

CUSTOMS CIRCULARS

F.No.605/25/2019-DBK

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs
(Drawback Division)

4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi
Dated 13th September, 2019

To

All Principal Chief Commissioners/ Chief Commissioners of
Customs/Customs (Preventive)/ Central Tax/Central Excise
and All Principal Directors General/Directors General
under CBIC

Madam/Sir,

Subject:- Revised Norms for Execution of Bank Guarantee under Advance Authorisation, DFIA and EPCG Schemes - reg.

Board is in receipt of references from field formations and inputs from trade and industry seeking clarification as to what should be the basis for waiver of Bank Guarantee to be executed with Customs in the Goods and Services Tax (GST) regime under AA, DFIA and EPCG schemes in respect of manufacturer exporters/service providers.

2. The matter has been examined. GST has come into force from 01.07.2017 whereby Service Tax as well as major portion of Central Excise have been subsumed in the GST. Board's Circular No. 58/2004-Cus dated 21.10.2004 (hereinafter referred to as 'the said Circular') as amended vide Circular Nos. 17/2009-Cus dated 25.05.2009, 32/2009-Cus dated 25.11.2009, 06/2011-Cus dated 18.01.2011, 08/2013-Cus dated 04.03.2013 and 15/2014-Cus dated 18.12.2014 inter alia prescribes the norms for execution of Bond/Bank Guarantee in respect of imports made under the AA, DFIA and EPCG Schemes. The said Circular and amending Circular No. 17/2009-Cus dated 25.05.2009 extend exemption from execution of Bank Guarantee based on export turnover, quantum of duty, tax paid etc.

3. In the wake of GST regime, the norms for execution of Bank Guarantee under AA, DFIA and EPCG schemes have been reviewed and the following clarification is given:-

(i) Manufacturer exporters/Service Providers registered with the GST authorities (Centre/State/Union Territory) who have been exporting during the previous two financial years and have minimum export of Rs. 1 crore or more during the preceding financial year shall also be eligible to claim exemption from furnishing Bank Guarantee under category (d) of importers specified in Table given in para 3.1 of the said Circular.

(ii) Manufacturer exporters/Service Providers registered with the GST authorities (Centre/State/Union Territory) who have paid GST of Rs.1 crore or more during the preceding financial year shall also be eligible to claim exemption from furnishing Bank Guarantee under category (e) of importers specified in Table given in para 3.1 of the said Circular.

4. In order to avoid difficulties in the GST regime regarding furnishing of proof of export performance or payment of duty required to be certified by the jurisdictional Superintendent of Central Excise (para 3.2(b) of the said Circular), it has been decided to discontinue the requirement for procurement of such certificate from Central Excise authorities. In other words, in cases where the AA/DFIA/EPCG authorisation holder is a registered member of an Export Promotion Council, he shall produce a certificate of export performance or payment of duty/GST for the purpose of availing Bank Guarantee exemption from the concerned Export Promotion Council on the lines of similar facility available earlier. In cases where the AA/DFIA/EPCG authorisation holder is not a registered member of an Export Promotion Council, he may produce such certificate duly authenticated by a practicing Chartered Accountant who is registered with the GST Department (Centre/State/Union Territory) for payment of GST. This is also on the lines of similar facility available earlier. The Chartered Accountant will mention his GSTIN and other registration details in the certificate on the lines stipulated earlier.

5. The other provisions of the said Circular, as amended from time to time, remain unchanged. A suitable Trade Notice and Standing Order may be issued for the guidance of the trade and staff. Difficulties faced, if any, in implementation of the Circular may be brought to the notice of the Board at an early date.

6. Receipt of the Circular may kindly be acknowledged.

(Ravi Kant)
OSD (Drawback)
Tel: 011 2336 2843

Circular No.58/2004-Cus
21st October, 2004

F.NO.605/ 40/2004-DBK
Government of India
Ministry of Finance
Department of Revenue

Sub : Revised Norms for Execution of Bond and Bank Guarantee under Advance License and EPCG Schemes – reg.

