81 crore apart from notional loss of interest of Rs. 58.41 crore. Out of this outstanding, there were a number of high money value cases pertaining to six Commissionerates viz., Chennai (sea), Tiruchirapalli, JNCH, Mumbai, Pune (Customs), Mumbai (sea) and Delhi. The total number of containers involved in these cases were 4748, which were valued at Rs. 514.97 crore and involved duty of Rs.183.50 crore alongwith notional loss of interest of Rs. 55.79 crore. Thus, these high value cases involved 95% of duty blockage i.e. Rs. 183.50 crore from out of total duty of Rs.192.81 crore recoverable. In this connection, the Committee have been informed by the Ministry that in respect of Chennai (sea), out of 436 containers, 140 had been disposed off for Rs.6.38 crore. Of the remaining 296 containers, 241 containers are pending due to court cases/CESTAT and under BIFR action/investigation. Only 55 containers involving 39 cases valued at Rs. 2.14 crore are stated to be still pending for disposal. As regards Tiruchirapalli, all the 1017 containers imported by a Public Sector Company were bonded due to non-clearance by the importer and are awaiting disposal action. In respect of JNCH, Mumbai, out of 1712 containers 1207 have been disposed off and out of balance 505 containers 333 are still under process of disposal. In so far, as Pune Customs, out of 63 Twenty feet Equivalent Units, 21 have been disposed off and in respect of balance goods, the issue had been taken up by the Department and Custodians with the concerned Municipal Authorities for settling the issue relating to payment of octroi tax. As regards, Mumbai(Sea), unclaimed cargo consisted of only 111 Twenty feet equivalent units (TEUs) and 43 Less than full Container Load (LCL) cargo, out of which 44 TEUs and 19 LCL consignments were disposed off. The balance 67 TEUs and 24 LCLs were put to auction but could not be disposed off. In Delhi actual number of containers involved were only 854 for ICD-TKD and 28 for ICD(PPG). Out of these, 251 were disposed off, 384 containers pertain to hazardous waste which is a matter of litigation in Supreme Court and 103 containers were ripe for disposal.

The Committee regret to observe that even after a lapse of more than 3 to 11 years from the date of their importation, a large number of containers/TEUs in respect of above 6 Commissionerates are still awaiting disposal on the pretext of one or the other reason. No concrete action seems to have been taken by the Ministry/Board to expedite disposal of pending cargo. What is surprising is the fact that the Board was just content with issuing routine circulars asking the Commissionerates to speed up disposal of pending cargo. The Committee feel that the Ministry should have taken a pro-active role and closely monitored the disposal of cases on a case to case basis with respect to each Commissionerate where considerable backlog of cargo was pending disposal/clearance for several years. That this was not done is regrettable. While deploring the lackadaisical attitude of the Government, the Committee recommend that the Ministry should immediately direct the concerned Commissionerate to act swiftly in the matter to ensure early disposal of pending cargo. A definite time limit should be fixed for this purpose and any delay in this regard should be taken seriously and responsibility fixed both on the Custodian as well as the concerned officials of the respective Commissionerates.

61. Apart from Cargo that is pending disposal with Custodians, Audit had pointed out cases of 115 containers valued at Rs.35 crore and involving customs duty of Rs.16.44 crore pending/locked up in court cases. Further, 25 containers valued at Rs.1.21 crore and involving duty of Rs .0.47 crore pending on account of these cases referred to Board for Industrial and Financial Reconstruction (BIFR), and 111 containers valued at Rs.10.04 crore detained by Departmental Agencies viz., Special Investigation and Intelligence Branch(SIIB)/ Directorate of Revenue Intelligence(DRI)/Dock Intelligence Unit (DIU) for investigation. Due to delay in the adjudication of these cases, duty amounting to Rs. 4.75 crore was blocked. As regards the latest position with regard to disposal of these cases and the efforts made by the Board/Department to get the stay orders vacated, the Ministry have merely given an updated information on the number of cases of cargo pending alongwith their value. The reply was conspicuously silent with respect to action taken/efforts made for getting the stay orders vacated from court as well as expediting the investigation process by the Departmental Agencies in respect of cargo held under detention. The Committee urge upon the Ministry to ensure that Commissionerates are directed to take all possible efforts for speedy trial of Court/BIFR cases. The Committee however, feel that there should not be any inordinate delay in cases of cargo that are pending investigation before SIIB/DRI/DIU which are Departmental Agencies. A definite time limit may be fixed for disposal of cases by these Agencies so as to protect the Government Revenue.

62. Another disquieting feature has been the instances of delay in clearance of those cargo where there was no litigation. 1215 such containers of goods valued at Rs. 255.31 crore in various Commissionerates were not cleared timely leading to blockage of duty amounting to Rs. 59.27 crore. According to the Ministry, 157 such containers pertain to Chennai (Sea), 35 to Tuticorin, 1017 to Trichy and one case belongs to Coimbatore Commissionerate. Out of above cases with respect to Chennai (Sea), 102 containers had been disposed off and 55 are still pending. In respect of Tuticorin Commissionerate, all the 35 pending containers were stated to have been disposed off by March 2005 through Public auction. As regards Trichy, all the 1017 containers imported by a Public Limited Company (M/s. Nagarjuna Oil Corporation) were stated to be pending. In so far as Coimbatore Commissionerate, out of 22 cases of seized, confiscated, unclaimed and uncleared cargo that was pending disposal, 18 were disposed off and 4 consignments are still pending. The Committee further note that in a Container Freight Station (Central Warehousing Corporation-Kolkata and Haldia) 74 consignments of goods of perishable nature valued at Rs. 4.44 crore were lying undisposed for a period ranging from 10 months to 6 years (December, 2003) resulting in blockage of revenue of Rs. 1.45 crore. In this connection, the Ministry have explained that out of 74 containers, 39 had been disposed off and 33 containers (11 in Haldia and 22 at Kolkata CWC) are lying uncleared. Despite a monitoring system/arrangement in place whereunder the Custodians periodically submit the list of uncleared/unclaimed goods, pending with them, to jurisdictional Customs authorities and the same is monitored by them, it is incomprehensible as to how a large number of cases of cargo/ containers were pending disposal with

Custodians. Ironically the Task Force constituted in 2005 to suggest measures for expeditious disposal of imported unclaimed/uncleared/confiscated cargo, in their Report have observed that the existing departmental instructions on disposal by sale of unclaimed/uncleared and confiscated goods were clear and unambiguous and required no major revision/modification. The Task Force opined that had these instructions been strictly followed by Customs and Custodians, the position should have been that no confiscated goods older than about six months and unclaimed goods landed earlier than 31.3.2003 would be lying unsold. The Committee are, thus, inclined to conclude that the instructions of Board are not being followed in letter and spirit by the Commissionerates. The Board also, after having issued the necessary instructions, did not seem to have bothered to ensure their strict compliance by the field officials. This reflects the sorry state of affairs prevalent in Board as well as in field units as regards to expeditious disposal of confiscated goods. Not only it is necessary to ensure strict compliance of instructions, the Board should examine the feasibility of evolving a system of periodical physical verification by an appropriate machinery of the cargo to be disposed of. For this, special cargo disposal cells may be set up in each of the Commissionerate.

63. The Committee note that out of 1215 containers of goods, which were free from litigation, a large consignment of goods i.e. 1017 containers were stated to have been imported by a Public Limited Company (M/s. Nagarjuna Oil Corporation Ltd.) during November, 1999 to September 2000 and in April 2001. These goods valued at Rs. 243.64 crore and involving duty of Rs. 53.79 crore, had remained uncleared in the bonded warehouse. The notional loss of interest on account of blockage of customs duty was worked out to be Rs. 25.14 crore. Explaining the reasons for non-disposal, the Chairman, CBEC stated during evidence that the equipment imported was specific for an Oil Refinery and the importer could not clear the goods because of his inability to arrange finances for payment of duty. According to him, it is a matter of subjective judgement whether customs should wait for the clearance to be effected by the importer or whether it should be sold at a scrap value. The Committee are concerned to note that there are no guidelines with regard to fixing cut-off period or time limit for disposal of goods in respect of such cases, where the importer/consignee could not clear the goods due to financial difficulties. During evidence, the Secretary (Revenue) had deposed that the Task Force constituted to suggest measures for expeditious disposal of uncleared/unclaimed and confiscated goods etc. would look into this matter. However, the Committee now find that the Report of Task Force is conspicuously silent in this regard. The Committee would, therefore, recommend that in cases where imported cargo is uncleared/unclaimed on account of non-clearance by the importer/consignee owing to financial difficulties or otherwise, Government should formulate guidelines for fixing time-limit/cut-off period, within which all the pending cargo should be disposed off.

64. One of the important pre-requisites for effective administration is to ensure proper monitoring of the system that is in place. Monitoring involves ensuring proper maintenance of prescribed records by the concerned authorities and to keep a close and continuous watch on the working of the system and also initiating timely and effective action in cases of default. For this, the Internal Audit Wing of a

Department is expected to play an effective role. The Committee were given to understand that the role of Internal Audit Wing of the Customs Department is limited to auditing of statutory records relating to clearance of goods and payment of duty on imports and exports, maintained by the Department. It does not undertake audit of ICD/CFS in relation to checking of the records in respect of goods that were awaiting disposal. Even where the Department has admitted the role of Internal Audit, they have not performed their functions effectively resulting in cases of delayed/ non-disposal of goods pending for disposal. The Committee, therefore, recommend that Internal Audit system in Customs Department should be revamped and strengthened so that they perform their role satisfactorily. Their scope and ambit should also be broadened so as to bring all the records of cases pertaining to non-disposal of cargo by the Custodian under their scrutiny/check.

