Circular No. 12/2006 - Customs

F.No. 711/1/2006-Cus (AS)
Government of India
Ministry of Finance
Department of Revenue
C.B.E.C.

20th February, 2006

Subject :- Guidelines for the valuation and disposal by auction-cum-tender of seized, confiscated and time - expired goods – Reg.

I am directed to invite your attention to the constitution by the Central Board of Excise and Customs of a Task Force vide order F. No. 442/12/2004-Cus IV dt. 27.06.2005 to suggest effective measures to put in place a permanent mechanism for the expeditious disposal of unclaimed, uncleared, seized and confiscated cargo.

2. The Board has considered the findings/recommendations of the Task Force. The Task Force has identified the unrealistic fixation of fair/reserve price as the single most important reason for the delay in the disposal of uncleared, unclaimed, seized and confiscated goods, including time – expired warehoused goods. Therefore, the procedure set out in the following paragraphs is prescribed for the valuation and disposal by auction- cum- tender of seized, confiscated and time-expired warehoused goods.

3.1 The disposal by sale of seized, confiscated and time – expired warehoused goods shall take place simultaneously through public auction and sealed tender right from the first time that the goods are offered for sale.

3.2 The auction–cum–tender shall be held every month.

3.3 A Joint Pricing Committee (JPC) shall be constituted in each Customs Commissionerate charged with the responsibility of disposal of seized and confiscated goods.

3.4 The Joint Pricing Committee shall have the following composition:

i. Additional/Joint Commissioner in charge of Disposal

ii. Deputy/Assistant Commissioner in charge of Disposal

iii. Superintendent in charge of Disposal

iv. Deputy/ Assistant Commissioner holding any other charge

v. Superintendent holding any other charge

3.5 The JPC shall determine the Fair Price of the goods to be disposed of through auction-cum- tender. The Fair Price is the best price at which the goods can be sold under normal conditions. It can be expected to be somewhat lower than the price at which goods of the same kind and in the same condition could be sold by the buyer in the wholesale market, the difference representing the profit which the buyer at the auction expects to make.

3.6 The Fair Price should be fixed by ascertaining the probable price of such goods in the wholesale market, and subtracting from it a discount representing the profit of the buyer at the auction-cum-tender. This discount (varying according to the nature of the goods) may be 5% to 10% more than the estimated profit which the buyer at the auction-cum-tender can reasonably expect to make on resale, the increase being the incentive to the prospective buyer at the auction. Therefore, if an item can fetch Rs 100 in the wholesale market, and the margin of profit is Rs 20, then the discount may be fixed at 25% to 30%, and the fair price would be Rs 75 or Rs 70. While fixing the quantum of discount representing the margin of profit for the buyer at the auction, due importance should be given to the condition of the goods, the type of packing, the fact that no warranty and after-sale service is attached to the goods, the size of the consignment etc.

3.7 The book value of the goods shall have no bearing on the Fair Price. The CIF value and applicable rate of duty should find a place in the valuation file only to serve as a comparison with the Fair Price arrived at with reference solely to the wholesale market price. Further, such a comparison shall be valid only in respect of goods which have landed up to one year before the date on which they are valued for purposes of disposal. In respect of goods which have landed before one year from the date on which they are being valued for purposes of disposal, the book value shall not be used even as a tool for comparison with the Fair Price determined with reference to the wholesale market price.

3.8 There shall be no Reserve Price as distinct from Fair Price.

3.9 The wholesale market price of the goods offered for sale and the margin of profit shall be ascertained by Government Approved Valuers alone and not by Customs staff.

3.10 The highest bid in the auction-cum-tender shall be accepted by the JPC if the bid is more than, or equal to or close (not less than the Fair Price by 5% to 10%) to the Fair Price. Otherwise, the goods shall be put up for auction- cum-tender the second time. In the event of the goods not being sold in the first two auction-cum-tenders, the goods shall be sold at the highest bid obtained in the third auction-cum-tender. If any lots still remain unsold after the third offer for sale, the Commissioner should ascertain whether the JPC has good reason for the goods remaining unsold.

3.11 The goods should not be withdrawn from auction–cum-tender on flimsy grounds, such as the possibility that the goods may fetch a slightly higher price in a subsequent auction.

3.12 All post-auction/tender offers, even if these are for amounts higher than the successful bid, shall be strictly disregarded and not taken cognizance of in any manner.

3.13 In respect of complaints regarding determination of Fair Price and acceptance of bids in auction-cum-tender, the Commissioner shall immediately ascertain whether the prescribed procedure has been adhered to. The matter should not be referred for Vigilance scrutiny in a routine manner if the prescribed procedure has been followed.

3.14 All Custom Houses shall immediately introduce e-auction, and physical auction shall be discontinued within 100 days of the issue of these instructions.

3.15 The procedure as set out in paragraphs 3.1 to 3.14 above shall not be applicable to goods that are required, as per existing instructions, to be disposed of by sale to NCCF or through SBI or in any manner other than public auction-cum-tender.

4. These instructions are applicable to seized, confiscated and time-expired warehoused goods that have become ripe for disposal and in respect of which notice has been given to the owner of the goods as required under Section 150 and Section 72(2) of the Customs Act, 1962.

5. These instructions are issued in super cession of Ministry's instructions issued vide letter F.No. 711/39/2004-Cus(AS) dt. 17.09.2004, letter F. No.21/23/55-Cus-IV dt. 8.12.1956 (paragraphs 14,15,16,17 & 20) and letter F. No.4/63/57-Cus III dt. 7.9.1961.