The Foreign Trade Policy for the period 2004-09 has come into force w.e.f. 1.9.2004. It has been provided in paragraph 2.27.1. of the said Policy that all exporters having an export turnover of at least Rs 5 crores in the current or preceding financial year and having a good track record of three years of exports will be exempted from furnishing a Bank Guarantee (BG) for any of the Schemes under the Policy and may furnish a LUT in lieu of BG. Further, paragraph 2.20 of the Hand Book of Procedures (Vol. I) prescribes that in cases of direct import, before clearance of goods through Customs, the licence holder shall execute a legal undertaking (LUT)/Bank Guarantee (BG) with the Customs authorities in the manner as may be prescribed by them.

2. In the light of these Policy provisions, the issue regarding execution of Bond/BG under DEEC and EPCG Schemes has been reviewed by the Board and in supersession of earlier DOR Circular Nos. 45/96-Cus., dated 28.8.96, 71/98-Cus., dated 15.9.98, 48/2003-Cus., dated 6.6.2003, 74/2003-Cus., dated 21.8.2003 and 79/2003-Cus., dated 4.9.2003, the following revised norms are prescribed for the purpose of furnishing Bond and BG under the said Schemes.

3 The bond under Advance License and EPCG Schemes shall be furnished in the format annexed to this Circular. The bond shall cover the duty ordinarily leviable on the goods but for the exemption. The bond shall be backed by a Bank Guarantee or cash security as per the norms prescribed in the following paragraph. Guarantee from a financial institution like IDBI, ICICI, UTI etc. may also be accepted in lieu of Bank Guarantee.

3.1 The Bank Guarantee/cash security shall be taken as per the following norms for the purpose of permitting clearance of imported goods under Advance License/EPCG Schemes.

| Category of Importer | Quantum of Bank Guarantee/cash security |
|--|---|
| (a) All exporters who have an export turnover (physical exports) of Rs 5 crores in current or preceding financial year and having a good track record of three years of exports | Nil |
| (b) Public Sector Undertaking | Nil |
| (c) Star Export House | Nil |
| (d) Manufacturer exporters registered with Central Excise, who have been exporting during the previous two financial years and have minimum export of Rs. 1 crore or more during the preceding financial year. | Nil |

| | |
|---|------|
| (e) Manufacturer exporters registered with Central Excise, who have paid central excise duty of Rs.1 crore or more during the preceding financial year. | NII |
| (f) Manufacturer exporters who are not covered under (a), (b),(c),(d) & (e) above. | 25% |
| (g) Others | 100% |

3.2. BG exemption as specified in Para 3.1 above shall be admissible subject to the following conditions:

- (a) The license holder has not defaulted on the export obligation in respect of any Advance License/EPCG Licence issued to him in the past. The BG exemption shall stand withdrawn if DGFT or Customs comes across default in export obligation against any Advance License/EPCG Licence issued.
 - (b) For the purpose of availing BG exemption in terms of Para 3.1 above, the exporter shall submit the proof of export performance or payment of duty, as the case may be, duly certified by the jurisdictional Superintendent of Central Excise in case he is registered with the Central Excise. In cases where the exporter is not registered with the Central Excise, but he is a registered member of an Export Promotion Council, he shall produce a certificate from the concerned Export Promotion Council. In other cases the exporter shall produce a certificate duly authenticated by a practicing Chartered Accountant, who is registered with the Central Excise Department for payment of service tax, along with evidences of export to the satisfaction of the Assistant Commissioner or Deputy Commissioner. The Chartered Account issuing the certificate will mention his STC code and other registration details in the certificate.
 - (c) The License holder should not have been penalized under the provisions of the Customs Act, 1962, the Central Excise Act, 1944, the Foreign Exchange Management Act (FEMA), 1999 or the Foreign Trade (Development and Regulation) Act, 1992 during the previous three financial years.
4. The facility of filing "Corporate Guarantee" as provided in DOR Circular No. 38/97-Cus dated 19.9.97 shall also continue to be available subject to fulfillment of conditions specified in the said Circular.
 5. In individual cases where the jurisdictional Commissioner of Customs/ DGFT authority /EPCG Committee/ALC/ is satisfied that a higher quantum of Bank Guarantee is justified on account of risk to revenue, 100% BG may be taken by the Customs after recording the reasons therefor in file.
 6. Where an importer so requests, a BG may be taken consignment-wise subject to the condition that such consignment-wise BG shall only be acceptable by the Customs at the port of registration of the license.
 7. The Bond/BG shall be filed for a minimum period of 3 years with an undertaking to keep the BG alive for the entire period of export obligation viz. 8+2 = 10 years or 12+2 = 14 years etc. under EPCG Scheme as the case may be.
 8. The Custom House shall properly maintain Bond/BG registers and ensure that wherever the bank guarantees are not renewed in time, recovery action is initiated by enforcement of the Bank Guarantee within time. The Customs shall also ensure that, wherever required, Bank Guarantees are renewed well in time. This aspect needs to be monitored closely by the Commissioners.
 9. In the case of subsidiary company of a parent company of a recognized status, the facility of filing joint bond (both by the parent company as well as the subsidiary company holding the license) along with

