

Circular No. 38 / 2016-Customs

F.No: 465 / 01 / 2016 – Cus V
Govt. of India
Ministry of Finance
Dept. of Revenue
Central Board of Excise & Customs

Dated 22nd August 2016

To,

All Principal Chief Commissioners of Customs / Customs & Central Excise
All Chief Commissioners of Customs,
All Chief Commissioners of Customs & Central Excise,
All Directorate-Generals, Chief Departmental Representative,
All Principal Commissioners of Customs,
All Principal Commissioners of Customs & Central Excise,
All Commissioners of Customs,
All Commissioners of Customs & Central & Excise

Subject:- Guidelines regarding Provisional Assessment under section 18 of the
Customs Act, 1962

The Customs (Provisional Duty Assessment) Regulations 2011 issued under notification no. 81/2011 – Customs (NT) dated 25.11.2011 were reviewed in view of references from the field formations regarding guidelines on the implementation of Regulation 2(2) and Regulation 4.

2. Regulations 2(2), 3 and 4 require three elements – namely, (a) deposit of 20% of the differential duty between “provisional duty” and duty to be “finally assessed or re-assessed”; (b) execution of a bond; and (c) surety or security or both, as deemed fit.

2.1 Section 18 of the Customs Act, 1962 defines the cases where provisional assessment may be resorted, as under:

- (1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46,-

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

2.2 Further, Section 18 goes on to state how a provisional assessment is to be carried out:

"the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed."

2.3 Thus, the provisions of section 18 of the Customs Act, 1962, require that in cases where goods are to be provisionally assessed:

- (a) the importer binds himself for the payment of deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed; and
- (b) furnishes such security as the proper officer deems fit for the payment of the deficiency.

2.4 In view of the requirement that the importer binds himself to pay the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed, it would be necessary to obtain a bond for meeting the aforesaid condition.

2.5 Insofar as the requirement of obtaining a 20% deposit of the duty provisionally assessed, the Board has decided that this condition be dispensed, particularly, as it necessitates following the procedure of refunds in cases where final assessment is in favour of the importer. Such requirements add to the transaction costs, lead to delays in clearance and detract from the ease of doing business.

2.6 It was also noted that Regulation 4 required that the importer should furnish such surety or security or both, as deemed fit, along with the Bond. In this connection, it was felt that acceptance of a surety requires making an evaluation of the underlying asset value or of the net worth of the person executing the same. This poses difficulties to the importers as well as administrative challenges to the Department in valuing sureties. Therefore, the Board has decided that the requirement of security needs to be met by either obtaining a bank guarantee or a cash deposit, as convenient to the importer, and that no sureties shall be obtained.

2.7 In view of the aforesaid, the Board has rescinded "The Customs (Provisional Duty Assessment) Regulations 2011" vide notification no. 113/2016 – Cus (NT) dated 22nd August 2016

since section 18 itself lays down the procedure to be followed in the case of provisional assessment. The only issue which is required to be addressed is regarding the amount of security since section 18 requires the same to be obtained as "deemed fit" by the proper officer. For the sake of uniformity of practice, transparency and predictability for the tax payer, the Board has decided that the following procedure and guidelines will be followed by all Customs stations while assessing goods provisionally:

2.8 Wherever, duty is to be assessed provisionally, the importer shall:

(a) for the purposes of undertaking to pay on demand the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed, execute a bond in the prescribed form (enclosed); and

(b) furnish such security for the payment of the duty deficiency, as indicated in para 3 below.

2.9 The security to be obtained shall be in the form of a bank guarantee or a cash deposit, as convenient to the importer.

