

COMMITTEE ON SUBORDINATE LEGISLATION
(2021-2022)

(SEVENTEENTH LOK SABHA)

EIGHTEENTH REPORT

**ACTION TAKEN BY THE GOVERNMENT ON THE OBSERVATIONS/RECOMMENDATIONS
CONTAINED IN THE NINTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(SEVENTEENTH LOK SABHA) ON "THE SEA CARGO MANIFEST AND TRANSHIPMENT
REGULATIONS, 2018 [G.S.R. No.448(E) OF 2018".**



सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI
February, 2022/ Magha, 1943(Saka)

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(PRESENTED TO LOK SABHA ON 08.02.2022)



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MEMBERS OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2021-2022)

Shri Balashowry Vallabhaneni

Chairperson

Members

2. Shri Jyotirmay Singh Mahato
3. Shri Pinaki Mishra
4. Shri Chandeshwar Prasad
5. Shri N.K.Premachandran
6. Shri Suresh Pujari
7. Shri A.Raja
8. Shri Nama Nageshwar Eao
9. Shri Sanjay Seth
10. Shri Mahendra Singh Solanki
11. Shri Su Thirunavukkarasar
12. Shri B.Manickam Tagore
13. Shri Ram Kripal Yadav
14. Vacant
15. Vacant

SECRETARIAT

1. Shri R.C.Tiwari - Additional Secretary
2. Shri T.S. Rangarajan - Director
3. Smt. Jagriti Tewatia - Additional Director
4. Shri S.Lalengzau Ngaihte - Under Secretary

INTRODUCTION

I, the Chairperson, Committee on Subordinate Legislation having been authorised by the Committee to submit the Report on their behalf, present this Eighteenth Action Taken Report.

2. This Report relates to the action taken on the Observations/Recommendations of the Committee contained in the Ninth Report (2020-2021) (Seventeenth Lok Sabha) which was presented to Lok Sabha on 23.03.2021.

3. The Committee considered and adopted this Report at their sitting held on 15.12.2021

4. The summary of recommendations contained in the Ninth Report and action taken reply of the Government thereon have been reproduced in Part-II (Appendix-I) of the Report.

5. The Extracts of the Minutes of the Eighth sitting of the Committee relevant to this Report are brought out in Appendix-II.

6. An analysis of the action taken by Government on the recommendations contained in the Ninth Report of the Committee (Seventeenth Lok Sabha) is given in Appendix III of the Report.

New Delhi;
February, 2022
Magha, 1943 (Saka)

BALASHOWRY VALLABHANENI
Chairperson,
Committee on Subordinate Legislation

REPORT

This Report of the Committee on Subordinate Legislation (2020-2021) deals with the action taken by the Government on the Observations/Recommendations contained in the Ninth Report (Seventeenth Lok Sabha) of the Committee which was presented to Lok Sabha on 23.03.2021. The Ninth Report dealt with the Regulations pertaining to "The Sea Cargo Manifest and Transhipment Regulations, 2018 [G.S.R.No.448 (E) of 2018]".

2. The shortcomings observed on the above Regulations and the Observations/Recommendations made by the Committee in respect of these shortcomings are contained in paras 4 and 7 of the Ninth Report (17th Lok Sabha). The Report, after presentation was forwarded to the Ministry of Finance (Department of Revenue) for implementation of the recommendations contained therein. The Ministry of Finance (Department of Revenue) vide their OM No. 450/58/2015-Cus IV(Pt) dated 16th August, 2021 furnished their action taken replies on all the Observations/Recommendations contained in the Report. A statement showing the Observations/Recommendations made by the Committee and Action Taken by the Government on the same is given in Part II of the Report.