BG/cash security/ any other guarantee from financial institutions like IDBI, ICICI, UTI etc, shall also be available. The facility, however, shall be subject to the following conditions:-

- (i) the parent company shall necessarily have more than 50% share holding in the subsidiary company.
- (ii) the bond shall be jointly signed by the parent company as well as the subsidiary company and shall be executed along with BG/cash security/ or guarantee from financial institutions like IDBI, ICICI, UTI etc. wherever applicable in terms of criterion laid down. The guarantee shall be in relation to terms and conditions of the Joint Bond.
- (iii) the parent company shall stand surety for the subsidiary company that in the event subsidiary company fails to fulfil the export obligation and defaults on payment of customs duty and interest, the parent company shall make good the Government revenue and the interest. In other words, the parent company will be severally and jointly liable for the action in terms of the Bond/BG jointly executed by them.
- (iv) this facility shall be extended only to those companies which have proven track record and reputation.

10. BG exemption specified in para 3.1 above shall also be available in respect of past licenses where license holder had earlier filed BG but as on date he is entitled for BG exemption.

11. It shall be the responsibility of the jurisdictional Superintendent of Central Excise or other agencies that while issuing the Certificate about export performance or about the fact of payment of central excise duty for the purpose of para 3.1, he satisfies himself about the genuineness of the declaration given by the license holder.

12. In order to thwart attempts to misuse Advance License Scheme, the DGFT authorities shall endorse a copy of the Advance License to the concerned Central Excise authorities by fax or e-mail with request to intimate the concerned DGFT authority in case the party appears to be bogus/ non-existent. Immediately on receipt of copy of the Advance License by Central Excise, the Superintendent of Central Excise having jurisdiction over the manufacturing premises of the license holder shall undertake physical verification within one month of the receipt of copy of Advance License from the relevant DGFT authority to ascertain that the party to whom Advance License has been issued is not bogus/non-existent. In all cases where on physical verification by Central Excise, the party is found to be bogus/non-existent, the jurisdictional Commissioner of Central Excise shall immediately inform the concerned Licensing Authority (who had issued the Advance License) so as to enable the DGFT authorities to suspend the Advance License and intimate the concerned Customs authorities about it where the Advance License is registered.

13. A suitable Trade Notice and Standing Order may be issued for the guidance of the trade and staff. Difficulties faced, if any, in implementation of the Circular may be brought to the notice of the Board at an early date.

14. Receipt of the Circular may kindly be acknowledged.

P. K. Mohanty
Joint Secretary (Drawback)

ANNEXURE
Form of Bond

(For availing duty exemption under Advance Licence / EPCG Scheme)

I / we, _____ having our registered office at _____ hereinafter referred to as the Obligor (s) and _____ called the surety (ies) (which expression shall, unless repugnant of the context or meaning thereof include our heirs, successors, executors, administrators, liquidators, legal representatives and assignees) hereby hold and firmly bind ourselves jointly and severally unto the President of India, acting through the (jurisdictional Deputy/Assistant Commissioner of Customs) Department of Revenue, Ministry of Finance, Government of India, hereinafter referred to as 'the Government' in the sum of Rupees _____ only for which payment to be well and truly made, I / we, the obligor (s) bind myself/ ourselves by these presents.

WHEREAS I / we, the obligor (s), have imported goods listed in Annexure I availing customs duty exemption in terms of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. _____ dated the _____ (hereinafter referred to as the said notification) against the Import Licence No. _____ dated _____ (hereinafter referred to as the licence) for the import of the goods mentioned therein on the terms and conditions specified in the said notification and licence.

