

CIRCULAR NO 10/2011- Customs

Dated: February 24, 2011

Subject: Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 - instructions for implementation -reg.

Attention is invited to Board's Circular No 41/2007-Customs dated 29-10-2007 on the above subject. In the said Circular, it was provided that the right holders may furnish a General Bond without security to the Commissioner of Customs prior to the grant of registration, undertaking to execute consignment specific Bonds with the jurisdictional Commissioner of Customs at the port of interdiction within three days from the date of interdiction of any allegedly infringing goods. This arrangement was prescribed considering the fact that at the time of registration but prior to importation, it may be difficult to ascertain and fix the Bond amount corresponding to the value of suspected infringing goods that are to be imported. Further, this would lock in right holders' money in the form of security.

2. However, representations have been received from the trade requesting for a centralized bond valid for all ports, as execution of bond at the port of interdiction within three days of interdiction of allegedly infringing goods is stated to be a cumbersome process. The opinion of Law Ministry on legal implications of a single Bond across different customs locations was sought. The Ministry of Law and Justice clarified as under:-

"The language of the Bond clearly indicates that the Bond is executed in favour of President of India and the same is enforceable by any authorised Commissioner (Customs). If the right holder is allowed to furnish one time Bond along with security at the time of Registration and all the ports to have access to this centralized account, there appears to be no legal objection for introduction of the same as Bond to be executed is in favour of President of India and not in favour of Commissioner (Customs)."

3. The issue has been considered in the Board. Currently, the right holders are required to give a notice for registration in the manner detailed in the Circular No. 41/2007-Customs dated 29.10.2007 to the Commissioner of Customs at any one of the ports where allegedly infringing goods are likely to be imported. The right holder can mention the details of other ports where he suspects that allegedly infringing goods may be imported and where he desires to get protection of his right. The right holders are required to furnish a General Bond with or without security to the Commissioner of Customs [along with indemnity bond] prior to the grant of registration, undertaking to execute consignment specific Bond along with security, as may be prescribed by the Commissioner of Customs at the port of interdiction within three days from the date of interdiction of any allegedly infringing goods.

4. Considering the genuine difficulties expressed by the right holders and keeping in view the opinion of the Law Ministry, it has been decided to implement an on-line, system driven, centralized bond management module as part of the existing Automated Recordation and

Targeting System (ARTS). The main objective of this system is to provide for a single centralized bond account with security that can be used at all ports in India, so that the right holders do not have to rush to different customs formations to execute consignment specific bonds with securities in case of interdiction of allegedly infringing consignments at the different Customs formations. The highlights of this module are as below:-

(i) The right holders will have the option to furnish either a general bond before registration followed by a consignment specific bond at the port of interdiction of allegedly infringing goods or a centralized bond at the port of registration which will be valid at all ports in India. The general bond and the consignment specific bond, which are off-line, will be in the formats prescribed hitherto as per Annexure-A and Annexure-B to Circular No. 41/2007 -Customs dated 29th October 2007. Alternatively, as stated above, the right holders can furnish a Centralized Bond (which will be a running bond) at the port of registration for an amount sufficient in their judgment, to correspond to value of suspected allegedly infringing goods, all over India, as per Annexure-I to this circular. The existing right holders, who have registered their rights with customs authorities (equipped with a valid UPRN and UTRN) can migrate to the centralized bond management system by communicating their willingness and submitting the centralized bond with Security in the prescribed format to the same Commissioner of Customs, where the general bond was initially furnished. Otherwise, they will continue to operate in the system of general bond and consignment specific bonds.

(ii) The right holders exercising the option of a Centralised Bond will have to necessarily furnish a security for an amount equivalent to 25% of the value of the Centralized Bond with the customs formation, where the right holder is registered.

