

Customs Circular No. 36/2011

Dated 12 August, 2011

Sub:- Waiver from the requirement of Bank Guarantee in respect of EOUs - Amendment to Circular No. 54/2004-Customs dated 13.10.2004 - reg.

Attention is invited to para 19 of the Board's Circular No. 54/2004-Customs dated 13.10.2004 which extends the facility of exemption from furnishing bank guarantee by 100% Export Oriented Units (EOUs) at the time of import or for sending goods on job work in Domestic Tariff Area (DTA).

2. In terms of the provisions of para 6.12 (f) of FTP announced on 31.8.2004, exemption was granted for 100% EOUs from furnishing bank guarantee at the time of import or going for job work in DTA subject to certain prescribed conditions to be followed by the unit. These conditions are that (i) the unit has a turnover of Rupees 5 crores or above; (ii) unit is in existence for at least three years; and (iii) unit is having an unblemished track record. Accordingly, this was implemented by issue of instructions vide para 19 of the aforesaid Board's Circular No. 54/2004-Customs.

3. It has been brought to the notice of the Board that one of the conditions relating to 'unblemished track record' for grant of such exemption from furnishing bank guarantee to 100% EOUs has been changed in the annual FTP amendments and the same is not being properly implemented. It has been represented by the exporters that Customs/ Central Excise field formations are insisting for Bank Guarantee even for Status Holder EOUs on the ground that show cause notices have been issued to them, thereby such units are unable to fulfill the condition of 'unblemished track record'.

4.1 The issue has been examined in the Board. The provisions of para 6.12 providing other entitlements to 100% EOUs was amended in the FTP changes introduced w.e.f. 1.4.2008, and the said para 6.12 state the following:

*6.12. (f): Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, where unit has

(i) a turnover of Rs. 5 crores or above;

(ii) unit is in existence for at least three years; and

(iii) The unit:

(a) has achieved positive NFE / export obligation wherever applicable;

(b) has not been issued a show cause notice or a confirmed demand, during the preceding 3 years, on grounds other than procedural violations, under the penal provision of the Customs Act, the Central Excise Act, the Foreign Trade (Development & Regulation) Act, the Foreign

Exchange Management Act, the Finance Act, 1994 covering Service Tax or any allied Acts or the rules made thereunder, on account of fraud / collusion / willful mis-statement/ suppression of facts or contravention of any of the provisions thereof;

[*Note: The said para has been re-numbered as 6.12(e) in the current FTP introduced w.e.f. 23.8.2010]

From the above it could be seen that there are four conditions prescribed as (i), (ii), (iii)(a) and (iii)(b). The condition (iii) has been revised in the FTP changes introduced w.e.f. 1.4.2008. While there appears to be no difficulty for the trade and industry in complying with first three conditions, in respect of condition at (iii)(b) it is represented that mere issue of show cause notice on procedural non-compliance would not debar them from the entitlements of bank guarantee waiver granted under para 6.12(f).

4.2 It could be seen from the provisions of para 6.12(f) sub-para (iii)(b) of FTP, that the prescribed condition clearly excludes show cause notices or cases booked for procedural violations. Hence, the entitlement of bank guarantee exemption to 100% EOUs / EHTP / STP / BTP units shall be denied only in cases involving fraud/ collusion/ willful mis-statement/ suppression of facts, whether or not extended period for issue of SCN has been invoked. Further, any violation or contravention of any of the provisions of the Customs Act, 1962 or Central Excise Act, 1944 or Finance Act, 1994 or other Acts specified in para 6.12(f) of FTP or any Allied Acts or Rules made thereunder, would also attract denial or exemption from furnishing bank guarantee. However, in simple cases of issue of show cause notices for procedural violation against such units, the entitlement of exemption from furnishing bank guarantee to EOU/EHTP/STP/BTP units need not be denied. These units shall continue to be eligible for availing the bank guarantee waiver mentioned in para 6.12(f) of the FTP, in view of the exclusion provided therein.

5. Board's Circular No. 54/2004-Customs dated 13.10.2004 stands modified to the above extent.

6. These instructions may be given wide publicity and should be brought to the notice of all the concerned by way of issuance of instructions/ trade notice.

7. Difficulty faced, if any, in implementation of the above instructions may be brought to the notice of the Board at an early date.

8. This issues with the approval of competent authority.

F. No. DGEP/EOU/18/2011

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