WHEREAS I / we the obligor (s) is / are manufacturer exporter (s) holding registration No. _____ dated _____ with the (name and address of the registering Central Excise authority to be mentioned) _____.

WHEREAS I / we the obligor(s) has/ have undertaken to fulfil the export obligation as specified in the said notification and the licence and to produce evidence of having so fulfilled the export obligation within 30 days from the expiry of the specified Export Obligation period to the satisfaction of the Government.

Now the conditions of this Bond are that

1. I / we, the obligor(s) shall observe all the terms and conditions of the said notification.
2. I / we, the obligor(s) shall observe all the terms and conditions specified in the licence.
3. I / we, the obligor(s), shall fulfil the export obligation as specified in the said notification and the licence and shall produce evidence of having so fulfilled the export obligation within 30 days from the expiry of the specified export obligation period to the satisfaction of the Government.
4. In the event of failure to fulfil full or part of the export obligations as specified in the said notification and the licence, I / we, the obligor(s), hereby undertake to pay the customs duty but for the exemption and also interest @ 15% per annum thereon forthwith and without any demur, to the Government.
5. I / we, the obligor(s), shall comply with the conditions and limitations stipulated in the said Import and Export Policy / Foreign Trade Policy as amended from time to time.
6. I / we, the obligor(s), shall not change the name and style under which we, the obligor(s), are doing business or change the location of the manufacturing premises except with the written permission of the Government.

If each and everyone of the above condition is duly complied with by us, the obligor(s), the above written bond shall be void and of no effect; otherwise the same shall remain in full force and effect and virtue.

It is hereby declared by us, the obligor(s) and the Government as follows:

1. The above written bond is given for the performance of an act in which the public are interested.
2. The Government through the Commissioner of Customs or any other officer of Customs shall recover the sums due from the obligor(s) in the manner laid down in sub-section(1) of the section 142 of the Customs Act, 1962.

Provided always that the liability of the surety here under shall not be impaired or discharged by reason of any time being granted, or any forbearance, act or omission of the Government (whether with or without the knowledge or the consent of the surety) in respect of or in relation to the obligation and condition to be performed or discharged by the obligor(s) nor shall it be necessary to sue the obligor(s) before suing the surety for amounts here under.

AND the president of India shall, at his option, be competent to make good all the loss and damages by endorsing his rights under the above written bond.

I/ we further declare that this bond is given under the orders of the Central Government in the performance of an act in which the public are interested.

In these presents the words imposing singular shall also include the plural and vice-versa where the context so requires.

IN WITNESS HEREOF these presents have been signed this day _____ of _____ 20 _____ herein before written by the obligor(s) and the surety (ies).
 Place: _____
 Date: _____

(Signature of the Obligor)

| | | | |
|---------|----------------------|----------------|-----------|
| Witness | (1) name and address | (1) occupation | (1) _____ |
| | (2) name and address | (2) occupation | (2) _____ |

(Signature of the surety)

*As per Para 3 of Board's Circular No. 58/2004- Cus. dated the 21st October, 2004

| | | | |
|-----------|----------------------|----------------|-----------|
| Witnesses | (1) name and address | (1) occupation | (1) _____ |
| | (2) name and address | (1) occupation | (2) _____ |

Signature and date

Name

Designation

Accepted for and behalf of the President of India on _____ day of _____ 20
_____.

Signature and date

Name _____

Designation _____

**Annexure - 1
Table**

| Sl. No. | Description of item | Quantity | Assessable Value | Duty involved (but for exemption) |
|---------|---------------------|----------|------------------|-----------------------------------|
| 1 | 2 | 3 | 4 | 5 |

F.NO.605/61/2007-DBK
 Government of India
 Ministry of Finance
 Department of Revenue

New Delhi, the 25th May, 2009.

Sub: Norms for execution of Bank Guarantee under specified export promotion schemes- Modifications in Circular No.58/04-Cus dt.21.10.04-reg.

