

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.	Nil
(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 License 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 21stOctober, 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