

Circular No. 03/2021-Customs

F.No. DGEP/EOU/40/2017
Government of India
Ministry of Finance
Department of Revenue Central Board of Indirect Taxes & Customs
(Directorate General of Export Promotion)

New Delhi, dated 03rd February, 2021

To,

All Pr. Chief Commissioners/ Chief Commissioners of Customs/ Customs (Prev.)

All Pr. Chief Commissioners/ Chief Commissioners of Central Tax/ Central Excise

All Pr. Commissioners/ Commissioners of Customs/ Customs (Prev.)

All Pr. Commissioners/ Commissioners of Central Tax and Central Excise

Madam/Sir,

Subject: - Systemic improvements regarding modification in the Bond (B-17) Execution process -regarding

In case of EOU/EHTP/STP, a single all-purpose bond was notified vide notification no. 06/98-C.E.(N.T.), dated 02.03.1998. This bond is called B-17(General Surety/Security). Various instructions through circulars were issued regarding execution of said B-17 bond. Post GST, revised new B-17 bond was notified vide notification no. 01/2018-C.E.(N.T.), dated 05.12.2018. It was also clarified vide circular no. 50/2018-Customs dated 06.12.2018 that all relevant instructions applicable for the old B-17 bond will be applicable, mutatis mutandis, to the new B-17 bond.

2. Circular no. 14/98 - Customs dated 10.03.1998 clarified that although the bond is devised to be executed as surety or security bond, it has also been decided that only surety bond has to be taken from such units. Subsequently, circular no. 42/98-Customs dated 19.06.1998 acknowledging the fact that some units were not able to organise prescribed individual/corporate surety equivalent to the bond amount, allowed such units to execute the bond coupled with a security amount.

3. CBIC vide circular no. 66/98-Customs dated 15.09.1998 further directed that the solvency of sureties may also be certified by a Chartered Accountant or the Bankers of the surety. And, since in the law, a limited company is distinct legal entity and the Members of the Company, including the Directors are distinct from the company, there should be no objection to

allow the Directors of the EOU, which are Limited Companies to stand as surety in their personal capacity for the said companies. In addition, other corporate bodies including Limited Companies may also stand as surety for the units.

4. Recently, it has come to notice that the B-17 bond executed by the Proprietor of EOU was issued in violation of the Circular no. 66/98-Customs dated 15.09.1998. The surety was given by the Proprietor himself though the same was required to be given by some independent legal entity other than the EOU firm. This resulted in improper execution of B-17 Bond resulting in loss of Government revenue.

5. Matter has been examined in the Board. "Surety" is a person/individual who undertakes an obligation to pay a sum of money or to perform some duty or promise for another in the event that person (obligor) fails to act. A sole Proprietorship firm is not a legal entity distinct from its proprietor. Hence, question of Proprietor himself standing as surety for his own Proprietorship firm does not arise. Even the clarification vide above referred circular no. 66/98-Customs dated 15.09.1998 clarified this fact that individuals (Directors) standing as surety in their personal capacity are distinct legal entities from the limited companies (EOUs) thereby allowing such Directors of EOU to stand as surety in their personal capacity for said EOU companies. This clarification nowhere recognizes a Proprietor standing as surety for his/her own Proprietorship EOU firm. Therefore, there seems to be no ambiguity with regard to the requirement of surety to be given by some independent legal entity other than EOU itself irrespective of the constitution of the EOU firm. However, it is hereby clarified that in case of B-17 bond executed by EOU/STP/EHTPs in capacity of Proprietorship or partnership firm, surety cannot be given by Proprietor/partner himself. Such sureties must be given by an independent legal entity other than the Proprietor/ Partner of the concerned Proprietorship/ Partnership EOU firm.

6. All B-17 bonds executed in your jurisdiction may be reviewed in view of the above clarification.

7. Difficulties, if any, may be brought to the notice of Board.

8. Hindi version will follow.

Yours faithfully,

-S/d-

(Saroj Kumar Behera)
Additional Director