65. Under the extant rules/arrangements, responsibility for clearance/disposal of goods lies with the Custodian and the role of Customs in disposal of cargo is to examine the status of cargo and give permission to Custodians when sought for under the Customs Act. The Committee are informed that in case of non-fulfilment of the obligations by the Custodians the concerned Commissioner of Customs can cancel the approval given to them to operate ICDs/CFSs. However, no detail Rules empowering the Customs to take any punitive/deterrent action against the Custodians in such cases have been framed. Further, no safeguards for protection of Revenue in cases of negligence or violations of the conditions/guidelines by the Custodians exist in the Customs Act. The Committee feel that Government should formulate appropriate rules and guidelines to control the activities of the Custodian so that in the event of their failure to adhere to the obligations, the Department/Board can take suitable punitive action against the erring Custodians so that revenue could be protected. For this, if necessary, the Customs Act, 1962 may be amended.

66. Apart from non-disposal of uncleared/unclaimed cargo there also exist cases where there were inordinate delays in disposal of these goods ranging from six months to as much as fifteen years. The Ministry have attributed these delays by saying that the goods could not be disposed of early and repeated auctions had to be conducted to dispose them off. Another factor leading to such delays is stated to be the inability on the part of the Custodian in taking prompt and immediate action in disposal of goods that had become ripe for disposal. Though *suo-motu* action was required to be taken by the Custodian for disposal of goods they unnecessarily chose to seek permission of the Customs Department to dispose off the goods thereby leading to considerable avoidable delays. The Committee desire that there should be close coordination between Custodians and Customs to ensure speedy disposal of goods. The monitoring mechanism for speedy/expeditious disposal of uncleared/unclaimed goods in the Customs Department also needs to be strengthened. For this, the Committee recommend that the CBEC should examine the feasibility of constituting a core group at the Board level, which should meet at regular intervals for monitoring the progress made in expeditious disposal of uncleared/unclaimed goods in various ICDs/CFSs.

67. In terms of Section 126 of the Customs Act, 1962, ownership of confiscated goods vests in the Central Government which is required to promptly dispose them to

avoid loss of revenue due to deterioration of quality, commercial value of the goods and excess expenditure incurred in the maintenance of the goods etc. Even in such cases, the Committee have come across considerable delays on the part of the Customs authorities. In eight Commissionerates, goods valued at Rs 27.23 crore involving duty of Rs. 10.74 crore were confiscated between 1991-2003 and the same were awaiting disposal for periods ranging from 8 months to 12 years resulting in consequential loss of interest amounting to Rs. 3.64 crore. During their recent visit to Kolkata Customs, the Committee were informed that there has been a lack of persistent follow up, in addition to legal incumbrances in the matter of disposal of confiscated/seized goods. The Committee were apprised that goods valued at Rs. 2.02 crore were still awaiting disposal in their Commissionerates. The Committee regret to find that no specific time frame has been prescribed for disposal of confiscated/seized goods. The Committee recommend that Ministry/Department should look into the matter with a view to find ways and means to simplify the procedures for expeditious disposal of cargo. Further, a time limit should also be fixed for all categories of confiscated/seized goods with a view to dispose them expeditiously.

68. The Committee find that in Delhi Commissionerate (ICD,TKD) imported goods such as brass dross/eckart ink were put for auction and when they could not be sold in the first auction they were again put for repeated auction in the next four auctions. After the fifth auction, the said item was declared as restricted by the Department. In a written information furnished to the Committee, the Ministry while admitting the lapse stated that the No Objection Certificate was inadvertently issued overlooking the aspect that the goods in question were allowed only to units registered with the Ministry of Environment & Forests, Government of India and by the actual user condition. Such serious lapse on the part of the Board/Department has revealed deficiencies in the procedures and monitoring systems in clearance of the goods for disposal. Such avoidable lapses render considerable loss of time and money to the exchequer in terms of expenditure incurred on auction. The Committee recommend that the procedures/guidelines involved in examination/scrutiny of cargo before their clearance for disposal, should be reviewed in their entirety. The management information system in this regard should be strengthened and periodically reviewed so that such lapses do not recur in future.

69. In yet another case export goods i.e. ready-made garments, compact disc, hand tools and electronic goods worth Rs. 63.15 crore which entered for export between 1985 and 2003 were lying in the export shed in Delhi Commissionerate as unclaimed/detained/ confiscated/seized. Non-disposal of such items, having short span of life, resulted in their commercial value being lost leading to loss of revenue amounting to Rs. 49.88 crore apart from blocking of revenue amounting to Rs. 13.27 crore on other goods. The Ministry have contested this Audit finding by saying that the goods under question were not seized or confiscated. Some of them were connected with investigation by Customs and the remaining were abandoned export goods over which Customs had no claim. It has been contended that abandoned export goods did not come either under the category of seized or confiscated goods and therefore their non-disposal did not involve any Revenue loss. The Committee are of the opinion that since the abandoned goods occupy considerable space of the

godowns of ICDs/CFSs thereby involving opportunity cost, it is imperative that the status of abandoned goods should be properly defined and appropriate amendments to this effect should be made in the Customs Act, 1962 so as to recover the costs involved in their maintenance. The Board should also formulate guidelines/instructions with respect to the modalities for their disposal.

70. The Committee are deeply perturbed to note that an atmosphere of non-accountability is prevailing in the entire system of disposal of pending cargo. While Customs Department have no powers to take action against the Custodians for inordinate delay in disposal of cargo, the Ministry/Board have also shirked their responsibility to fix responsibility on the concerned officials for delay in disposal of goods on the plea that it is the Custodian who is responsible for disposal of pending cargo. With a view to address this problem, the Committee recommend that Ministry of Finance should constitute a high level Committee comprising of members of the CBEC and other experts on the subject, to go into the entire gamut of functioning of ICDs/CFSs and Customs Commissionerates, in relation to disposal of pending uncleared/unclaimed goods and also to investigate into the causes for inordinate delay in disposal of cargo, on a case to case basis and fix responsibility on the concerned Customs officials and the Custodians.

71. In January, 2004 the Ministry of Finance are stated to have introduced e-auction system at field level with the objective of providing time efficient and transparent procedure for disposal of cargo. The e-auction software is presently being implemented in Chennai, Mumbai II and Bangalore Commissionerates. As regards its status of implementation, the Ministry have informed that e-auction had helped in facilitating a time-bound and efficient mechanism for disposal of cargo and also eliminated cartelization in auction procedure and the same would be implemented in other Commissionerates in a phased manner. The Committee expect the Ministry of Finance to take necessary steps to introduce/implement e-auction in all the Commissionerates in a time-bound period. They also hope that e-auction would cut red tape and simplify the procedures in clearance/disposal of the uncleared/unclaimed goods in an expeditious manner so as to safeguard the revenue of the Government. The Committee would also like to be apprised of the further progress made in this regard.

72. The Committee are informed that a Task Force headed by Chief Commissioner of Customs, New Delhi and comprising of Chief Commissioner of Customs of different zones was set up by the Ministry of Finance on 27th June, 2005 to suggest administrative measures including monitoring mechanism for clearance of cargo lying undisposed/ uncleared/unclaimed or confiscated beyond specific period of time, in an expeditious manner, by effective use of IT sources, appropriate development of manpower etc. The Committee regret to observe that the subject-disposal of uncleared/unclaimed/ confiscated cargo seems to have been neglected by the Department/ Board until Audit conducted a review on the working of ICDs/CFSs and Public Accounts Committee took up the subject for detailed examination. It is only after that the Ministry woke up to the problem and constituted a Task Force. The Committee are of the opinion that had the Ministry seized of the problem and taken corrective measures well in advance, things would not have come to such a pass.

The Task Force had submitted its Report in September, 2005. Important recommendations made by the Task Force are stated to be as under:

- (i) The procedure laid down in the last Circular dated 28.01.2004 should be put in place as a permanent measure. However, the procedure should be made applicable only to unclaimed/uncleared cargo landed at least one year prior to the date on which the list of goods for customs “no objection” is prepared. The total number of auctions/tenders to which a lot is subjected should be four, with the goods to be necessarily sold for the highest bid in the last auction/tender regardless of the reserve price fixed.
- (ii) All other Custom Houses should mandatorily introduce e-auctions utilizing the software developed by Chennai Custom House within 100 days of the Task Force report being approved by the Board. The physical auctions should be altogether discontinued once the e-auction has become operational. Such e-auctions would not only cover goods confiscated by Customs or time-expired warehoused goods but also to unclaimed/unclaimed cargo lying with the custodians required to be disposed of under Section 48.
- (iii) The Customs Act, 1962 should be amended to provide that if the importer does not avail of the option given to him for taking delivery of the goods on a provisional basis, the Department may offer the goods for sale in public auction after giving a notice of say 30 days to the importer. The sale proceeds should be kept in a fixed deposit with the nationalized bank until the case is decided and the proceeds be disposed of depending on the final outcome.

As a follow up of Task Force Report, the CBEC have issued two circulars on 1st and 9th December, 2005 prescribing a revised Procedure for expeditious disposal of unclaimed/uncleared cargo under Section 48 of the Customs Act lying with the Custodians—both Public and Private. The Committee hope that the revised Procedure prescribed by the Board in the light of Task Force Report would cut down the delays and enable the Custodians to dispose unclaimed/uncleared goods expeditiously and also protect the revenue due to the Government. They also recommend that Ministry of Finance should apprise them of the progress made in the disposal of all pending cargo in the light of the revised Procedure.

NEW DELHI;
14 March, 2006

23 Phalgun, 1927 (Saka)

PROF. VIJAY KUMAR MALHOTRA,
Chairman,
Public Accounts Committee.