3. Replies to the observations/recommendations contained in the Report have broadly been categorized as follows:-

(i)	Observations/Recommendations which have been accepted by the Government Sl. Nos. 4 and 7	Total 2
(ii)	Observation/Recommendation which the Committee do not desire to pursue in view of the Government's reply. Sl.No. Nil	Total Nil
(iii)	Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee Sl. No. Nil	Total Nil
(iv)	Observation/Recommendation in respect of which final reply of the Government is still awaited Sl. No. Nil	Total Nil

4. The main Observations/Recommendations made by the Committee in its Ninth Report (17th Lok Sabha) pertaining to "The Sea Cargo Manifest and Transshipment Regulations, 2018 [G.S.R.No.448 (E) of 2018]" (Seventeenth Lok Sabha) and the action taken thereon by the Ministry of Finance (Department of Revenue) are briefly as follows:-

No definition of the term 'reasonable belief':

5. The Committee noted that in Regulation 11(2) of the aforesaid Regulations, the term 'reasonable belief' used is arbitrary and vague as it gives all encompassing powers to the Commissioner which can be misused in the absence of clarity. While drawing attention towards the earlier recommendations made by the Committee that the term appearing in an Act should be defined in the very statute itself and not in the rules made there under, the Committee had pointed out that in this case the term 'reasonable belief' had neither been defined in the relevant Act nor in the Regulations. The Committee had therefore, recommended that the term 'reasonable belief' may be explicitly explained in the Regulations and if feasible be defined in the relevant Acts also by bringing in suitable amendment. The Ministry of Finance (Department of Revenue) in their Action Taken Reply submitted that by accepting the Committee's recommendation they have amended Regulation 11(2) of the Sea Cargo Manifest and Transshipment Regulations, 2018 vide Notification No.61/2021-Customs (N.T.) dated 23.07.2021 (**Annexure-I**).

No time limit for report of inquiry:

6. In Regulation 12(5) of the above Regulations no time limit was provided within which the Deputy/Assistant Commissioner of Customs, shall prepare a report of the inquiry recording of his findings after the conclusion of the inquiry regarding notice issued to the authorized carrier by the Jurisdictional Commissioner of Customs in-connection with proposed revocation of authorized carrier registration. The Committee had felt that absence of any time limit for preparing report of inquiry, may give rise to arbitrary use of discretionary powers in the context of recording his findings by the Deputy/Assistant Commissioner of Customs, and in making conclusion in the inquiry, which may have adverse impact for which notice is issued to the authorized carrier. The Committee had therefore, recommended that the Ministry may bring out necessary amendment in the Regulations so as to make the provision transparent and void of any manipulation. The Ministry of Finance (Department of Revenue) in their Action Taken Reply informed that by accepting the Committee's recommendation, they have amended Regulation 12 (5) of the Sea Cargo Manifest and Transshipment Regulations, 2018 vide Notification No.61/2021-Customs (N.T.) dated 23.07.2021 (**Annexure-I**).

7. The Committee are satisfied to note that the Ministry of Finance (Department of Revenue) have accepted the Committee's recommendations made at paragraphs 4 and 7 in the Ninth Report of the Committee (17th Lok Sabha) and as per recommendations of the Committee, the Regulations 11(2) and 12(5) of the Sea Cargo Manifest and Transhipment Regulations, 2018 vide G.S.R.504 (E) published in Gazette Notification No.61/2001-Customs (NT) dt. 23rd July, 2021.

Annexure

सं. ६१/२०२१-कस्टम, के द्वारा सशाधन

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

NOTIFICATION

New Delhi, the 23rd July, 2021

No. 61/2021-Customs (N.T.)

G.S.R. 504(E).—In exercise of the powers conferred by section 157, read with sections 30, 30A, 41, 41A, 53, 54, 56, sub-section (3) of section 98 and sub-section (2) of section 158 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following regulations further to amend the Sea Cargo Manifest and Transhipment Regulations, 2018, namely: -

1. Short title and commencement. - (1) These regulations may be called the Sea Cargo Manifest and Transhipment (Fifth Amendment) Regulations, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Sea Cargo Manifest and Transhipment Regulations, 2018 (hereinafter referred to as the said regulations), in regulation 3,-

(a) for sub-regulation (2), the following sub-regulations shall be substituted, namely:-

“(2) Where the Jurisdictional Commissioner of Customs is satisfied with the information provided by the applicant in the Form-I, he shall register such applicant for transacting business under these regulations”;

(b) for sub-regulation (4), the following sub-regulation shall be substituted, namely: -

“(4) The registration shall be valid unless and until revoked in terms of the provisions under regulation 3A or regulation 11:

Provided that the registration of the authorised carrier shall be deemed invalid if the authorised carrier is found to be inactive for a period of one year.