3. The following guidelines shall be followed while obtaining security where provisional assessment under section 18 of the Customs Act is being undertaken:

Sl. No.	Class of Importer	Amount of Bank Guarantee or Cash deposit to be obtained as "security" of the differential duty	Remarks
1.	Imports by Authorised Economic Operators (AEO - T3)	0% (including cases at Sl. No. 4 to 6b.)	In terms of Circular no. 33/2016-Customs dated 22 nd July 2016, as amended.
2.	Imports by Authorised Economic Operators (AEO - T1 and AEO - T2) (excluding importers mentioned at Sl. No.3)	(a) 0% (in terms of Sl. No. 5(b), 6(a) and 6(b) (2)) (b) 50% (for AEO-T1) or 25% (for AEO-T2) of the applicable bank guarantee or cash deposit specified at Sl. No. 4, 5(a), 5(c), 6(b)(1).	In terms of Circular no. 33/2016-Customs dated 22 nd July 2016, as amended.
3.	Imports by Public Sector Undertakings / Government (Central/State/UT and their	0% (including cases at Sl. No. 4 to	

	undertakings)	6b.)	
Sl. No.	Nature of Import	Amount of Bank Guarantee or Cash deposit to be obtained as "security" of the differential duty	Remarks
4.	Cases referred to SVB	As per circular No.5/2016-Customs dated 9.2.2016 issued from F. No. 465/12/2010-Cus V	
5 (a)	Cases related to verification of origin under FTAs based on the reasonable belief that the matter involves mis-declaration of origin / value addition.	100%	Based upon "Operational Certification Procedures" contained in the non-tariff notifications issued on Rules for determination of Origin
5 (b)	Cases selected <u>on random basis</u> for verification of origin.	0%	
5 (c)	Cases related to verification of signatures and seals under FTAs	100%	Provided that the Principal Commissioner of Customs or the Commissioner of Customs may reduce the amount of security where there are good and justifiable reasons to do so.
6 (a)	Cases, where the importer is not able to make self-assessment and has sought provisional assessment.	Not applicable	As this such cases will be provisionally assessed by the proper officer as deemed fit.
6(b)	Cases, where the proper officer deems it necessary to order a provisional assessment, whether for the purposes of chemical test or requirement of information or causing inquiries: (1) Where differential duty has been estimated. (2) Where, despite best efforts by the proper officer, differential duty cannot be computed	100% 0%	Provided that the Principal Commissioner of Customs or the Commissioner of Customs may reduce the amount of security where there are good & justifiable reasons to do so. N.A.

3.1 By way of a clarification, attention is also drawn to an earlier instruction of the Ministry contained in F.No. 511/7/77-Cus VI dated 09.01.1978, to the effect that the amount of security shall be determined on the basis of duty differential and not the CIF value of goods.

3.2 It is also clarified that provisional assessments under section 18 are to be carried out with respect to cases where the duty is in dispute. Cases relating to execution of a bond or undertaking specified as a condition to a notification or those requiring compliance of conditions under allied acts are not to be provisionally assessed under section 18 of the Customs Act. This position had been earlier clarified by the Ministry of Law and Justice and circulated vide Ministry F.No. 353 / 91 / 74 – Cus dated 28th January 1977.

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

5. Hindi version follows.

Yours faithfully,

Encl: Format of bonds

(S. Kumar)
Commissioner (Customs)

Bond
Individual Importation

(With Bank Guarantee or Cash Deposit)

(To be executed by the Importer of goods with bank guarantee/cash deposit under section 18 of the Customs Act,
1962 (52 of 1962)

(Circular No. 38 /2016-Customs dated 22/08/2016 issued from CBEC F.No: 465/01/2016 - Cus V)

KNOW ALL MEN BY THESE PRESENTS THAT We M/s _____
having our registered office located at _____ and holding
Import-Export Code No. _____ hereinafter called the "Importer" (which expression shall
include its successors/heirs, executors, administrators and legal representatives) are held and
firmly bound unto the President of India hereinafter called the "President" (which expression
shall include his successors and assigns) in the sum of Rs _____
Rupees _____ (please fill amount in words) to be paid to the President for
which payment well and truly to be made, we bind ourselves, our successors, heirs, executors,
administrators and legal representatives firmly by these presents.

Sealed with our seal(s) this ____ day of _____ 20 ____

WHEREAS the Assistant Commissioner of Customs/Deputy Commissioner of Customs
at the _____ (place), (hereinafter called the "proper officer") has agreed to make
provisional assessment of the goods imported by us, pending submission of further documents
and/or furnishing information and/or completion of further enquiries and/or chemical test and/or
other test and the Proper Officer has agreed to allow provisional assessment of the goods
mentioned in the schedule hereto annexed upon the importer agreeing to furnish such bond as
is herein contained; and

WHEREAS the importer has deposited with the Principal Commissioner of Customs or
Commissioner of Customs, as the case may be, at _____ (location),

¹ a bank guarantee;

OR

¹ a cash deposit

mentioned in the schedule hereunder for the due observance of and performance of the
terms and undertakings on the part of the importer and for being applied in part or full towards
the indemnity hereby given or otherwise according to law.