(iii) Upon fulfillment of requirements by the right holders, the customs formation, where the right holders are registered, will create an on-line centralized bond account and security account. The system will generate a unique Bond Registration Number (BRN) and the same will be e-mailed to the right holder or his/her authorised representative, whose e-mail id is provided in the notice given by the right holders. All future correspondence relating to bond management shall be with reference to this BRN only. There will be a single BRN for a right holder which may cover more than one Unique Permanent Registration Number (UPRN). In other words, a centralized bond account can cover one or more rights registered by a right holder with the Customs. However, to enable linking of all UPRNs of a right holder, the applicant (whether the right holder or the service-provider/ consultants / law firms) has to be the same in all the UPRNs which are to be so linked. Thus, if the right-holder chooses two different law firms to register his Trademarks with the Custom Authorities or registers one trademark himself and other through a service provider, then both these UPRNs cannot be linked through a single Bond as the applicants in the two UPRNs would be different.

(iv) In case of interdiction of allegedly infringing goods, if the amount of Centralised Bond and the security are not sufficient to cover the value of the goods interdicted, then within three days of interdiction, the right holders would be required to execute a supplementary bond (as per Annexure - II to this circular) and furnish security for the corresponding

amount. The supplementary bond, along with security has to be executed invariably with the Commissioner of Customs where the centralized bond has been executed. Commissioners of Customs at other ports where the allegedly infringing goods are interdicted can not accept the supplementary bonds.

(v) The ARTS has been so designed that while the creation of Centralized Bond account, credit (top-up) of the amounts to the bond and the security and cancellation thereof are operated only by the officers of the customs formation where the Centralized Bond is executed, the debit of amounts and re-credit of the amounts pertaining to those debits can be done only by officers at the ports where the allegedly infringing goods are interdicted, The re credit shall be done after verification of the fact that no legal proceedings and dues are pending in relation to the debit.

(vi) While the right holders who choose to execute general bond have to execute the consignment specific bond at the port of interdiction within 3 days of interdiction of the consignment allegedly infringing the right of the right holders in terms of Circular No 41/2007-Customs dated 29th October 2007, the right holders who have opted for the Centralized bond and in whose case a BRN has been generated, have to inform in writing the jurisdictional IPR Cell, where the allegedly infringing goods have been interdicted, duly mentioning the BRN along with the particulars of debits to be made in the bond and security accounts so that the same can be verified and debited by the IPR cell. If the right holder fails to submit such a letter, customs authorities will be under no obligation to suspend the clearance of the allegedly infringing goods. It shall be responsibility of the right Holders to ensure that that the Centralized Bond and security account has sufficient balance. In case of inadequate balance, the same can be supplemented by executing a supplementary bond with necessary security at the Custom House where registration has taken place and the BRN has been generated. To enable this, the right holders have been given an on-line facility to view and check their balance using the BRN-

(vii) Irrespective of availment of either option i.e. execution of General Bond and consignment specific Bond or Centralised Bond, the rights holders would be required to furnish an indemnity bond in the format prescribed at Annexure-C to the Circular No 41/2007 -Customs dated 29th October 2007.

5. In case of suspension of clearance of goods by Customs on its own initiative, the right holder is required to give notice as laid down under rule 3 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and to execute Bonds as specified in Rule 5 of the Rules. The right holder will now have the option to execute a general bond or a centralized bond, as the case may be, following the procedure detailed in the foregoing paragraphs.

6. The Deputy/Assistant Commissioner of Customs while intimating the right holder about interdiction of any goods, will also intimate the value of the goods to the right holder so as to enable him to work out the required bond amount or supplementary bond amount, along with the security.

7. The IPR Cells will accept the requests for migration of existing IPR holders to the new system. The IPR cells should properly monitor the work relating to execution of bonds. Monitoring of the Bonds and securities including their closure and expiry is the prime responsibility of the Commissioner with whom the right is registered. The closure of bond will require checking and confirmation of the fact that there are no debits in the centralized bond account pertaining to any of the UPRNs by any other Custom House. All steps to renew the bank guarantees, wherever executed, shall be initiated by the IPR Cells well within time and at least 15 days before the expiry of the bank guarantee.

8. 8. The Board's Circular 41/2007-Customs dated 29-10-2007 stands modified to the above extent.

9. 9. Wide publicity to this Circular may be given by way of issuance of public notice and standing order. The Additional Director General, Risk Management Division shall inform the actual date of commencement of this new system and will issue separate set of instructions for smooth operation of the centralized bond management module to the Commissioners of Customs.