Explanation.- The term 'inactive' refers to an authorised carrier who does not transact any business pertaining to Customs during a period of one year, excluding the period for which registration has been suspended under regulation 11.”;

(c) after sub-regulation (5), the following sub-regulation shall be inserted, namely: -

“(5) Subject to the provisions of sub-regulation (1A), the Jurisdictional Commissioner of Customs may, on an application made by the authorised carrier in Form IA, after the registration has been deemed invalid under sub regulation (4), renew the registration from the date of expiration, after satisfying himself that the

applicant is otherwise eligible for registration under this regulation within one month of the date of receipt of the application”.

3. In the said regulations, after regulation 3, the following regulation shall be inserted, namely:-

“**3A. Surrender of registration.**- (1) An authorised carrier may surrender his registration issued under regulation 3 through a written request to the Jurisdictional Commissioner of Customs.

(2) On receipt of the request under sub-regulation (1), the Jurisdictional Commissioner of Customs may revoke the registration, if, -

(a) the authorised carrier has paid all dues payable to the Central Government under the provisions of the Act, rules or regulations made thereunder; and

(b) no proceedings are pending against the authorised carrier under the Act, rules or regulations made thereunder”.

4. In the said regulations, in regulation 11, for sub-regulation (2), the following sub-regulation shall be substituted, namely: -

“(2) The Commissioner of Customs may, subject to the provisions of regulation 12, suspend the operations of such authorised carrier in his jurisdiction by an order, for reason to be recorded in writing, on any of the following grounds, namely: —

(a) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;

(b) failure to comply with any of the conditions of the bond executed by him under these regulations;

(c) any misconduct, within his jurisdiction, which in the opinion of the Commissioner of Customs renders him unfit to transact any business in the Customs Station;

(d) adjudicated as an insolvent;

(e) of unsound mind;

(f) convicted by a competent court for an offence involving moral turpitude or otherwise”.

5. In the said regulations, in regulation 12, for sub-regulation (5), the following sub-regulation shall be substituted, namely: -

“(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare the report of inquiry and after recording his findings thereon, submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1)”.

6. In the said regulations, after Form I, the following Form shall be inserted namely :-

“**FORM - IA**

[See regulation 3 (5)]

Application by authorised carrier to renew registration

To,

The Commissioner of Customs

Custom House

Sl. No.	Particulars	Remarks
1.	Name of the authorised carrier with details of PAN	
2.	Full address of the authorised carrier	
3.	Custom House of issue	

4.	Has the applicant paid all dues payable to the Central Government under the provisions of the Customs Act, 1962 (52 of 1962), rules or regulations made thereunder? (Yes/No)	
5.	Whether bond and furnishing of security executed, if applicable is still active? (Yes/No)	
6.	Is there a change in the name and Permanent Account Numbers (PAN) of partner/partners or director/directors who will actually be engaged in the work as authorised carrier, in case the applicant is a firm or a company? If Yes, Provide the details:	(Yes/No)
7.	Reason for renewal	
	Declaration:	
(a)	I have working knowledge of English/local language (.....)/Hindi.	
(b)	The firm or company by whom the undersigned is employed have earlier held an authorised carrier registration under the Sea Cargo Manifest Transhipment Regulations, 2018 and not cancelled or suspended.	
(c)	The details of cases booked under the provisions of the Customs Act, 1962 (52 of 1962) against the applicant/the person proposed to be employed by the applicant	

I/We hereby affirm that I/we have read the Sea Cargo Manifest Transhipment Regulations, 2018 and agree to abide by them.

Date :

Signature of applicant".