¹ strike out whatever is not applicable

NOW THE CONDITION of the above written bond is such that –

(1) If the importer shall within ____ days or within such extended period as the
Proper Officer may allow, produce such documents and furnish such information as may be
called for by the Proper Officer, **and**

(2) If the importer pays to the President, the difference between the duty finally assessed and the duty provisionally assessed in respect of the imported goods and mentioned in the Schedule hereto annexed.

Then the above written bond shall be void and of no effect; otherwise the same shall remain in full force and virtue.

AND IT IS HEREBY AGREED AND DECLARED by the importer as follows:-

1. This bond and cash deposit/bank guarantee are given under the orders of the Central Government for the performance of an act which is in public interest.

2. The President through the [Deputy Commissioner / Assistant Commissioner of Customs] or other officer may recover the said sum of Rs _____ in the manner laid down in Section 142 of the Customs Act, 1962 without prejudice to any other mode of recovery.

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

SIGNED AND DELIVERED by and on behalf of the importer at _____ (place) in the presence of:-

(Signature of Authorised Signatory and Corporate Seal)

Witnesses:

1.

2.

Accepted for and on behalf of the President of India
(Signature of the Proper Officer)

**Schedule to Bond
(Individual importation)**

(With Bank Guarantee or Cash Deposit)

*(To be executed by the Importer of goods with bank guarantee/cash deposit under section 18 of the Customs Act,
1962 (52 of 1962))*

(Circular No.38 /2016-Customs dated 22/08/2016 issued from CBEC F.No: 465/01/2016 - Cus V)

Bill of Entry Number	Date	Value at which provisionally assessed	Bond value	Details of security deposit or bank guarantee whichever is applicable	Remarks (attach bank guarantee/cash deposit receipt in original)	Signature / date / name / designation of officer making the entry
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Bond
Individual Importation

(Without Bank Guarantee or Cash Deposit)

(To be executed by the Importer of goods without bank guarantee/cash deposit under section 18 of the Customs Act, 1962 (52 of 1962))

(Circular No. 38 / 2016-Customs dated 22/08/2016 issued from CBEC F.No: 465/01/2016 - Cus V)

KNOW ALL MEN BY THESE PRESENTS THAT We M/s _____
having our registered office located at _____ and holding Import-
Export Code No. _____ hereinafter called the "Importer" (which expression shall include
its successors/heirs, executors, administrators and legal representatives) are held and firmly
bound unto the President of India hereinafter called the "President" (which expression shall
include his successors and assigns) in the sum of Rs _____
Rupees _____ (please fill amount in words) to be paid to the President for
which payment well and truly to be made, we bind ourselves, our successors, heirs, executors,
administrators and legal representatives firmly by these presents.

Sealed with our seal(s) this ____ day of _____ 20__

WHEREAS the Assistant Commissioner of Customs/Deputy Commissioner of Customs
at the _____ (place), (hereinafter called the "proper officer") has agreed to make
provisional assessment of the goods imported by us, pending submission of further
documents and/or furnishing information and/or completion of further enquiries and/or
chemical test and/or other test and the Proper Officer has agreed to allow provisional
assessment of the goods mentioned in the schedule hereto annexed upon the importer
agreeing to furnish such bond as is herein contained; and

NOW THE CONDITION of the above written bond is such that –

(1) If the importer shall within _____ days or within such extended period as the
Proper Officer may allow, produce such documents and furnish such information as may be
called for by the Proper Officer, **and**

(2) If the importer pays to the President, the difference between the duty finally
assessed and the duty provisionally assessed in respect of the imported goods and
mentioned in the Schedule hereto annexed.

Then the above written bond shall be void and of no effect; otherwise the same shall
remain in full force and virtue.

AND IT IS HEREBY AGREED AND DECLARED by the importer as follows:-

1. This bond is given under the orders of the Central Government for the
performance of an act which is in public interest.