APPENDIX I

AUDIT PARAGRAPH REPORT No. 19 Of 2005

3.7 Non-disposal of uncleared/unclaimed imported cargo

According to section 55 read with section 48 of the Customs Act, 1962, if goods brought into India from a place outside India were not cleared within 30 days from the date of unloading thereof at the customs station and if no extension for retention of such goods beyond 30 days was obtained, they could be sold by the person having custody thereof.

Further, the Board *vide* circular of October 1997 stipulated that:—

- (a) All goods that landed till 1 January, 1994 and were lying uncleared/unclaimed were to be taken up for disposal by the custodian even without No Objection Certificate (NOC) from customs if there was no stay/court case.
- (b) For goods that landed between 1 January, 1994 and 31 December, 1996, custodian was to prepare a monthly list of cargo due for disposal and sent it to customs for NOC. If no intimation was received from customs within 30 days, custodian was to presume that the former had no objection and go ahead with the disposal.
- (c) For goods pending since 1997 a monthly list was sent to customs for their permission to dispose off the cargo within 30 days, failing which the custodian would be free to dispose off these goods.

Scrutiny of records of 37 ICD/CFS in 13 Commissionerates revealed that goods worth Rs. 540.47 crore imported between 1985 and March 2003 were awaiting disposal action for periods ranging from one to eighteen years resulting in blockage of duty amounting to Rs. 192.81 crore apart from notional loss of interest of Rs. 58.41 crore.

Analysis of non-disposal of goods in 16 ICD/CFS revealed that for 1466 containers valued at Rs. 301.55 crore in Chennai (Sea), Tuticorin, Tiruchirapalli and Coimbatore the reasons for non-disposal were as under:—

- (i) Clearance of 115 containers valued at Rs. 35.00 crore involving custom duty of Rs. 16.44 crore, were locked up in court cases.
- (ii) Twenty five containers valued at Rs. 1.21 crore involving custom duty of Rs. 0.47 crore were pending as the cases were referred to Board for Industrial and Financial Reconstruction (BIFR).
- (iii) One hundred and eleven containers valued at Rs. 10.04 crore were detained by Special Investigation and Intelligence Branch (SIIB)/Directorate of Revenue Intelligence (DRI)/Dock Intelligence Unit (DIU) and customs duty amounting to Rs. 4.75 crore was blocked due to delay in adjudication.
- (iv) One thousand two hundred and fifteen containers of goods valued at Rs. 255.31 crore were free from litigation, yet were delayed in clearance leading to blockage of customs duty of Rs. 59.27 crore.

In above cases delays had ranged from 9 to 105 months involving a notional loss of interest of Rs. 43.03 crore.

Of 1215 containers, the Department reported (July 2004) that the goods contained in 33 containers were disposed off and duty amounting to Rs. 10.96 lakh was realised (March/April 2004). In another case the importer cleared the goods in June 2004 on payment of duty of Rs. 1.83 lakh.

Illustrative cases are narrated below:—

- (a) A second-hand blast furnace plant imported by M/s. Kitti Industries Limited in January 1999 was transhipped partly to a CFS, in Chennai and balance retained in Port Trust, Chennai. Due to non-payment to the supplier, Chennai, High Court restrained the removal of cargo. No action was initiated by the Department for lifting the restrictions on sale of goods and the same remained uncleared (December 2003) for five years causing blockage of customs duty of Rs. 15.67 crore with notional loss of interest of Rs. 11.16 crore.
- (b) Eighteen consignments of cold store equipments imported during 1995-96 at a public CFS could not be cleared owing to importer's financial constraints. Duty amounting to Rs. 33.75 lakh remained blocked for more than seven years apart from notional loss of interest of Rs. 39.23 lakh.
- (c) Capital goods valued at Rs. 3.97 crore imported (February 1999) under export promotion of capital goods scheme (EPCG) at a private CFS in Chennai were detained by the Department, as the importer did not fulfil conditions of import on earlier occasion under the same scheme. The case was adjudicated in July 2002 whereby benefit of EPCG scheme was disallowed. However, the goods lay uncleared (December 2003). Delay in adjudication and disposal of goods led to blockage of customs duty of Rs. 1.86 crore for more than 58 months apart from notional loss of interest of Rs. 1.33 crore.
- (d) Five consignments of dewatering equipments worth Rs. 1.80 crore imported in 1995-96 at a public sector CFS in Chennai were placed for auction in 2002-03 after the Department permitted the custodian to auction the goods. However, in October 2002 customs department intimated the custodian that the goods were liable for confiscation and should not be auctioned. They remained uncleared (December 2003). The inordinate delay in disposal of goods caused blockage of duty of Rs. 90.36 lakh apart from notional loss of interest of Rs. 1.05 crore.
- (e) A public limited company, imported (November 1999 to September 2000), 663 containers of second hand refinery equipment valued at Rs. 144.92 crore at a private CFS at Chennai. The Department did not take action to dispose off the goods in terms of section 48 *ibid*. On the request of the importer, the containers were transhipped (January 2003) to factory premises at Cuddalore through ICD Sattva, Pondicherry after obtaining permission from Chennai customs. The goods remain uncleared (December 2003), causing blockage of duty of Rs. 31.59 crore for 39 months apart from notional

loss of interest of Rs. 17.65 crore. Further, 354 containers of the same goods valued at Rs. 98.72 crore imported (April 2001), through Chennai Sea customs, were transhipped to the bonded warehouse of the importer through the same ICD, after obtaining permission. The goods remained uncleared (December 2003) in the bonded warehouse causing blockage of customs duty of Rs. 22.20 crore and interest thereon amounting to Rs. 7.49 crore.

On this being pointed out (April 2004), the Department stated (May 2004) that the remaining 30 per cent of the equipments were yet to be received and only then would erection of the equipment be completed. The Department further stated that the importer could not clear the goods owing to their financial constraints and that the duty with interest would be collected early.

The fact remains that there was delay in warehousing the goods and the same still remained uncleared (for three to four years causing blockage of revenue amounting to Rs. 78.93 crore.

- (f) In CFS (CWC/Kolkata and Haldia), 74 consignments of goods of perishable nature valued at Rs. 4.44 crore were lying undisposed for a period ranging from 10 months to six years (December 2003) contrary to instructions issued in this regard resulting in loss/blockage of revenue of Rs. 1.45 crore.

3.7.1 Delay in disposal of uncleared/unclaimed cargo

Test check of records in eight ICDs/CFS located in three Commissionerates revealed that goods valued at Rs. 7.53 crore were disposed off after periods ranging from six months to fifteen years of their importation. Delayed disposal resulted in loss of duty/notional loss of interest of Rs. 1.78 crore.

Illustrative cases are narrated below:—

- (a) Four consignments of machinery imported at a private CFS in Chennai (March 1996) were not cleared by the importer. The machinery was placed for auction for the first time in June 2001 after a lapse of five years though the subject goods were free from litigation. They were sold in auction in September 2001 and customs duty of Rs. 16.51 lakh was realised in November 2001. Delay in disposal of cargo had led to postponement of revenue of Rs. 16.51 lakh for more than five years apart from notional loss of interest of Rs. 13.61 lakh.
- (b) In five cases of PSWC Ludhiana where uncleared cargo arrived between 1997 and 2001, the goods were auctioned by custodian for Rs. 71.15 lakh (between March 2002 and March 2003) and duty of Rs. 28.20 lakh was realised. Delay in disposal led to postponement of revenue realisation causing notional loss of interest of Rs. 8.46 lakh.

3.7.2 Non-disposal of confiscated goods

Section 126 of the Customs Act, 1962 provides that ownership of confiscated goods vests in the Central Government who is promptly required to dispose them to

avoid loss of revenue due to deterioration in quality, commercial value of the goods, excess expenditure incurred in the maintenance of the goods besides rent liability to the custodian.

Scrutiny revealed that in eight Commissionerates goods valued at Rs. 27.23 crore (involving duty of Rs. 10.74 crore) were confiscated between 1991 to 2003. The same were awaiting disposal for periods ranging from eight months to twelve years resulting in consequential loss of interest amounting to Rs. 3.64 crore to the Government. Also, six cars confiscated in May 2001 were awaiting disposal in Overseas Warehousing Limited, Ludhiana till May, 2004.

Illustrative cases are as under:—

- (a) Forty two cargo containers (medical equipments, fruit juice, organic chemicals, oil seeds etc.) valued at Rs. 2.52 crore (involving duty of Rs. 82.42 lakh) confiscated between April 1996 and February 2003 in Kolkata Commissionerate were awaiting disposal for periods ranging from eight months to seven years (December 2003). Their non-disposal would result in deterioration in quality and commercial value.
- (b) Four hundred and sixty bales of synthetic rags imported in October/November 1998 and lying uncleared on account of delay beyond 30 days in terms of section 48 of the Customs Act, had been confiscated in July 2000 on termination of appointment of the custodian of CFS, Thammanam (Cochin). However, no action was taken by the Department for its disposal even after two years, which resulted in blockage of revenue amounting to Rs. 36.30 lakh apart from notional loss of interest of Rs. 21.78 lakh (December 2003).

3.7.3 Loss of revenue due to delayed disposal of confiscated/unclaimed goods

Ministry's instructions issued on 7 September, 1961 provided that the reserve price fixed by Joint Pricing Committee would be the absolute minimum price below which for legal or other reasons & consignment could not be sold. However, some instances came to light as follows:—

- (a) According to orders of Commissioner (Amritsar) (January 2003) auction of goods made in February/March 2003 for Rs. 91.34 lakh against the reserve price of Rs. 1.39 crore fixed by the Committee (July 2002) resulted in short realisation/loss of Government revenue to the extent of Rs. 47.62 lakh.
- (b) According to instructions (May 1984) electronic goods liable to rapid depreciation in value on account of fast change in technology, should be disposed off immediately after adjudication.