I am directed to invite your attention to Circular No.58/2004-Cus. dated 21.10.2004 (herein after referred to as 'the said circular') vide which revised norms for execution of Bond / Bank Guarantee (BG) in respect of imports made under the Advance Licence and EPCG Schemes were notified and to say that, representations suggesting the following amendments in the said circular have been received,-

1. to consider the service exports at par with the physical exports and to extend the benefit of exemption from BG to the service providers who fulfill the criteria laid down in the circular ;
2. to extend the benefits of the said circular to the imports under DFIA scheme;
3. to consider the cumulative turnover of all the units of a manufacturer for the purpose of eligibility for exemption under the circular if all the units are operated under the same Importer Exporter Code (IE-Code).

2 The above representations have been examined by the Board. As regards extending benefits provided under para 3.1 of the circular to the service exporters on par with the exporters who are doing physical exports, it is observed that the service providers with foreign exchange earnings of Rs.50 lakhs or more during the preceding financial year and having a clean track record have already been allowed the facility of 15% BG vide Circular No.30/2005-Cus. dated 12.7.2005. Further, the service providers in the port handling sector who have been appointed as Custodians have been allowed to furnish BG @ 25% vide Circular No.49/2005-Cus. dated 29.11.2005. It has now been decided to extend the facility of nil / reduced rate of bank guarantee as provided under para 3.1 (a), (d),(e) & (f) of the said circular to all the service providers who meet the criteria prescribed in the said paragraph and other criteria of the said circular as amended.

2.1. In view of the modifications proposed at para-2 above, the table in para-3.1 of the circular No.58/2004-Cus shall be replaced with the following table and the note.

Table

| Category of Importer | Quantum of BG/cash security |
|--|-----------------------------|
| (a) All exporters who have an export turnover of Rs 5 crores of goods exported physically or of services in current or preceding financial year and having a good track record of three years of exports | Nil |
| (b) Public Sector Undertaking | Nil |
| (c) Star Export House | Nil |
| (d) Manufacturer exporters / Service Providers registered with Central Excise or the Service Tax authorities, as the case may be, who have been exporting | Nil |

| | |
|---|------|
| during the previous two financial years and have minimum export of Rs. 1 crore or more during the preceding financial year. | |
| (e) Manufacturer exporter / Service Provider registered with Central Excise or the Service Tax authorities, who has paid central excise duty/ Service Tax of Rs.1 crore or more, as the case may be, during the preceding financial year. | Nil |
| (f) (1) Manufacturer exporters who are not covered under (a), (b),(c),(d) & (e) above. (2) Units in Agri Export Zones (AEZs), (3) Established Service Providers who have free foreign Exchange earnings of Rs.50 lakhs or more during the preceding financial year and have a clean track record. | 15% |
| (g) service providers in the port handling sector who are appointed as Custodians by the jurisdictional Customs / Central Excise authorities | 25% |
| (h) Others | 100% |

Note: The exemption provided at para (g) above shall be applicable only in respect of import of capital goods under EPCG scheme.

3. As regards extending the benefits of the above mentioned circular to the imports under the DFIA scheme, it is observed that the DFIA scheme is akin to the Advance Authorization scheme; both the schemes are operated more or less with the same set of provisions under the Foreign Trade Policy / Hand Book of Procedures. Since the Advance authorization scheme is already covered by the said circular, it has been decided that the benefits of the said circular may also be extended to the imports under DFIA scheme provided they have fulfilled the other criteria of the said circular as amended.

4. As regards considering the combined export performance / duty payment of all the units of a manufacturer operating under single Importer exporter code (IE code) for the purposes of deciding the eligibility of the said importer for benefits under the said circular, it has been felt that the exporter operating under one IE code and having different units is basically one legal entity. Accordingly it has been decided that the combined export performance / duty payment of all the units of a manufacturer exporter operating under a single IE-Code shall be considered for extending the benefits of the said circular provided all such individual units are separately registered with the Central Excise department and they have fulfilled the other criteria of the said circular.

5. These instructions may be brought to the notice of the trade / exporters by issuing suitable Trade / Public Notices. Suitable Standing orders/instructions may be issued for the guidance of the assessing officers. Difficulties faced, if any, in implementation of the Circular may please be brought to the notice of the Board at an early date.

Receipt of this Circular may kindly be acknowledged.

Yours faithfully,
(P.V.K. Rajasekhar)
OSD(Drawback)

Circular No. 32/2009-Cus.