10. 10. Difficulties, if any, faced in the implementation of this circular, may be immediately brought to the notice of the Board.

11. Please acknowledge receipt.

12. Hindi version follows.

F. No. 305/1/2008-FTT

(P. S. Pruthi)
Commissioner (Customs)

ANNEXURE-I
(Centralized Bond with Provision for Security Deposit)

**BOND EXECUTED IN PURSUANCE OF REGISTRATION OF INTELLECTUAL PROPERTY
RIGHTS WITH INDIAN CUSTOMS**

[See Rule 5(a) of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007]

[To be executed by the Right Holder(s)]

KNOW ALL MEN BY THESE PRESENTS THAT I/we
residing at hereinafter referred to as "Right Holder" (which expression shall include its successors / heirs, executors, administrators and legal representatives) am/are held and firmly bound unto the President of India hereinafter called the "President" (which expression shall include his successors and his representative Officers like Commissioner of Customs and his authorized officers) in the sum of Rs (Rupees.....only) to be paid to

the President for which payment well and truly to be made, I / we bind myself / ourselves, my / our successors / heirs, executors, administrators and legal representatives firmly by these presents.

Sealed with my / our seal(s) this day of
20.....

WHEREAS

The Commissioner of Customs or his authorized Officer at (hereinafter called the "Proper Officer") has agreed to register the intellectual property right (hereinafter abbreviated as "IPR") held by me/us and to suspend clearance of goods suspected to be infringing the IPR held by me/us, depending on the information furnished by me/us and on the basis of the declarations made by the Importers in the course of importation, the Right Holder hereby agrees to furnish such bond and security, hereinafter specified, in terms of Rule 5 (a) of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

The Right Holder has deposited with the Proper Officer at, the securities as mentioned in the Schedule hereunder written of the face value of Rs (Rupees

..... only) endorsed in favour of..... as security for the due observance and performance of the terms of conditions on the part of the Right Holder, prescribed as per the ibid Rules.

NOW, IT IS HEREBY AGREED AND DECLARED that -

(i) The Right Holder shall keep the Customs abreast of validity of registration obtained by him under the IPR laws namely The Copyright Act, 1957; The Trade Marks Act, 1999; The Patents Act, 1970; The Designs Act, 2000 and The Geographical Indications of Goods (Registration and Protection) Act, 1999; expiry of the term of registration and renewal thereof, if any; cancellation; grant of compulsory licence in accordance with the law etc.

(ii) The Right holder, having recognized limitations of international trade and understood general functioning of Customs, shall share the trends and information with Customs on an on-going basis, about suspected imports of infringing goods violating the IPR laws, as may be required to interdict consignments and to suspend the clearance.

(iii) The Right Holder undertakes to protect the importer, consignee and the owner of the goods and the competent authorities against all liabilities that are incidental and ancillary to the act of suspension of clearance of allegedly infringing goods, in case it is established that the suspension is vexatious.

(iv) The Right Holder shall bear all the costs towards sampling, destruction, demurrage and detention charges incurred till the time of destruction or disposal of such infringing goods, upon being confirmed.

(v) The Right Holder shall join the proceedings as per the time lines prescribed in terms of the ibid Rules, failing which, they agree, to not to object to the release of the goods.

(vi) The President or the Proper Officer, without prejudice to any other mode of recovery may, inter alia, adjust the security deposit / securities in part or full towards the dues arising out of clause (iii) and (iv) supra.

(vii) In case the proceedings are not final, the right holder agrees to renew the bank guarantee before 15 days of expiry of the bank guarantee, failing which, the bank guarantee shall be encashed by the department.

The Schedule of Securities above referred to [Particulars of the amount deposited, along with consignments, if any]

IN THE WITNESS WHEREOF the Right Holder has herein set and subscribed its hands and seals the day, month and year first above written.

SIGNED AND DELIVERED by the Right Holder at.....

In the Presence of :-

1.....

2.....