In Delhi Commissionerate a container of "flat shadow" (electronic goods) involving FOB value of Rs. 60.39 lakh was brought to ICD Patparganj (PPG) for export in May 1993. The goods were not exported and finally sold (March 2001) by the custodian for Rs. 7200. Thus, delay in disposal of goods resulted in loss of Rs. 60.32 lakh, as the value of the article was highly prone to depreciation.

3.7.4 Injudicious decision of custodian resulted in loss of customs duty

Disposal guidelines contained in chapter-21 (para 6) of Customs Law Manual 2002-03 provided that in the event of goods not being disposed off at the reserve price (or within the permissible margin) in the first auction, the reserve price be reduced according to prescribed scale in the subsequent auction.

In Delhi Commissionerate (ICD TKD) imported goods such as brass dross/eckart ink were put for auction (March 2002) with reserve price of Rs. 31.96 lakh. The highest bid received was Rs. 29 lakh (9.26 per cent less than reserve price). The bid was not accepted and in the next four auctions the highest bid did not cross the limit of Rs. 13.51 lakh. Goods remained uncleared and after the fifth auction the Department restrained the custodian from disposing off the goods on the ground of their being restricted items. However, it was not clear as to how an item put to auction five times was declared as restricted by the Department subsequently.

Non-disposal of the goods resulted in loss of customs duty to the extent of Rs. 9.77 lakh (applicable at the first auction value).

3.7.5 Non-disposal of export cargo

Under instructions issued by the Ministry in May 1984, seized, confiscated goods were to be disposed off within the time frame prescribed for each category according to preservation periodicity *i.e.* goods prone to rapid decay — immediately after seizure, goods having short span of life — within six months from the date of seizure, and goods liable to rapid depreciation in value immediately after adjudication.

Test check of records of four Commissionerates revealed that due to non-compliance of aforesaid instructions export goods worth Rs. 67.92 crore were not disposed for one to eighteen years.

The following cases came to light:—

- (a) In Delhi Commissionerate export goods *i.e.* readymade garments, compact disc, hand tools and electronic goods worth Rs. 63.15 crore entered for export between 1985 and 2003 were lying in the export shed as unclaimed/detained/confiscated/seized.

Non-disposal as required in the aforesaid instructions, of such items having short span of life, within appropriate time limit resulted in their commercial value being lost leading to loss of revenue amounting to Rs. 49.88 crore apart from blocking of revenue amounting to Rs. 13.27 crore on other goods.

Regarding non-disposal of watches, the Department (ICD PPG) stated (February 2004) that the goods were presumably disallowed for export and were seized by customs for over valuation. It was further stated that detailed reply would be furnished in due course.

- (b) In Chennai (Sea) and Tuticorin Commissionerates, of 11 consignments, four cases involving value of Rs. 2.27 crore were confiscated but not sold for 33 months. Show cause notices were issued in six cases involving value of Rs. 1.76 crore. Delay in adjudication of these cases was for 31 months.

A case involving value of Rs. 66.67 lakh was pending before CEGAT who granted stay in 1999. The case had not been decided and the goods remained uncleared.

On this being pointed out (March/May 2004), the Department (Tuticorin) reported (July 2004) disposal of one export cargo in June 2004 for Rs. 6.40 lakh. These goods valued at Rs. 1.03 crore were brought to CFS in November, 2001 and confiscated in December, 2003. Thus the delay in adjudication and disposal led to loss of revenue of Rs. 96.60 lakh.

APPENDIX II

Circular No. 50/97
Dated 17/10/97

F.No. 446/44/92-Cus. IV

Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs, New Delhi

Subject:— Disposal of unclaimed/uncleared cargo-regarding

Government of India have taken a number of important decisions, as a part of the Scheme Operation Instant Cargo, for the expeditious clearance of cargo lying unclaimed/uncleared in the seaports, Airports and Aircargo within a specified complex time limit. The instructions in respect of Air Cargo complexes have already been issued *vide* D.U. letter F.No. 446/44/92-Cus. IV dated 20.9.97 from Member (Customs).

2. The following instructions are being issued in respect of unclaimed/uncleared goods lying with the Custodians who are Central Government undertakings like Port Trusts/C.W.C./CUNCOR for immediate compliance.

2.1 All goods landed upto 01.01.1994 and lying unclaimed/uncleared may be taken up for disposal by the Custodians and the process of disposal should be completed by the target date fixed by the respective Custodians.

2.2 The Custodians would not require any NOC from the Customs, as long as they ensure that consignments in respect of which any dispute has been raised by the customs/importers or where any stay on disposal from any court or Tribunal is operational, are not disposed of.

2.3 Customs shall scrutinise their own files and intimate the Custodians a list of disputed or stayed consignments or consignments requiring them to be retained for any proceedings. If no such intimation is received from the Customs within 15 days, the Custodian can go ahead with the disposal of the goods.

2.4 The valuation of the goods for disposal shall be done by the Custodians through approved valuers appointed by them, irrespective of any value arrived at by the Appraisers earlier. In cases of doubt, the same may be referred to a panel of three valuers whose decision shall be final.

2.5 The disposal shall be made by Public Auction as earlier. These values assessed by the valuers appointed by the Custodian shall form the reserve price.

2.6 In the event of the goods not being disposed of at the reserved price at the first auction, following procedure shall be adopted for reduction in reserve price:—

Perishable goods

- (a) 25% reduction after first auction.
- (b) 50% reduction after second auction.
- (c) by public auction and sealed tender simultaneously to the highest bidder.

Non-Perishable goods

- (a) 10% reduction after first auction.
- (b) 20% reduction after second auction.
- (c) by public auction and sealed tender simultaneously to the highest bidder.

The above method of reduction in reserve price be intimated to the Custodian.

2.7 The sale proceeds shall be shared between the Custodians and the Customs on 50:50 basis.

3.1 All the goods landed between 01.01.1994 and 31.12.1996 and lying unclaimed/uncleared may be taken up for disposal, and the action should be completed by the target date fixed by the respective custodians. The following procedure shall be adopted for disposal of such goods.

3.2 The responsibility for the disposal shall exclusively be with the Custodians, who shall fix a reserve price, arrived at by a panel of approved valuers, which should include an expert on the product line. In case any request is made by the Custodians, the Customs shall make available to the Custodian the services of an Appraiser for the purpose to serve on the panel.

3.3 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.

3.4 Procedure for auction and/or reduction of reserve price shall be the same as in the case of packages prior to 01.01.1994 as contained in para 2.1.

3.5 The custodian shall prepare a monthly list of Cargo due for disposal and sent it of the customs. In case, Customs desires detention of any of the consignments for their being involved in disputes, court cases etc., they shall intimate Port Trusts within 30 days of the receipt thereof. If no intimation is received from the Customs within 30 days, the Custodian shall presume that Customs have no objection and shall go ahead with the disposal.

3.6 The proceeds from the sale shall be shared on 50:50 basis between the Custodians and the Customs.

4. The Custodians shall forward to the Customs a list of the consignments imported and pending clearance from 1.1.1997 on a monthly basis. The Customs shall immediately on receipt, examine the list and forward to the Custodian the list of consignments in which they want to be withdrawn from such list on any account and permit the Custodians to dispose off the remaining cargo. If no list is received within 30 days, the Custodians will be free to dispose off these goods.

5. The above instructions are being issued as one time interim administrative arrangement to ensure that the unclaimed/uncleared cargo pending for long are disposed off at the earliest. As the requirement under section 150(2) of the Customs Act, 1962 is mandatory, the sharing of proceeds on the ratio of 50:50 is being adopted on a rough

and ready basis, but in the final accounting of all auctioned goods, care should be taken to ensure that the mandatory requirements under the law are adhered to. You may require the concerned Custodians to submit consignment wise accounts after the goods are disposed off so as to ensure that full duty as applicable under section 150(2) is recovered from the disposal value.

Sd/-
(S.C. Choudhury)
Director (Customs)

APPENDIX III

Circular No. 7/2004
28th January, 2004

F. No. 450/97/2003-Cus.IV

Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Subject:— Procedure for disposal of unclaimed/uncleared cargo under section 48 of the Customs Act, 1962, lying with the custodians-regarding

I am directed to invite your attention to above mentioned subject and to say that the Department, in the past has taken a number of measures to ensure expeditious disposal off unclaimed/uncleared cargo lying in Air cargo complexes/Ports/ICDs/CFSs/LCSs.

2. The custodians have brought to the notice of the Board that considerable time is being taken by Customs in fixing the fair price which eventually delays the process of fixing the "Reserve Price" by the custodian. At times the reserve price is so high that the goods are not sold even in three auctions and over a period of time the quality of goods deteriorates.

3. The matter has been examined by the Board. In order to ensure expenditure of disposal of unclaimed/uncleared cargo, under section 48 of the Customs Act, 1962, and landed upto 31.3.2003, and lying with custodians, whether in the private or public sector, the following procedure should be followed:—

- (i) All goods landed upto 31.3.2003 and lying unclaimed/uncleared may be taken up for disposal by the Custodians and the process of disposal should be completed by 30.4.2004 by the respective custodians.
- (ii) 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. A notice shall simultaneously be issued by the custodian to the consignee at his known address and also displayed on the custodian's notice board that if the goods are not cleared within 15 days it will be sold by the Custodian under Section 48 of the Customs Act, 1962.
- (iii) Customs shall scrutinize the list with their own files/records and intimate the custodian a list of disputed or stayed consignments or consignments requiring them to be retained for any investigation/adjudication/court proceedings, motor vehicles or negative list items as restrictions imposed under allied acts. If no such intimation is received from the Customs within 15 days, the custodian shall go ahead with the disposal of the goods.