[F. No. 450/58/2015- Cus IV(Pt)]

MANISH KUMAR CHOUDHARY, Under Secy.

Note : The principal regulations were published in the Gazette of India, Extraordinary, Part II, Section 3 Sub-section (i) vide number G.S.R. 448(E), dated the 11th-May, 2018 and were last amended vide notification No. 56/2021-Customs (N.T), dated the 30th June, 2021 vide number G.S.R. 457 (E), dated the. 30th June, 2021.

PART-II
(Appendix-I)

(Vide Para 4 of the Introduction of the Report)

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE OBSERVATIONS/RECOMMENDATIONS CONTAINED IN THE NINTH REPORT OF THE COMMITTEE (17th LOK SABHA) ON "THE SEA CARGO MANIFEST AND TRANSHIPMENT REGULATIONS, 2018 [G.S.R.No.448(E) of 2018".

The Sea Cargo Manifest and Transhipment Regulations, 2018.

Observations/ Recommendations of the Committee

The Committee note that in Regulation 11(2) of the Sea Cargo Manifest and Transhipment Regulations, 2018 (G.S.R. 448E dated 11 May,2018) it has been stated that, 'the Commissioner of Customs of any Customs Station on reasonable belief that operations of such authorized carrier is detrimental to the interest of revenue may suspend their operation in his jurisdiction by an order stating the grounds of suspension'. The Committee observe that the term 'reasonable belief' used in the Regulation is arbitrary and vague as it gives all encompassing powers to the Commissioner which can be misused in the absence of clarity. The Committee note that on being pointed out to the Ministry of Finance (Department of Revenue), the Ministry, vide OM dated 8 July,2019 submitted that, the term 'reasonable belief' has been used in Section 123 of the Customs Act,1962 and in Section 132 of the Central Goods and Services Act,2017. The Committee however, note with concern that the term 'reasonable belief,as submitted by the Ministry have not been defined in the two Sections of the Acts also. The Committee have time and again recommended that the term appearing in an Act should be defined in the very statute and not in the rules made there under, but in this case the term 'reasonable belief' has neither been defined in the relevant Act nor in the Regulations. In the opinion of the Committee, it is of utmost importance that the provision of legislation (including subordinate legislation) are spelt out with precision and, as far as possible, the use of vague expression, which may be interpreted differently by different persons should be avoided and the Regulations should be self-contained and drafted in a matter that no difficulty is caused to the public in interpreting it.

The Committee are also of the firm opinion that, vagueness and uncertainty in Regulations is bound to prejudicially affect the administration of justice by the rule making authority. The Committee further envisages that usage of such vague expressions which leaves scope of being interpreted differently by different persons may lead to litigations resulting in over burdening of the already over-burdened Courts/Administrative Tribunals. The Committee, therefore, recommend that the term 'reasonable belief' may be explicitly explained in the Regulations and if feasible be defined in the relevant Acts also by bringing in suitable amendment. The Committee may be apprised of the Action taken in this regard.

(Para 4 of the Report)

REPLY OF THE MINISTRY

Accepting the Committee's recommendation, Regulation 11(2) of Sea cargo Manifest and Transhipment Regulations, 2018, is amended as follows:

"The Commissioner of Customs may, subject to the provisions of regulation 12, suspend the operations of such authorized carrier in his jurisdiction by an order, **for reason to be recorded in writing**, on any of the following grounds, namely:-

- (a) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;
- (b) failure to comply with any of the conditions of the bond executed by him under these regulations;
- (c) any misconduct, within his jurisdiction, which in the opinion of the Commissioner of Customs renders him unfit to transact any business in the Customs station;
- (d) adjudicated as an insolvent;
- (e) of unsound mind;
- (f) convicted by a competent court for an offence involving moral turpitude or otherwise".