XXXXXXXXXXXXXX

Accepted

**For and on behalf of the President of India (Signature of the Proper Officer with
Official Stamp and Seal)**

ANNEXURE - II

(Supplementary Bond with Provision for Security Deposit)

**BOND EXECUTED IN PURSUANCE OF REGISTRATION OF INTELLECTUAL PROPERTY
RIGHTS WITH INDIAN CUSTOMS**

[See Rule 5(a) of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007]

[To be executed by the Right Holder(s)]

KNOW ALL MEN BY THESE PRESENTS THAT the Proper Officer of Customs has been pleased to accept on behalf of the President of India the Centralized bond executed by us vide letter dated.....and assigned the Bond Registration Number (BRN)....., in respect of

the IPRs registered with the Custom House and UPRNs.....andso generated against them,

And

Whereas the amount bound by myself / ourselves is inadequate to cover the suspension of clearances of any suspect infringing future consignments and / or any suspect consignment already interdicted by any customs formation in India, I/we residing at.....hereinafter referred to as "Right Holder" (which expression shall include its successors / heirs, executors, administrators and legal representatives) am/are held and firmly bound unto the President of India hereinafter called the "President" (which expression shall include his successors and his representative Officers like Commissioner of Customs and his authorized officers) in the sum of Rs..... (Rupees..... only), in addition to any amount bound earlier, to be paid to the President for which payment well and truly to be made, I / we bind myself / ourselves, my / our successors / heirs, executors, administrators and legal representatives firmly by these presents.

Sealed with my / our seal(s) this day of20.....

WHEREAS The Commissioner of Customs or his authorized Officer at (hereinafter called the "Proper Officer") has agreed to register the intellectual property right (hereinafter abbreviated as "IPR") held by me/us and to suspend clearance of goods suspected to be infringing the IPR held by me/us, depending on the information furnished by me/us and on the basis of the declarations made by the Importers in the course of importation, the Right Holder hereby agrees to furnish such bond and security, hereinafter specified, in terms of Rule 5 (a) of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

The Right Holder has deposited with the Proper Officer at , the additional securities as mentioned in the Schedule hereunder written of the face value of Rs(Rupees.....only) endorsed in favour of.....as security for the due observance and performance of the terms of conditions on the part of the Right Holder, prescribed as per the ibid Rules.

NOW, IT IS HEREBY AGREED AND DECLARED that -

(i) The Right Holder shall keep the Customs abreast of validity of registration obtained by him under the IPR laws namely The Copyright Act, 1957; The Trade Marks Act, 1999; The Patents Act, 1970; The Designs Act, 2000 and The Geographical Indications of Goods (Registration and Protection) Act, 1999; expiry of the term of registration and renewal thereof, if any; cancellation; grant of compulsory licence in accordance with the law etc.

(ii) The Right holder, having recognized limitations of international trade and understood general functioning of Customs, shall share the trends and information with Customs on an

on-going basis, about suspected imports of infringing goods violating the IPR laws, as may be required to interdict consignments and to suspend the clearance.

(iii) The Right Holder undertakes to protect the importer, consignee and the owner of the goods and the competent authorities against all liabilities that are incidental and ancillary to the act of suspension of clearance of allegedly infringing goods, in case it is established that the suspension is vexatious.

(iv) The Right Holder shall bear all the costs towards sampling, destruction, demurrage and detention charges incurred till the time of destruction or disposal of such infringing goods, upon being confirmed.

(v) The Right Holder shall join the proceedings as per the time lines prescribed in terms of the ibid Rules, failing which, they agree, to not to object to the release of the goods.

(vi) The President or the Proper Officer, without prejudice to any other mode of recovery may, inter alia, adjust the security deposit / securities in part or full towards the dues arising out of clause (iii) and (iv) supra.

(vii) In case the proceedings are not final, the right holder agrees to renew the bank guarantee before 15 days of expiry of the bank guarantee, failing which , the bank guarantee shall be encashed by the department.

The Schedule of Securities above referred to [Particulars of the amount deposited, along with consignments, if any]

IN THE WITNESS WHEREOF the Right Holder has herein set and subscribed its hands and seals the day, month and year first above written.

SIGNED AND DELIVERED by the Right Holder at.....

In the Presence of :-

1.....

2.....

xxxxxxxxxxxxxxxx

Accepted

For and on behalf of the President of India (Signature of the Proper Officer with Official Stamp and Seal)