F.NO.605/61/2007-DBK
Government of India
Ministry of Finance
Department of Revenue

New Delhi, the 25th November 2009.

To,

All Chief Commissioners of Customs/ Customs & Central Excise
All Commissioners of Customs/Customs (Prev.) /Customs & Central Excise / Central Excise,
DG, CEIB, New Delhi,
DG, Central Excise Intelligence/ DGRI/ DG (Export Promotion) /DGI/ DG, NACEN/ DG (Systems & Data Management),
Chief Departmental Representative, Customs, Excise & Service Tax Appellate Tribunal, West Block-2, R.K. Puram, New
Delhi.

Sir/Madam,

**Sub: Revised norms for execution of Bank Guarantee under specified Export Promotion Schemes - Modifications in
Circular No.17/09-Cus dt.25.05.09 - reg.**

I am directed to invite your attention to Circular No.17/2009-Cus. dated 25.05.2009 (herein after referred to as 'the said circular') vide which revised norms for execution of Bond / Bank Guarantee (BG) in respect of imports made under the Advance Authorization / Export Promotion Capital Goods/Duty Free Import Authorization Schemes were notified and to say that, representations have been received to clarify, whether the status holders other than 'Star Export House' are entitled for 'nil' BG in terms of sl.No.(c) of the Table appended to para 2.1 of the said circular.

2 The issue has been examined by the Board. The circular no 17/09-Cus. had amended circular No.58/2004-Cus which was issued in the light of the provisions of the 2004-05 edition of the Foreign Trade Policy (FTP). The FTP-2004 recognized five categories of Status Holders viz. One star /two star / three star /four star and five star Export Houses. The circular No. 58/2004-Cus extended the benefit of 'nil' BG to all the five categories through a common phrase 'Star Export House' under sl.No. (c) of the Table. The intention of the circular no 58/2004-Cus was therefore to extend the benefit of 'nil' BG to all the status holders. The sl no. (c) of the table remained unchanged in circular No. 17/09-Cus.

3. As the above categories are now known as Export House, Star Export House, Trading House, Star Trading House and Premier Trading House respectively in terms of para 3.10.2 of the current FTP, the benefit of 'nil' BG should also be extended to all categories of status holders. The words 'Star Export House' appearing under sl. No. (c) of the Table may therefore be read to mean 'Status Holders recognized under the provisions of the Foreign Trade Policy'

4. These instructions may be brought to the notice of the trade / exporters by issuing suitable Trade / Public Notices. Suitable Standing orders/instructions may be issued for the guidance of the assessing officers. Difficulties faced, if any, in implementation of the Circular may please be brought to the notice of the Board at an early date.

Receipt of this Circular may kindly be acknowledged.

Yours faithfully,
(P.V.K. Rajasekhar)
OSD (Drawback)

F.NO.609/119/2010-DBK
Department of Revenue
Government of India
Ministry of Finance

New Delhi, the 18th January, 2011

To,

All Chief Commissioners of Customs / Customs & Central Excise.
All Directors General of CBEC /CDR, CESTAT.
All Commissioners of Customs & Central Excise.

Sir/Madam,

Sub : Norms for Execution of Bank Guarantee in respect of Advance Authorization / Duty Free Import Authorization (DFIA) / Export Promotion Capital Goods(EPCG) Schemes - reg.

The undersigned is directed to invite your attention to Circular No.58/2004-Cus. dt.21.10.2004 on the above subject as amended by Circular Nos.17/2009-Cus. dt.25.5.2009 and 32/2009-Cus. dt.25.11.2009 and to state that references have been received with reference to para 3.2(c) of the Circular No. 58/2004-Cus. dt.21.10.2004. Para 3.2(c) of the said Circular, inter alia, stipulates that exemption from Bank Guarantee contemplated therein will not be available in case the licence holder has been penalized under the provisions of Customs Act,1962, the Central Excise Act,1944, the Foreign Exchange Management Act (FEMA),1999 or the Foreign Trade (Development and Regulation) Act,1992 during the previous three Financial years.

2. It has been informed that many a time requests are received from importers for exemption from Bank Guarantee on the ground that penalty imposed on them was on account of offences which were technical in nature. It has been suggested that exemption from Bank Guarantee may not be denied in cases of technical offences.