- (iv) The responsibility for the disposal shall exclusively be with the Custodian, who shall fix a reserve price, arrived at by a panel of their approved valuers [irrespective of any value arrived at by the Customs Appraisers earlier], which should include an expert on the product line. In case any request is made by the custodians, the Customs shall make available to the custodian the services of an Appraiser to serve on the panel. In case of doubt, the same may be referred to a panel of three values whose decision shall be final.
- (v) The customs will not insist on complete and detailed inventory of the contents of the consignments for which detailed inventory shall be made in their presence for sample check.
- (vi) The disposal of the goods shall be made by public auction. The date of the public auction should be adequately publicized in advance through national newspapers (both in English and Hindi) as well as in at least one newspaper in the local language. The values assessed by the approved valuers appointed by the custodians shall form the 'reserve price'. In the event of the goods not being disposed off at the first auction, the bids will be invited in sealed tender by the custodian on all India basis through advertisement in national newspapers as also through E-auction, within 30 days of the first auction and goods shall be sold to the highest bidder. Reserve price fixed will be applicable with respect to first auction only.
- (vii) Guidelines issued by the Central Vigilance Commission as contained in their Letter No. 98/ORD/1 dated 18th December, 2003, relating to auction through tender system, should also be kept in view [Letter available of CVC website:<http://www.cvc.nic.in>].
- (viii) 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].
- (ix) The custodian should fix a date for holding the auction and communicate such date to the officer in charge of the customs station and the concerned Assistant Commissioner/Deputy Commissioner. The Assistant Commissioner/Deputy Commissioner would nominate, if necessary, an officer not below the rank of Superintendent/appraiser to witness the auction. Customs shall not withdraw any consignments at the last moment from the auction except with the written approval of the Commissioner of Customs.
- (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. Auctioned goods will be allowed out of change only after the duty assessed is paid by the Custodian [Refer Unclaimed Goods (Bill of Entry) Regulations, 1972].
- (xi) The sale proceeds shall be shared as per the provisions of section 150 of the Customs Act, 1962.

4. The above instructions are being issued as a one time interim administrative arrangement to ensure that the unclaimed/uncleared cargo pending for long are disposed off at the earliest.

5. In case of inconsistency between this Circular and any Circular issued in the past on this issue, this Circular will prevail.

6. Public Notices may be issued for the benefit of the trade, particularly the custodians.

7. Please acknowledge receipt of this Circular.

8. Hindi version will follow.

Sd/-

V. Kezo

Under Secretary to the Government of India

APPENDIX IV

Circular No. 50/2005-Cus
December 01, 2005

F. No.442/12/2004-Cus.IV (Pt.II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Subject:— Procedure for disposal of unclaimed/uncleared cargo under section 48 of the Customs Act, 1962, lying with the custodians-regarding

I am directed to invite your attention to the report of the Task Force which was constituted by the Central Board of Excise and Customs as a sequel to the observations of the C&AG, *vide* order F.No. 442/12/2004-Cus.IV (Pt.) dated 27.6.2005 to examine the various issues arising out of the audit review, and to suggest effective measures to be put in place as a permanent mechanism for expeditious disposal of the backlog of accumulated, unclaimed, uncleared and confiscated cargo, and also to ensure that no delays in disposal take place in future. The Chief Commissioner of Customs, Delhi Zone was the Chairman of the Task Force.

2. Looking at the considerable success in expeditious disposal of Section 48 unclaimed cargo as a result of the interim special initiatives taken by Government *vide* Circulars dated 17.10.1997, 13.01.2000 and 28.01.2004, the Task Force viewed that the procedure laid down in the Ministry's last Circular No. 7/2004 dated 28.01.2004 should be put in place as a permanent measure with some modifications.

3. The matter has been examined by the Board. In order to ensure expeditious disposal of unclaimed/uncleared cargo, under section 48 of the Customs Act, 1962, and lying with custodians, whether in the private or public sector, the following procedure should be followed:—

- (i) The procedure shall be applicable only to unclaimed/uncleared cargo landed at least one year prior to the date on which the list of goods for customs "no objection" is prepared. In other words, this liberalized procedure would not apply to goods which have been lying uncleared for a period less than one year from the date of the import.
- (ii) 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. A notice shall simultaneously be issued by the custodian to the consignee at his known address and also displayed on the custodian's notice board stating that if the goods are not cleared within 15 days they be sold by the custodian under section 48 of the Customs Act, 1962.
- (iii) Customs shall scrutinize the list with their own files/records and intimate the custodian a list of disputed or stayed consignments or consignments

required to be retained for any investigation/adjudication/court proceedings, motor vehicles or negative list items as restrictions imposed under allied acts. If no such intimation is received from the Customs within 15 days, the custodian shall go ahead with the disposal of the goods.

- (iv) The responsibility for the disposal shall exclusively be with the Custodian who shall fix a reserve price arrived at by a panel of Government approved valuers appointed by the Custodian [irrespective of any value arrived at by the Customs Appraisers earlier.] which should include an expert on the product line.
- (v) The custom's 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 that presence for sample check.
- (vi) The disposal of the goods shall be made by Public auction/E-auction/tender. The date of the public auction/E-auction/tender should be adequately publicised in advance through national newspapers (both in English and Hindi), departmental website as well as in at least one newspaper in the local language. 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 to be necessarily sold for the highest bid in the last auction/tender regardless of the reserve price fixed. Reserve price fixed would not be applicable in case of further auction/tender. 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 18th December, 2003 should also be kept in view.
- (viii) 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].
- (ix) The custodian should fix a date for holding the auction/tender and communicate such date to the officer incharge of the customs station and the concerned Assistant Commissioner/Deputy Commissioner. The Assistant Commissioner/Deputy Commissioner would nominate, if necessary, 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.
- (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. Auctioned goods will be allowed out of charge only after the duty assessed is paid by the custodian [Refer Unclaimed Goods (Bill of Entry) Regulations, 1972].

- (xi) The Sale proceeds shall be shared as per the provisions of section 150 of the Customs Act, 1962.

For uncleared/unclaimed goods which are lying for a period less than one year, the custodian would get the reserve price fixed by a panel of Government approved valuers appointed by the Custodian. However, 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 without any 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. It is re-iterated that for the valuation of goods added at least one year prior to the date of seeking NOC, Customs should not associate with the valuation of the goods lying uncleared with the custodian, however, both reserve price and bids would be approved by the Customs. This is to ensure that the custodians do not cast the responsibility for unrealistic fixation of the reserve price on customs.

The above instructions may be brought to the notice of all concerned immediately through appropriate Public Notice.

Receipt of this Circular may kindly be acknowledged.

Circular No. 62/2005-Cus.
December 09, 2005

F. No. 442/12/2004-Cus.IV (Pt.II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Subject:— Procedure for disposal of unclaimed/uncleared cargo under section 48 of the Customs Act, 1962, lying with the custodians—regarding

I am directed to invite your attention to the Boards Circular No. 50/2005-Cus. dated 01.12.2005 on disposal of claimed/uncleared cargo, under section 48 of the Customs Act, 1962. Para 3 of the said Circular deals with the disposal of unclaimed/uncleared cargo 'landed more than one year category' while para 4 of the Circular deals with the disposal of uncleared cargo landed 'less than one year category'. Field formations have raised doubt over the applicability of para 4 of disposal of cargo 'landed less than one' year category.

The matter has been examined by the Board. In order to clearly state the intention behind the para 4 of the Circular No. 50/2005-Cus. dated 01.12.2005, it has been revised as follows:—

"For uncleared/unclaimed goods which are lying for a period less than one year, the custodian would get the reserve price fixed by a panel of Government approved valuers appointed by the Custodian. Customs shall not associate itself with the valuation of the such goods lying uncleared with the custodian. 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 as detailed in para 3 without any 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."

Para 4 of the Circular No. 50/2005-Cus. dated 01.12.2005 would be replaced with the text as mentioned above.

The above instructions may be brought to the notice of all concerned immediately through appropriate Public Notice.

Receipt of this Circular may kindly be acknowledged.