(Ministry of Finance, Department of Revenue)

(Central Board of Indirect Taxes & Customs)

OM F. No. 450/58/2015-Cus IV(Pt)

Dated: August 16th, 2021

Observations/ Recommendations of the Committee

The Committee note that Regulation 12(5) of the Sea Cargo Manifest and Transshipment Regulations, 2018 [G.S.R. 448 (E) dated 11 May, 2018] does not provide for any time limit within which the Deputy/Assistant Commissioner of Customs, shall prepare a report of the inquiry recording of his findings after the conclusion of the inquiry regarding notice issued to the authorized carrier by the Jurisdictional Commissioner of Customs in connection with proposed revocation of authorized carrier registration. The absence of any time limit for preparing report of inquiry may give rise to arbitrary use of discretionary powers in the context of recording his findings and in making conclusion in the inquiry, which may have adverse impact for which notice is issued to the authorized carrier. Therefore, specific time limits is needed to be provided in the regulations for completing the enquiry to prevent an unwanted scenario of delaying causing unnecessary delay. The Committee however, note with satisfaction that on being pointed out, the Ministry of Finance have taken note of the observation made and has agreed to examine the same. The Committee recommend that the Ministry may bring out the necessary amendment in the Regulations so as to make the provision transparent and void of any manipulation. The Committee may be apprised of the action taken in this regard.

(Para 7 of the Report)

REPLY OF THE MINISTRY

Accepting the Committee's recommendation, the regulation 12(5) of Sea Cargo Manifest and Transshipment Regulations, 2018 is amended as follows:

"At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner Customs, as the case may be, shall prepare the report of inquiry and after recording his findings thereon, submit the **report within a period of ninety days from the date of issue of a notice** under sub-section(1)".

(Ministry of Finance, Department of Revenue)

(Central Board of Indirect Taxes & Customs)

OM F. No. 450/58/2015-Cus IV(Pt)

Dated: August 16th, 2021

APPENDIX-II

(vide Para 5 of Introduction of the Report)

EXTRACTS FROM MINUTES OF THE EIGHTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2021-2022)

The eighth sitting of the Committee (2021-22) was held on Wednesday, the 15th December, 2021 from 1500 to 1715 hours in Committee Room No. B, Parliament House Annexe, New Delhi

PRESENT

1. Shri Balashowry Vallabhaneni Chairperson

MEMBERS

1. Shri Chandeshwar Prasad
2. Shri N.K. Premachandran
3. Shri Suresh Pujari
4. Shri A. Raja
5. Shri Nama Nageshwar Rao
6. Shri Sanjay Seth
7. Shri Ram Kripal Yadav

SECRETARIAT

1. Shri R.C.Tiwari - Joint Secretary
2. Shri T.S. Rangarajan - Director
3. Smt. Jagriti Tewatia - Additional Director

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. The Committee then considered the following draft Reports:-

(i) xx xx xx xx

(ii) xx xx xx xx

(iii) xx xx xx xx

(iv) The Eighteenth Report on action Taken by the Government on the Observations/Recommendations contained in the Ninth Report of the Committee on Subordinate Legislation (Seventeenth Lok Sabha) on the Sea Cargo Manifest and Transhipment Regulations, 2018 [G.S.R. No.448(E) of 2018.

3. After deliberations, the Committee adopted the same without any modification. The Committee also authorized the Chairperson to present the same to the House.

4. xx xx xx xx

5. xx xx xx xx

6. xx xx xx xx

7. xx xx xx xx

8. xx xx xx xx

9. xx xx xx xx

The Committee then adjourned.

XX Omitted portion of the Minutes are not relevant to this Report

APPENDIX-III

(vide Para 6 of Introduction of the Report)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE OBSERVATIONS/RECOMMENDATIONS CONTAINED IN THE NINTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(SEVENTEENTH LOK SABHA)

I	Total No. of observations/recommendations made	2
II	Recommendations that have been accepted by the Government [vide recommendations at Sl. Nos.4 and 7]	2
	Percentage of total	100%
III	Recommendations which the Committee do not want to pursue in view of Government reply	Nil
	Percentage of total	0%
IV	Recommendations in respect of which replies of the Government have not been accepted by the Committee.	Nil
	Percentage of total	0%
V	Recommendations in respect of which final replies of Government are still awaited	Nil
	Percentage of total	0%