

CIRCULAR NO 6/2011-CUSTOMS

Dated: January 18, 2011

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, interalia, 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 misdeclaration, 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.

F.NO.609/119/2010-DBK

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