APPENDIX V

OBSERVATIONS AND RECOMMENDATIONS

Sl. No.	Para No.	Ministry/Department concerned	Observations and Recommendations
1	2	3	4
1.	58	Ministry of Finance <i>(Department of Revenue)</i>	An Inland Container Depot (ICD) or Container Freight Station (CFS) is a common user facility which offers services for handling and temporary storage of import/export goods. They were established in order to facilitate the clearance of import and export goods of importers or exporters based in hinterland and were to function as a dry port. Under Section 45 of the Customs Act, 1962, the Commissioner of Customs approves a Custodian under whose custody all the imported goods unloaded in a customs area remains till they are cleared from ICDs/CFSs for home consumption, warehoused or transshipped. The clearance/disposal of uncleared and unclaimed goods is to be initiated and carried out by the Custodian as per the instructions in vogue.
2.	59	-do-	The Committee's examination of the subject is based on the Audit Review on the working of Inland Container Depots (ICDs)/ Container Freight Stations (CFSs) in relation to clearance/disposal of uncleared/ unclaimed cargo on payment of appropriate customs duty to the Government. For this, Audit had conducted test-check

1	2	3	4
			<p>of records of customs as well as custodians <i>i.e.</i> ICDs/CFSS located in 13 Commissionerates for three years <i>i.e.</i> from 2000-01 to 2002-03 with the objective of assessing whether Revenue due to the Government <i>viz.</i> duty on uncleared/unclaimed goods at ICDs was recovered in time. The Committee's examination of the subject has revealed a number of deficiencies in the system. There have been instances where the prescribed rules/regulations and procedures have not been followed in respect of disposal of uncleared/unclaimed goods leading to inordinate delay in their disposal and consequent non-recovery/delay in recovery of customs duty on auctioned goods etc. The existing monitoring mechanism in the Ministry/ Department in respect of functioning of ICDs/CFSS, also seem to be very weak and ineffective. These issues have been discussed in detail in the succeeding paragraphs.</p>
3.	60	<p>Ministry of Finance (Department of Revenue)</p>	<p>As per the extant instructions of Central Board of Excise and Customs (CBEC) contained in their Circular No.50/97 of October, 1997 in respect of disposal of unclaimed/ uncleared goods lying with Custodians, all goods that landed till 1.1.1994 and were lying uncleared/unclaimed were to be disposed off by Custodians even without NOC from Customs. For goods that landed between 1.1.1994 and 31.12.1996, it was prescribed that a monthly list of Cargo due for disposal was to be</p>

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			<p>prepared and sent to Customs for NOC and if no intimation was received from Customs within 30 days Custodian was to presume that the former had no objection and could go ahead with disposal. Further, according to these instructions in respect of goods pending since 1997 a monthly list was to be sent to Customs for their permission to dispose off cargo within 30 days failing which the Custodian would be free to dispose off these goods. The Board <i>vide</i> their Circular No.7/2004 dated 28.1.2004 further simplified the procedure for disposal of unclaimed/uncleared cargo landed upto 31.3.2003, wherein the waiting period for customs clearance/NOC has been reduced from 30 to 15 days.</p> <p>Notwithstanding the simplified procedure prescribed by the Board from time to time, Audit scrutiny of records of 37 ICDs/ CFSs in 13 Commissionerates had revealed that goods worth Rs. 540.47 crore imported between 1985 and March 2003 were awaiting disposal for periods ranging from one to eighteen years resulting in blockage of duty amounting to Rs. 192.81 crore apart from notional loss of interest of Rs. 58.41 crore. Out of this outstanding, there were a number of high money value cases pertaining to six Commissionerates viz., Chennai (sea), Tiruchirapalli, JNCH, Mumbai, Pune (Customs), Mumbai (sea) and Delhi. The total number of containers involved in these cases were 4748, which were</p>

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			<p>valued at Rs.514.97 crore and involved duty of Rs.183.50 crore alongwith notional loss of interest of Rs.55.79 crore. Thus, these high value cases involved 95% of duty blockage <i>i.e.</i> Rs.183.50 crore from out of total duty of Rs.192.81 crore recoverable. In this connection, the Committee have been informed by the Ministry that in respect of Chennai (Sea), out of 436 containers, 140 had been disposed of for Rs.6.38 crore. Of the remaining 296 containers, 241 containers are pending due to court cases/CESTAT and under BIFR action/investigation. Only 55 containers involving 39 cases valued at Rs.2.14 crore are stated to be still pending for disposal. As regards Tiruchirapalli, all the 1017 containers imported by a Public Sector Company were bonded due to non-clearance by the importer and are awaiting disposal action. In respect of JNCH, Mumbai, out of 1712 containers 1207 have been disposed of and out of balance 505 containers 333 are still under process of disposal. In so far, as Pune Customs, out of 63 Twenty feet Equivalent Units, 21 have been disposed of and in respect of balance goods, the issue had been taken up by the Department and Custodians with the concerned Municipal Authorities for settling the issue relating to payment of octroi tax. As regards, Mumbai (Sea), unclaimed cargo consisted of only 111 Twenty feet equivalent units (TEUs) and 43 Less than full Container Load (LCL) cargo, out of which 44 TEUs and 19 LCL</p>

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			<p>consignments were disposed of. The balance 67 TEUs and 24 LCLs were put to auction but could not be disposed of. In Delhi actual number of containers involved were only 854 for ICD-TKD and 28 for ICD(PPG). Out of these, 251 were disposed off, 384 containers pertain to hazardous waste which is a matter of litigation in Supreme Court and 103 containers were ripe for disposal.</p> <p>The Committee regret to observe that even after a lapse of more than 3 to 11 years from the date of their importation, a large number of containers/TEUs in respect of above 6 Commissionerates are still awaiting disposal on the pretext of one or the other reason. No concrete action seems to have been taken by the Ministry/Board to expedite disposal of pending cargo. What is surprising is the fact that the Board was just content with issuing routine circulars asking the Commissionerates to speed up disposal of pending cargo. The Committee feel that the Ministry should have taken a pro-active role and closely monitored the disposal of cases on a case to case basis with respect to each Commissionerate where considerable backlog of cargo was pending disposal/clearance for several years. That this was not done is regrettable. While deploring the lackadaisical attitude of the Government, the Committee recommend that the Ministry should immediately direct the concerned</p>

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4.	61	Ministry of Finance (<i>Department of Revenue</i>)	<p>Commissionerate to act swiftly in the matter to ensure early disposal of pending cargo. A definite time limit should be fixed for this purpose and any delay in this regard should be taken seriously and responsibility fixed both on the Custodian as well as the concerned officials of the respective Commissionerates.</p> <p>Apart from Cargo that is pending disposal with Custodians, Audit had pointed out cases of 115 containers valued at Rs.35 crore and involving customs duty of Rs.16.44 crore pending/locked up in court cases. Further, 25 containers valued at Rs.1.21 crore and involving duty of Rs.0.47 crore pending on account of these cases referred to Board for Industrial and Financial Reconstruction (BIFR), and 111 containers valued at Rs.10.04 crore detained by Departmental Agencies viz., Special Investigation and Intelligence Branch(SIIB)/Directorate of Revenue Intelligence(DRI)/ Dock Intelligence Unit (DIU) for investigation. Due to delay in the adjudication of these cases, duty amounting to Rs.4.75 crore was blocked. As regards the latest position with regard to disposal of these cases and the efforts made by the Board/Department to get the stay orders vacated, the Ministry have merely given an updated information on the number of cases of cargo pending alongwith their value. The reply was conspicuously silent with respect to action taken/efforts</p>

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5.	62	Ministry of Finance (<i>Department of Revenue</i>)	<p>made for getting the stay orders vacated from court as well as expediting the investigation process by the Departmental Agencies in respect of cargo held under detention. The Committee urge upon the Ministry to ensure that Commissionerate are directed to take all possible efforts for speedy trial of Court/BIFR cases. The Committee however, feel that there should not be any inordinate delay in cases of cargo that are pending investigation before SIIB/DRI/DIU which are Departmental Agencies. A definite time limit may be fixed for disposal of cases by these Agencies so as to protect the Government Revenue.</p> <p>Another disquieting feature has been the instances of delay in clearance of those cargo where there was no litigation. 1215 such containers of goods valued at Rs. 255.31 crore in various Commissionerates were not cleared timely leading to blockage of duty amounting to Rs. 59.27 crore. According to the Ministry, 157 such containers pertain to Chennai (Sea), 35 to Tuticorin, 1017 to Trichy and one case belongs to Coimbatore Commissionerate. Out of above cases with respect to Chennai (Sea), 102 containers had been disposed of and 55 are still pending. In respect of Tuticorin Commissionerate, all the 35 pending containers were stated to have been disposed of by March 2005 through Public auction. As regards Trichy, all the 1017 containers imported by a Public</p>

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			<p>Limited Company (M/s. Nagarjuna Oil Corporation) were stated to be pending. In so far as Coimbatore Commissionerate, out of 22 cases of seized, confiscated, unclaimed and uncleared cargo that was pending disposal, 18 were disposed of and 4 consignments are still pending. The Committee further note that in a Container Freight Station (Central Warehousing Corporation- Kolkata and Haldia) 74 consignments of goods of perishable nature valued at Rs. 4.44 crore were lying undisposed for a period ranging from 10 months to 6 years (December, 2003) resulting in blockage of revenue of Rs. 1.45 crore. In this connection, the Ministry have explained that out of 74 containers, 39 had been disposed of and 33 containers (11 in Haldia and 22 at Kolkata CWC) are lying uncleared. Despite a monitoring system/ arrangement in place whereunder the Custodians periodically submit the list of uncleared/unclaimed goods, pending with them, to jurisdictional Customs authorities and the same is monitored by them, it is incomprehensible as to how a large number of cases of cargo/containers were pending disposal with Custodians. Ironically the Task Force constituted in 2005 to suggest measures for expeditious disposal of imported unclaimed/uncleared/ confiscated cargo, in their Report have observed that the existing departmental instructions on disposal by sale of unclaimed/</p>

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6.	63	Ministry of Finance (<i>Department of Revenue</i>)	<p>uncleared and confiscated goods were clear and unambiguous and required no major revision/modification. The Task Force opined that had these instructions been strictly followed by Customs and Custodians, the position should have been that no confiscated goods older than about six months and unclaimed goods landed earlier than 31.3.2003 would be lying unsold. The Committee are, thus, inclined to conclude that the instructions of Board are not being followed in letter and spirit by the Commissionerates. The Board also, after having issued the necessary instructions, did not seem to have bothered to ensure their strict compliance by the field officials. This reflects the sorry state of affairs prevalent in Board as well as in field units as regards to expeditious disposal of confiscated goods. Not only it is necessary to ensure strict compliance of instructions, the Board should examine the feasibility of evolving a system of periodical physical verification by an appropriate machinery of the cargo to be disposed of. For this, special cargo disposal cells may be set up in each of the Commissionerate.</p> <p>The Committee note that out of 1215 containers of goods, which were free from litigation, a large consignment of goods <i>i.e.</i> 1017 containers were stated to have been imported by a Public Limited Company (M/s. Nagarjuna Oil Corporation Ltd.) during</p>