3. The issue has been examined. It is noted that the Board has recently relaxed the criteria for accreditation of importers under the Accredited Clients Programme (ACP) vide circular No.29/2010-Cus. dt.20.8.2010. According to the said circular, the importer for availing the facility under ACP should not have any cases of Customs, Central Excise or Service Tax, as detailed below, booked against them, in the previous three financial years:

- (a) Cases of duty evasion involving mis-declaration / mis-statement/collusion / willful suppression / fraudulent intent whether or not extended period for issue of Show Cause Notice (SCN) has been invoked.
- (b) Cases of mis-declaration and/or clandestine/unauthorized removal of excisable / import / export goods warranting confiscation of said goods.
- (c) Cases of mis-declaration / mis-statement / collusion / willful suppression / fraudulent intent aimed at availing CENVAT credit, rebate, refund, drawback, benefits under export promotion/reward schemes.
- (d) Cases wherein Customs/Excise duties and Service Tax has been collected but not deposited with the exchequer.
- (e) Cases of non-registration with the Department with intent to evade payment of duty / tax.

4. It has been decided that the above criteria may be adopted and para 3.2(c) of Circular No. 58/2004-Cus. modified to this extent. Thus offences, other than those stipulated at para 3 above, would not result in denial of the benefit of Circular

No.58/2004-Cus. In order to verify whether the Authorization holder meets the above criteria, he may be asked to furnish an affidavit stating whether any case(s) involving mis-declaration, suppression etc. as mentioned in para 3 above have been booked against him during the previous three Financial years under the provisions of the Custom Act, 1962, Central Excise Act, 1944, the Foreign Exchange Management Act (FEMA), 1999, the Foreign Trade (Development and Regulation) Act, 1992 and the Service Tax (Finance Act, 1994). In case the details reveal violation(s) of the type mentioned above under the provisions of the above mentioned Acts then the benefit of Circular No. 58/2004-Cus. will not be extended. The Commissioners shall ensure that some of the affidavits furnished are cross checked randomly with the field formations for their veracity.

5. These instructions may be brought to the notice of the trade / exporters by issuing suitable Trade / Public Notices. Suitable Standing orders/instructions may be issued for the guidance of the assessing officers. Difficulties faced, if any, in implementation of the Circular may please be brought to the notice of the Board at an early date.

Receipt of this Circular may kindly be acknowledged.

Yours faithfully,

(M.V.V.SURYA NARAYANA)
OSD (DRAWBACK)

F.No.609/134/2012-DBK
Government of India
Ministry of Finance, Department of Revenue
Central Board of Excise and Customs

New Delhi, the 4th March, 2013

To
All Chief Commissioners of Customs
All Chief Commissioners of Central Excise / Customs & Central Excise
All Director Generals under CBEC,
All Commissioners of Customs / Customs (Preventive)
All Commissioners of Central Excise / Customs & Central Excise

Madam/Sir,

Subject : Norms for Execution of Bank Guarantee in respect of Advance Authorization (AA) / Duty Free Import Authorization (DFIA) / Export Promotion Capital Goods (EPCG) Schemes - reg.

The undersigned is directed to invite reference to Circular No. 58/2004-Cus dated 21.10.2004 on the above subject. This was amended by Cir. Nos.17/2009-Cus and 32/2009-Cus. Circular No.58/2004 was further amended by Circular No.6/2011-Cus dated 18.1.2011. By this amendment, para 3.2 (c) was amended and the conditions for availing of exemption from bank guarantee were modified.

2. Prior to amendment by Cir 6/2011-Cus, one of the explicit criteria for denying benefit was that the license holder should have been penalized. However, the issue of penalty imposed for technical offences had arisen. The Circular 6/2011-Cus asked for taking an affidavit from the license holder stating whether any case(s) for certain offences, regarded as other than technical offences, had been booked during the previous three financial years and it was prescribed that, in case such violation(s) were revealed, the benefit of exemption from bank guarantee should not be extended.

3. It has been brought to the notice of the Board by exporters, trade associations and the field formations that with this amendment the benefit of availing of exemption from bank guarantee will be denied even before the show cause notice proposing imposition of penalty has been adjudicated.