2. The President through the [Deputy Commissioner / Assistant Commissioner of Customs] or other officer may recover the said sum of Rs _____ in the manner laid down in Section 142 of the Customs Act, 1962 without prejudice to any other mode of recovery.

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

SIGNED AND DELIVERED by and on behalf of the importer at _____ (place) in the presence of:-

(Signature of Authorised Signatory and Corporate Seal)

Witnesses:

1.

2.

Accepted for and on behalf of the President of India
(Signature of the Proper Officer)

**Schedule to Bond
(Individual importation)**

(Without Bank Guarantee or Cash Deposit)

(To be executed by the Importer of goods without bank guarantee/cash deposit under section 18 of the Customs Act, 1962 (52 of 1962)

(Circular No. 38/2016 –Customs dated 22/08/2016 issued from CBEC F.No: 465/01/2016 - Cus V)

Bill of Entry Number	Date	Value at which Provisionally assessed	Bond value	Remarks (if any)	Signature / date / name / designation of officer making the entry
(1)	(2)	(3)	(4)	(5)	(6)

Continuity Bond

(With Bank Guarantee or Cash Deposit)

(To be executed by the Importer of goods with bank guarantee/cash deposit under section 18 of the Customs Act, 1962 (52 of 1962)

(Circular No.38 /2016-Customs dated 22/08/2016 issued from CBEC F.No: 465/01/2016 - Cus V)

KNOW ALL MEN BY THESE PRESENTS THAT We M/s _____ having our registered office located at _____ and holding Import-Export Code No. _____ hereinafter called the "Importer" (which expression shall include its successors/heirs, executors, administrators and legal representatives) are held and firmly bound unto the President of India hereinafter called the "President" (which expression shall include his successors and assigns) in the sum of Rs _____ Rupees _____ (please fill amount in words) to be paid to the President for which payment well and truly to be made, we bind ourselves, our successors, heirs, executors, administrators and legal representatives firmly by these presents.

Sealed with our seal(s) this ____ day of _____ 20__

WHEREAS the Assistant Commissioner of Customs/Deputy Commissioner of Customs at the _____ (place), (hereinafter called the "proper officer") has agreed to make provisional assessment of the goods imported from time to time by us, pending submission of further documents and/or furnishing information and/or completion of further enquiries and/or chemical test and/or other test and the Proper Officer has agreed to allow provisional assessment of the goods mentioned in the schedule hereto annexed upon the importer agreeing to furnish such bond as is herein contained; and

WHEREAS the importer has deposited with the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, at _____ (location),

¹ a bank guarantee;

OR

¹ a cash deposit

mentioned in the schedule hereunder for the due observance of and performance of the terms and undertakings on the part of the importer and for being applied in part or full towards the indemnity hereby given or otherwise according to law.

¹ strike out whatever is not applicable

NOW THE CONDITION of the above written bond is such that –

(1) If the importer shall within _____ days or within such extended period as the Proper Officer may allow, produce such documents and furnish such information as may be called for by the Proper Officer, **and**

(2) If the importer pays to the President, the difference between the duty finally assessed and the duty provisionally assessed in respect of the goods imported from time to time and mentioned in the Schedule hereto annexed.

Then the above written bond shall be void and of no effect; otherwise the same shall remain in full force and virtue.

AND IT IS HEREBY AGREED AND DECLARED by the importer as follows:-

1. This bond and cash deposit/bank guarantee are given under the orders of the Central Government for the performance of an act which is in public interest.

2. The President through the [Deputy Commissioner / Assistant Commissioner of Customs] or other officer may recover the said sum of Rs _____ in the manner laid down in Section 142 of the Customs Act, 1962 without prejudice to any other mode of recovery.

3. This bond and the cash deposit/bank guarantee shall remain in force from the date hereof and the obligation and liability of the importer shall be a continuing one in respect of all goods imported from time to time by the importer between the period of _____ and the payment by the importer of the difference between the duty finally assessed and the duty provisionally assessed in respect of the goods imported from time to time.

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

SIGNED AND DELIVERED by and on behalf of the importer at _____ (place) in the presence of:-

(Signature of Authorised Signatory and Corporate Seal)

Witnesses:

1.