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			<p>November, 1999 to September 2000 and in April 2001. These goods valued at Rs. 243.64 crore and involving duty of Rs. 53.79 crore, had remained uncleared in the bonded warehouse. The notional loss of interest on account of blockage of customs duty was worked out to be Rs. 25.14 crore. Explaining the reasons for non-disposal, the Chairman, CBEC stated during evidence that the equipment imported was specific for an Oil Refinery and the importer could not clear the goods because of his inability to arrange finances for payment of duty. According to him, it is a matter of subjective judgement whether customs should wait for the clearance to be effected by the importer or whether it should be sold at a scrap value. The Committee are concerned to note that there are no guidelines with regard to fixing cut- off period or time limit for disposal of goods in respect of such cases, where the importer/consignee could not clear the goods due to financial difficulties. During evidence, the Secretary (Revenue) had deposed that the Task Force constituted to suggest measures for expeditious disposal of uncleared/unclaimed and confiscated goods etc. would look into this matter. However, the Committee now find that the Report of Task Force is conspicuously silent in this regard. The Committee would, therefore, recommend that in cases where imported cargo is uncleared/unclaimed on account</p>

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7.	64	Ministry of Finance (<i>Department of Revenue</i>)	<p>of non-clearance by the importer/ consignee owing to financial difficulties or otherwise, Government should formulate guidelines for fixing time-limit/cut-off period, within which all the pending cargo should be disposed off.</p> <p>One of the important prerequisites for effective administration is to ensure proper monitoring of the system that is in place. Monitoring involves ensuring proper maintenance of prescribed records by the concerned authorities and to keep a close and continuous watch on the working of the system and also initiating timely and effective action in cases of default. For this, the Internal Audit Wing of a Department is expected to play an effective role. The Committee were given to understand that the role of Internal Audit Wing of the Customs Department is limited to auditing of statutory records relating to clearance of goods and payment of duty on imports and exports, maintained by the Department. It does not undertake audit of ICD/ CFS in relation to checking of the records in respect of goods that were awaiting disposal. Even where the Department has admitted the role of Internal Audit, they have not performed their functions effectively resulting in cases of delayed/ non-disposal of goods pending for disposal. The Committee, therefore, recommend that Internal Audit system in Customs Department should be revamped and strengthened so</p>

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8.	65	Ministry of Finance (<i>Department of Revenue</i>)	<p>that they perform their role satisfactorily. Their scope and ambit should also be broadened so as to bring all the records of cases pertaining to non-disposal of cargo by the Custodian under their scrutiny/check.</p> <p>Under the extant rules/arrangements, responsibility for clearance/disposal of goods lies with the Custodian and the role of Customs in disposal of cargo is to examine the status of cargo and give permission to Custodians when sought for under the Customs Act. The Committee are informed that in case of non-fulfillment of the obligations by the Custodians the concerned Commissioner of Customs can cancel the approval given to them to operate ICDs/CFSs. However, no detail Rules empowering the Customs to take any punitive/deterrent action against the Custodians in such cases have been framed. Further, no safeguards for protection of Revenue in cases of negligence or violations of the conditions/guidelines by the Custodians exist in the Customs Act. The Committee feel that Government should formulate appropriate rules and guidelines to control the activities of the Custodian so that in the event of their failure to adhere to the obligations, the Department/Board can take suitable punitive action against the erring Custodians so that revenue could be protected. For this, if necessary, the Customs Act, 1962 may be amended.</p>

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9.	66	Ministry of Finance (<i>Department of Revenue</i>)	<p>Apart from non-disposal of un-cleared/unclaimed cargo there also exist cases where there were inordinate delays in disposal of these goods ranging from six months to as much as fifteen years. The Ministry have attributed these delays by saying that the goods could not be disposed of early and repeated auctions had to be conducted to dispose them off. Another factor leading to such delays is stated to be the inability on the part of the Custodian in taking prompt and immediate action in disposal of goods that had become ripe for disposal. Though <i>suo-motu</i> action was required to be taken by the Custodian for disposal of goods they unnecessarily chose to seek permission of the Customs Department to dispose off the goods thereby leading to considerable avoidable delays. The Committee desire that there should be close coordination between Custodians and Customs to ensure speedy disposal of goods. The monitoring mechanism for speedy/expeditious disposal of un-cleared/unclaimed goods in the Customs Department also needs to be strengthened. For this, the Committee recommend that the CBEC should examine the feasibility of constituting a core group at the Board level, which should meet at regular intervals for monitoring the progress made in expeditious disposal of un-cleared/unclaimed goods in various ICDs/CFSS.</p>

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10.	67	Ministry of Finance (<i>Department of Revenue</i>)	<p>In terms of Section 126 of the Custom's Act 1962, ownership of confiscated goods vests in the Central Government which is required to promptly dispose them to avoid loss of revenue due to deterioration of quality, commercial value of the goods and excess expenditure incurred in the maintenance of the goods etc. Even in such cases, the Committee have come across considerable delays on the part of the Customs authorities. In eight Commissionerates, goods valued at Rs 27.23 crore involving duty of Rs. 10.74 crore were confiscated between 1991-2003 and the same were awaiting disposal for periods ranging from 8 months to 12 years resulting in consequential loss of interest amounting to Rs. 3.64 crore. During their recent visit to Kolkata Customs, the Committee were informed that there has been a lack of persistent follow up, in addition to legal incumbrances in the matter of disposal of confiscated/seized goods. The Committee were apprised that goods valued at Rs. 2.02 crore were still awaiting disposal in their Commissionerates. The Committee regret to find that no specific timeframe has been prescribed for disposal of confiscated/seized goods. The Committee recommend that Ministry/Department should look into the matter with a view to find ways and means to simplify the procedures for expeditious disposal of cargo. Further, a time limit should also be fixed for all</p>

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11.	68	Ministry of Finance (<i>Department of Revenue</i>)	<p>categories of confiscated/seized goods with a view to dispose them expeditiously.</p> <p>The Committee find that in Delhi Commissionerate (ICD,TKD) imported goods such as brass dross/eckart ink were put for auction and when they could not be sold in the first auction they were again put for repeated auction in the next four auctions. After the fifth auction, the said item was declared as restricted by the Department. In a written information furnished to the Committee, the Ministry while admitting the lapse stated that the No Objection Certificate was inadvertently issued overlooking the aspect that the goods in question were allowed only to units registered with the Ministry of Environment & Forests, Government of India and by the actual user condition. Such serious lapse on the part of the Board/Department has revealed deficiencies in the procedures and monitoring systems in clearance of the goods for disposal. Such avoidable lapses render considerable loss of time and money to the exchequer in terms of expenditure incurred on auction. The Committee recommend that the procedures/guidelines involved in examination/scrutiny of cargo before their clearance for disposal, should be reviewed in their entirety. The management information system in this regard</p>

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12.	69	Ministry of Finance (<i>Department of Revenue</i>)	<p>should be strengthened and periodically reviewed so that such lapses do not recur in future.</p> <p>In yet another case export goods <i>i.e.</i> ready-made garments, compact disc, hand tools and electronic goods worth Rs. 63.15 crore which entered for export between 1985 and 2003 were lying in the export shed in Delhi Commissionerate as unclaimed/detained/ confiscated/ seized. Non-disposal of such items, having short span of life, resulted in their commercial value being lost leading to loss of revenue amounting to Rs. 49.88 crore apart from blocking of revenue amounting to Rs. 13.27 crore on other goods. The Ministry have contested this Audit finding by saying that the goods under question were not seized or confiscated. Some of them were connected with investigation by Customs and the remaining were abandoned export goods over which Customs had no claim. It has been contended that abandoned export goods did not come either under the category of seized or confiscated goods and therefore their non-disposal did not involve any Revenue loss. The Committee are of the opinion that since the abandoned goods occupy considerable space of the godowns of ICDs/CFSs thereby involving opportunity cost, it is imperative that the status of abandoned goods should be properly defined and appropriate amendments to this effect should be made in the Customs Act, 1962</p>

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13.	70	Ministry of Finance (<i>Department of Revenue</i>)	<p>so as to recover the costs involved in their maintenance. The Board should also formulate guidelines/instructions with respect to the modalities for their disposal.</p> <p>The Committee are deeply perturbed to note that an atmosphere of non-accountability is prevailing in the entire system of disposal of pending cargo. While Customs Department have no powers to take action against the Custodians for inordinate delay in disposal of cargo, the Ministry/Board have also shirked their responsibility to fix responsibility on the concerned officials for delay in disposal of goods on the plea that it is the Custodian who is responsible for disposal of pending cargo. With a view to address this problem, the Committee recommend that Ministry of Finance should constitute a high level Committee comprising of members of the CBEC and other experts on the subject, to go into the entire gamut of functioning of ICDs/CFSS and Customs Commissionerates, in relation to disposal of pending uncleared/unclaimed goods and also to investigate into the causes for inordinate delay in disposal of cargo, on a case to case basis and fix responsibility on the concerned Customs officials and the Custodians.</p>
14.	71	-do-	<p>In January, 2004 the Ministry of Finance are stated to have introduced e-auction system at field level with the objective of</p>

