

Circular No. 08 / 2013-Customs

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)