2.

Accepted for and on behalf of the President of India
(Signature of the Proper Officer)

Schedule to Continuity Bond

(With Bank Guarantee or Cash Deposit)

(To be executed by the Importer of goods with bank guarantee/cash deposit under section 18 of the Customs Act, 1962 (52 of 1962)

(Circular No. 38 /2016-Customs dated 22/08/2016 issued from CBEC F.No: 465/01/2016 - Cus V)

Bill of Entry Number	Date	Value at which provisionally assessed	Bond Value	Balance of bond value	Details of security deposit or bank guarantee whichever is applicable	Balance of security deposit or bank guarantee value (whichever is applicable)	Remarks (attach bank guarantee/ cash deposit receipt in original)	Signature/ date/name/ designation of officer making the entry
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Continuity Bond

(Without Bank Guarantee or Cash Deposit)

(To be executed by the Importer of goods without bank guarantee/cash deposit under section 18 of the Customs Act, 1962 (52 of 1962)

(Circular No.38 /2016-Customs dated 22/08/2016 issued from CBEC F.No: 465/01/2016 - Cus V)

KNOW ALL MEN BY THESE PRESENTS THAT We M/s_____ having our registered office located at_____ and holding Import-Export Code No._____ hereinafter called the "Importer" (which expression shall include its successors/heirs, executors, administrators and legal representatives) are held and firmly bound unto the President of India hereinafter called the "President" (which expression shall include his successors and assigns) in the sum of Rs_____ Rupees_____ *(please fill amount in words)* to be paid to the President for which payment well and truly to be made, we bind ourselves, our successors, heirs, executors, administrators and legal representatives firmly by these presents.

Sealed with our seal(s) this____ day of____ 20__

WHEREAS the Assistant Commissioner of Customs/Deputy Commissioner of Customs at the _____ *(place)*, (hereinafter called the "proper officer") has agreed to make provisional assessment of the goods imported from time to time by us, pending submission of further documents and/or furnishing information and/or completion of further enquiries and/or chemical test and/or other test and the Proper Officer has agreed to allow provisional assessment of the goods mentioned in the schedule hereto annexed upon the importer agreeing to furnish such bond as is herein contained; and

NOW THE CONDITION of the above written bond is such that –

(1) If the importer shall within ____ days or within such extended period as the Proper Officer may allow, produce such documents and furnish such information as may be called for by the Proper Officer, **and**

(2) If the importer pays to the President, the difference between the duty finally assessed and the duty provisionally assessed in respect of the goods imported from time to time and mentioned in the Schedule hereto annexed.

Then the above written bond shall be void and of no effect; otherwise the same shall remain in full force and virtue.

AND IT IS HEREBY AGREED AND DECLARED by the importer as follows:-

1. This bond is given under the orders of the Central Government for the performance of an act which is in public interest.

2. The President through the [Deputy Commissioner / Assistant Commissioner of Customs] or other officer may recover the said sum of Rs _____ in the manner laid down in Section 142 of the Customs Act, 1962 without prejudice to any other mode of recovery.

3. This bond shall remain in force from the date hereof and the obligation and liability of the importer shall be a continuing one in respect of all goods imported from time to time by the importer between the period of _____ and the payment by the importer of the difference between the duty finally assessed and the duty provisionally assessed in respect of the goods imported from time to time.

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

SIGNED AND DELIVERED by and on behalf of the importer at _____ (place) in the presence of:-

(Signature of Authorised Signatory and Corporate Seal)

Witnesses:

1.

2.

Accepted for and on behalf of the President of India
(Signature of the Proper Officer)

Schedule to Continuity Bond

(Without Bank Guarantee or Cash Deposit)

(To be executed by the Importer of goods without bank guarantee/cash deposit under section 18 of the Customs Act, 1962 (52 of 1962))

(Circular No. 38 /2016-Customs dated 22/08/2016 issued from CBEC F.No: 465/01/2016 - Cus V)

Bill of Entry Number	Date	Value at which provisionally assessed	Bond Value	Balance of bond value	Remarks (if any)	Signature / date / name / designation of officer making the entry
(1)	(2)	(3)	(4)	(5)	(6)	(7)