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			<p>providing time efficient and transparent procedure for disposal of cargo. The e-auction software is presently being implemented in Chennai, Mumbai II and Bangalore Commissionerates. As regards its status of implementation, the Ministry have informed that e-auction had helped in facilitating a time-bound and efficient mechanism for disposal of cargo and also eliminated cartelization in auction procedure and the same would be implemented in other Commissionerates in a phased manner. The Committee expect the Ministry of Finance to take necessary steps to introduce/ implement e-auction in all the Commissionerates in a time-bound period. They also hope that e-auction would cut red tape and simplify the procedures in clearance/disposal of the uncleared/unclaimed goods in an expeditious manner so as to safeguard the revenue of the Government. The Committee would also like to be apprised of the further progress made in this regard.</p>
15.	72	Ministry of Finance <i>(Department of Revenue)</i>	<p>The Committee are informed that a Task Force headed by Chief Commissioner of Customs, New Delhi and comprising of Chief Commissioner of Customs of different zones was set up by the Ministry of Finance on 27th June, 2005 to suggest administrative measures including monitoring mechanism for clearance of cargo lying undisposed/ uncleared/</p>

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			<p>unclaimed or confiscated beyond specific period of time, in an expeditious manner, by effective use of IT sources, appropriate development of manpower etc. The Committee regret to observe that the subject-disposal of uncleared/unclaimed/ confiscated cargo seems to have been neglected by the Department/ Board until Audit conducted a review on the working of ICDs/ CFSs and Public Accounts Committee took up the subject for detailed examination. It is only after that the Ministry woke up to the problem and constituted a Task Force. The Committee are of the opinion that had the Ministry seized of the problem and taken corrective measures well in advance, things would not have come to such a pass.</p> <p>The Task Force had submitted its Report in September, 2005. Important recommendations made by the Task Force are stated to be as under:</p> <p>(i) The procedure laid down in the last Circular dated 28.01.2004 should be put in place as a permanent measure. However, the procedure should be made applicable only to unclaimed/ uncleared cargo landed at least one year prior to the date on which the list of goods for customs “no objection” is prepared. The total number of auctions/tenders to which a lot is subjected should be four, with the goods to be necessarily sold for the highest bid in the last auction/tender</p>

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			<p>regardless of the reserve price fixed.</p> <p>(ii) All other Custom Houses should mandatorily introduce e-auctions utilizing the software developed by Chennai Custom House within 100 days of the Task Force report being approved by the Board. The physical auctions should be altogether discontinued once the e-auction has become operational. Such e-auctions would not only cover goods confiscated by Customs or time-expired warehoused goods but also to uncleared/unclaimed cargo lying with the custodians required to be disposed of under Section 48.</p> <p>(iii) The Customs Act, 1962 should be amended to provide that if the importer does not avail of the option given to him for taking delivery of the goods on a provisional basis, the Department may offer the goods for sale in public auction after giving a notice of say 30 days to the importer. The sale proceeds should be kept in a fixed deposit with the nationalized bank until the case is decided and the proceeds be disposed of depending on the final outcome.</p> <p>As a follow up of Task Force Report, the CBEC have issued two circulars on 1st and 9th December, 2005 prescribing a revised Procedure for expeditious disposal of unclaimed/uncleared cargo under Section 48 of the Customs Act lying with the Custodians—both Public and Private. The Committee hope that the revised Procedure prescribed</p>

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			<p>by the Board in the light of Task Force Report would cut down the delays and enable the Custodians to dispose unclaimed/uncleared goods expeditiously and also protect the revenue due to the Government. They also recommend that Ministry of Finance should apprise them of the progress made in the disposal of all pending cargo in the light of the revised Procedure.</p>

PART-II

MINUTES OF THE FOURTH SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE (2005-2006) HELD ON 1st JULY, 2005

The Committee sat from 1100 hrs. to 1245 hrs. on 1st July, 2005 in Committee Room "B", Parliament House Annexe, New Delhi.

PRESENT

Prof. Vijay Kumar Malhotra — *Chairman*

MEMBERS

Lok Sabha

2. Shri Ramesh Bais
3. Shri Khagen Das
4. Shri Brajesh Pathak
5. Shri Madan Lal Sharma
6. Shri Brijbhushan Sharan Singh
7. Dr. Ramlakhan Singh
8. Kunwar Revati Raman Singh
9. Shri Tarit Baran Topdar

Rajya Sabha

10. Shri Prasanta Chatterjee
11. Shri C. Ramachandraiah
12. Shri Jairam Ramesh
13. Prof. R.B.S. Verma

SECRETARIAT

1. Shri Ashok Sarin — *Director*
2. Shri N.S. Hooda — *Under Secretary*

Officers of the office of the Comptroller and Auditor General of India

1. Ms. Mohua Chatterjee — ADAI
2. Ms. Minakshi Ghose — Pr. Director

**Representatives of the Ministry of Finance
(Department of Revenue)**

- | | | | |
|----|-------------------------|---|--|
| 1. | Shri K.M. Chandrasekhar | — | Secretary (Revenue) |
| 2. | Shri A.K. Singh | — | Chairman (CBEC) |
| 3. | Shri M. Jayaraman | — | Member (Customs & EP) |
| 4. | Shri V.P. Singh | — | Member (RI&I/ST) |
| 5. | Shri Kailash Sethi | — | Member (L & J/Computerisation) |
| 6. | Shri J.K. Batra | — | Chief Commissioner of Customs, Chennai |
| 7. | Shri Ramesh Ramachandra | — | Chief Commissioner of Customs, New Delhi |
| 8. | Shri S. Basu | — | Chief Commissioner of Customs, Kolkata |
| 9. | Shri S.S. Bedi | — | Chief Commissioner of Customs, Amritsar |

2. At the outset, the Chairman, welcomed the Members and the Officers of C&AG to the sitting of the Committee. The Chairman informed the Members that the sitting has been convened to take oral evidence of the representatives of the Ministry of Finance (Department of Revenue) and Central Board of Excise and Customs (CBEC) regarding “Non-disposal of uncleared/unclaimed imported cargo”. Thereafter, the Officers of the Office of C&AG briefed the Committee on the specific points arising out of Paragraph 3.7 of Audit Report No. 10 of 2005 (Union Government– Indirect Taxes). Then the representatives of the Ministry of Finance (Department of Revenue) and CBEC were called and the Committee commenced the oral evidence. The Secretary, Department of Revenue and Chairman, CBEC explained to the various points and queries raised by the Members. To certain queries, for which the witnesses could not give satisfactory reply, the Hon’ble Chairman directed that Ministry of Finance (Department of Revenue) might furnish the requisite information in writing at the earliest.

3. A copy of the verbatim proceedings of the sitting has been kept on record.

4. The Committee decided to meet again on 14 and 15 July, 2005.

The Committee then adjourned.

MINUTES OF THE NINETEENTH SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE (2005-2006) HELD ON 14TH MARCH, 2006

The Committee sat from 1600 hrs. to 1630 hrs. on 14th March, 2006 in Room No. "51" (Chairman's Chamber), Parliament House, New Delhi.

PRESENT

Prof. Vijay Kumar Malhotra — *Chairman*

MEMBERS

Lok Sabha

2. Shri Khagen Das
3. Shri R.L. Jalappa
4. Dr. R. Senthil
5. Dr. Ramlakhan Singh
6. Shri K.V. Thangka Balu

Rajya Sabha

7. Shri R. K. Dhawan
8. Shri V. Narayanasamy

SECRETARIAT

1. Shri S.K. Sharma — *Additional Secretary*
2. Shri A. Mukhopadhyay — *Joint Secretary*
3. Shri Ashok Sarin — *Director*
4. Shri M.K. Madhusudhan — *Under Secretary*

Officers of the office of the Comptroller and Auditor General of India

1. Shri Jayanti Prasad — Principal Director (INDT-Cus)
2. Shri R. P. Singh — Principal Director (Scientific Departments)

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee. The Committee then took up for consideration the following draft Reports and approved the same:

- (i) Draft Report on Paragraph No. 3.7 of the Report of C&AG of India for the year ended March 2004, No. 10 of 2005 (Indirect Taxes—Customs) relating to "Non-disposal of Uncleared/Unclaimed Imported Cargo in ICDs/CFSS" and
- (ii) Draft Report on Action Taken on the recommendations contained in the 62nd Report of PAC (13th Lok Sabha) relating to "Ganga Action Plan."

3. The Committee authorised the Chairman to finalise these Reports in the light of verbal and consequential changes arising out of factual verification by Audit or otherwise and present the same to the House.

4. The Chairman apprised the Members of the work done by the Committee. He stated that 27 Reports – 12 Original and 15 Action Taken – were finalised and presented within a short period of a year and a half during the two terms of 14th Lok Sabha i.e. September 2004 to April 2005 and May 2005 to April 2006. While referring to the qualitative and substantial work done by the Committee, he observed that this could not have been possible but for the active participation and interest evinced by all the Members.

5. The Committee also placed on record their appreciation of the valuable assistance rendered by the Officers of the C&AG and the commendable work performed by the Committee Secretariat in the examination of various subjects and finalisation of the Reports thereon.

The Committee then adjourned.

CORRIGENDA TO THE 27th REPORT OF PAC (2005-2006)

Sl.No.	Page No.	Para/Line	For	Read as
1	(i)	6	(No. 19 of 2005)	(No. 10 of 2005)
2	(i)	10	62/2005	52/2005
3	33	3	No. 19 of 2005	No. 10 of 2005
4	35	3.7.1 line 3	importantion	importation
5	35	3.7.1 (b) line 2	Rs. 71.15 lakh	Rs. 72.15 lakh
6	48	Line 1	Circular No. 62/2005 Cus	Circular No. 52/2005 Cus
7	70	Line 6 from below	Prof. R.B.S. Verma	Prof. R.B.S. Varma