



INDIAN DRUG MANUFACTURERS' ASSOCIATION

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PARTNERS IN GLOBAL HEALTHCARE 14 January 2014

The Secretary to the Government of India,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 011.



Dear Sir,

Sub: Circular No.8/2013 - Customs in respect of the exemption from Bank Guarantee related to Advance Authorization /DFIA/EPCG Schemes

We refer to the communications and representations made by us and other trade bodies for amending para 4 clause (C) of the Circular no. 8/2013 as it can bring undue hardship to the importers.

We are now informed by our members that the intentions and objectives of the circulars are being mis-utilised by the department authorities which is leading to undue hardship to the importers.

The provisions of current para 4 Clause (C) reads as under;

“(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 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/will full 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,*

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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-registrations 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 case the licensor falls into any of the above clause, there would be a requirement of Bank Guarantee of 5% to 25% of the duty involved for which the License is sought for the specified category of Importers (Start Trading, Export House, Trading House etc.) and 100% for others.

As we understand, the clear intent behind the above clause was to curb and prevent importers with background of duty evasion to not enjoy the exemption benefits. However with such a wide inclusion the circular has lost its intention and has brought almost every importer in the net.

In the current mechanism information is been requested by Custom authorities from Excise, Service Tax and other bodies inquiring of any pending cases and demands in the books of department against the importer. For all large scale importers, there are cases and SCN's with some or the other disputes such as Valuation interpretations, Input credits eligibilities, Duty on sale to government institutions, etc. In fact in some of the matters the ground of demand for all the SCN's are same and still, since the same has not been settled by any appellate authority the demands are raised and pending. Every order passed by the authority has penalty, which at a later point on appeals or on closure of dispute with appellate authorities are resolved. Based on these details and feedback, Custom authorities are invoking provisions of Clause (C) of current circular and demanding Bank Guarantee and other procedural confirmations.

The main practical problem faced by the department and importers are that with such a wide and exhaustive coverage (Clause C), almost all importers are been rejected with the benefits of exemption enumerated under current Circular.

The main distinguishing line between and intention of clause C and practical implementation is the gap between the disputed and undisputed liabilities. The benefits to importer are rejected merely on the fact that as per the departmental records (Excise, Customs, Service tax etc.) , there is a demand raised pending settlement as at the date of reporting to Customs. The circular and the Custom officers however do not consider following points:

1. Whether the demand pending as per records is disputed or undisputed.
2. What is the amount lying in the Cenvat accounts of the Importer. In event of dispute being resolved what is the payback capacity of the Importer
3. Track record and matter involved in the dispute. Whether the demand is against an contravention of act or an interpretation dispute

Our reading and observations are that department also understands the above grounds, however due to the incorrect interpretation and lack of clarity in the wordings of the Circular 8, all importers are made to undergo hardship.

We are informed by our Members that instead of open wordings the circular should mention the word "**Undisputed**" before the duty, demand, penalty etc. We request that the benefit under Circular 8/2013 should be provided to all importers, where the demands/penalties/liabilities raised by jurisdictional authorities are pending at an appellate stage and are *sub judice*.

We expect with the introduction of word **undisputed demand / duty / penalty**, following will improve:

1. Undue hardship to importers will be removed
2. Ambiguity in the department for interpreting the matter will be removed as guidelines and declarations would be very clear.
3. Real intent of the circular to penalize defaulted importers would happen.
4. Time of department, jurisdictional authorities and that of Importers would be saved.

We have on all the earlier occasions i.e Budget proposals, TRU meetings, Transaction cost representations and direct meetings with Ministry of Pharmaceuticals pressed on the inflating problem faced by Pharmaceuticals Industry on the huge cenvat accumulations. The basic problem of rate anomaly in the Excise duty on input vs. output and high rate of service tax on input services has not been addressed. The Pharmaceutical Industry feels aggrieved due to such further operational issues impacting their business. While the main ground of duty anomaly remains the challenge, the other operational difficulties need to be addressed.

In light of the above discussion, we seek your urgent indulgence in taking up the matter and carrying out the necessary amendments.

Thanking you,

Yours sincerely,



S V Veerramani
President

Cc: Commissioner of Customs (Exports), Mumbai