4. The Board has reviewed the matter and considers that the position of not having been penalized should be restored. Accordingly, the para 3.2 (c) of Circular 58/2004-Cus shall be read as follows:

"(c) The License holder should not have been penalized during the previous three financial years in cases booked against him related to Customs, Central Excise or Service Tax under the provisions of the Customs Act, 1962, the Central Excise Act, 1944, the Finance Act, 1994 (for Service Tax), as detailed below:

(a) Cases of duty evasion involving mis-declaration / mis-statement/collusion / willful suppression / fraudulent intent whether or not extended period for issue of show cause notice has been invoked.

(b) Cases of mis-declaration and/or clandestine/unauthorized removal of excisable / import / export goods warranting confiscation of said goods.

(c) Cases of mis-declaration / mis-statement / collusion / willful suppression / fraudulent intent aimed at availing CENVAT credit, rebate, refund, drawback, benefits under export promotion/reward schemes.

(d) Cases wherein Customs/Excise duties and Service Tax has been collected but not deposited with the exchequer.

(e) Cases of non-registration with the Department with intent to evade payment of duty / tax. or in cases booked against him under the Foreign Exchange Management Act (FEMA), 1999 or the Foreign Trade (Development and Regulation) Act, 1992. In order to ascertain/verify whether the License/Authorization holder meets this criterion he may be asked to furnish an affidavit. The Commissioners shall ensure that some of the affidavits furnished are cross checked randomly with the field formations for their veracity."

5. It may be noted that the other conditions in Para 3.2 of the Circular No.58/2004-Cus dated 21.10.2004 remain unchanged. These instructions may be brought to the notice of the trade/exporters by issuing trade/Public Notices. Standing orders/instructions may be issued for guidance of the assessing officers. Difficulties faced, if any, in implementation of the Circular may please be brought to the notice of the Board at an early date.

Receipt of this circular may kindly be acknowledged.

(Ashok Kumar Pandey)
Senior Technical Officer (Drawback

F.No.609/144/2013-DBK

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

New Delhi, dated the 18th December, 2014

To

All Chief Commissioners of Customs / Customs (Prev)/ Central Excise & Customs,
All Directors General of CBEC / Chief Commissioner (AR), CESTAT,
All Commissioners of Customs/Customs (Prev)/Customs & Central Excise/Commissioners (Appeals)

Ma'am/Sir,

Subject: Norms for Execution of Bank Guarantee in respect of Advance License/Export Promotion Capital Goods (EPCG) Schemes - reg.

Reference of field formations is drawn to Circular No. 58/2004-Cus dated 21.10.2004 on the above subject as amended by Circular Nos.17/2009-Cus, 32/2009-Cus, 6/2011-Cus and 8/2013-Cus.

2. Presently, the para 3.2 of the Circular No. 58/2004-Customs prescribes that the bank guarantee (BG) exemption specified in para 3.1 of the Circular shall be admissible subject to certain conditions. One of the conditions (amongst others) for the admissibility of the Nil or 15% or 25% BG is in para 3.2(c) of the Circular. It prescribes that the license holder should not have been penalized during the previous three financial years in certain types of cases booked against him under statutes specified therein. If this condition is not satisfied, i.e. the license holder has been penalized, the exemption (Nil or 15% or 25%) from BG becomes inadmissible and 100% BG becomes applicable to the relevant category of importer specified in para 3.1 of the Circular.

3. It has been brought to notice of the Board that in the above situation the exemption from BG becomes inapplicable (i.e. trade facilitation gets affected) even if there is absence of risk to revenue.

4. In order to redress the above position, the Board has decided to add sub-para (d) below sub-para (c) in para 3.2 of Circular No. 58/2004-Customs (as amended) as follows -

"(d) Where the condition (c) above is not fulfilled, the jurisdictional Commissioner of Customs is satisfied, for reasons recorded in the file, that 100% BG is not justified on account of absence of risk to revenue."

5. These instructions may be brought to the notice of the trade/exporters by issuing suitable Trade/ Public Notice. Officers may be suitably guided through Standing Orders. Difficulties faced, if any, in implementation may be brought to the notice of the Board at an early date.

Yours faithfully,

(Sanjay Kumar)
Under Secretary (DBK)
Tele: 23341480