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34/2019-Cus.

Bonded warehouses — Manufacturing or other operations undertaken in bonded warehouses under Customs Section 65 — Procedure modified

Circular No. 34/2019-Cus., dated 1-10-2019

F. No: 473/03/2015-LC(pt.)

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Indirect Taxes & Customs, New Delhi

Subject : Procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouses under section 65 of the Customs Act - Regarding.

Please refer to the Manufacture and Other Operations in Warehouse Regulations 2019, issued vide Notification No. 44/2019-Customs (N.T) dated 19th June, 2019 and Circular 38/2018-Customs dated 18-10-2018 [2018 (362) E.L.T. (T16)] issued to streamline the procedure, documentation and compliances to be followed under Section 65 of the Customs Act, 1962 (hereinafter referred to as the "Act").

2. Representations have been received from the trade including potential investors seeking clarifications on some issues. With a view to provide clarity and predictability and to facilitate investments, Board has decided to issue a revised circular along with the Manufacture and Other Operations in Warehouse Regulations, 2019 (No. 2 regulations), issued vide Notification No. 69/2019-Customs (N.T.) dated 1-10-2019, hereinafter referred to as, "MOOWR, 2019". Circular 38/2018-Customs stands consolidated and integrated into this Circular.

2. MOOWR, 2019 and this circular covers the procedures and documentation for units operating under Section 65 in a comprehensive manner, including application for seeking permission under section 65, provision of execution of the bond by the licensee, receipt, storage and removal of goods, maintenance of accounts, conduct of audit, etc.

3. Consequently, the Warehouse (Custody and Handling of Goods) Regulations, 2016, and the Warehoused Goods (Removal) Regulations, 2016, which were hitherto governing the procedure for custody and handling of goods in and removal of goods from public and private bonded warehouses, have been amended vide Notification 70/2019-Customs (N.T.) and 71/2019-Customs (N.T.) both dated 1-10-2019 to exclude their application for warehouses operating under section 65. The said regulations will continue to be applicable for warehouses, not operating under Section 65.

4. It is to be noted that an applicant desirous of manufacturing or carrying out other operations in a bonded warehouse under section 65 read with MOOWR, 2019 must also have the premises licensed as a private bonded warehouse under section 58 of the Customs Act. The applicants can seek a license under section 58 and permission to operate under section 65 synchronously, or request for permission under section 65, if they already have a warehouse licensed under section 58.

5. For the sake of uniformity, ease of doing business and exercising due diligence in grant of permission under section 65, the form of application to be filed by an applicant before the jurisdictional Principal Commissioner/Commissioner of Customs is prescribed as in *Annexure A*. The form of application has been so designed that the process for seeking grant of license as a private bonded warehouse as well as permission to carry out manufacturing or other operations stands integrated into a single form. The declaration to be made to satisfy Regulation, 5 of Private Warehouse Licensing regulations 2016 and the undertaking to be made by the applicant as per regulation 4 of MOOWR, 2019 is included in the application format (Part II). The warehouse in which section 65 permission is granted shall also be declared by the Licensee as the principal/additional place of business for the purposes of GST.

6. It has also been decided that the licensees manufacturing or carrying out other operations in a bonded warehouse shall be required to maintain records as per the form prescribed under this circular (*Annexure B*). Regulation 4 of the MOOWR, 2019, provides that the applicant under section 65 shall undertake to execute a bond in such format as specified. Further, Section 59 of the Customs Act requires the owner of the warehoused goods to execute a triple duty bond for the warehoused goods. Thus, the bond prescribed under this

Circular as per *Annexure C* serves the requirements of both MOOWR, 2019 and Section 59 of the Customs Act.

7. To the extent that the resultant product manufactured or worked upon in a bonded warehouse is exported, the licensee shall have to file a shipping bill and pay any amounts due. A GST invoice shall also be issued for such removal. In such a case, no duty is required to be paid in respect of the imported goods contained in the resultant product as per the provisions of section 69 of the Act.

8. To the extent that the resultant product (whether emerging out of manufacturing or other operations in the warehouse) is cleared for domestic consumption, such a transaction squarely falls within the ambit of "supply" under Section 7 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the, "CGST Act"). It would therefore be taxable in terms of section 9 of the CGST Act, 2017 or section 5 of the Integrated Goods and Services Tax Act, 2017 depending upon the supply being intra-state or inter-state. The resultant product will thus be supplied from the warehouse to the domestic tariff area under the cover of GST invoice on the payment of appropriate GST and compensation cess, if any. As regards import duties payable on the imported goods contained in so much of the resultant products are concerned, same shall be paid at the time of supply of the resultant product from the warehouse for which the licensee shall have to file an ex-bond Bill of entry and such transactions shall be duly reflected in the accounts prescribed under *Annexure B*. As per MOOWR, 2019, the applicant shall also inform the input-output norms, wherever considered necessary, for raw materials and final products and shall also inform the revised input-output norms in case of change therein.

9. The waste generated during the course of manufacture of the resultant product may be cleared for home consumption as per clause (b) to sub-section (2) of section 65 of the Customs Act on payment of applicable duties of customs and GST.

10. In cases where the resultant product is exported, and duty on the waste or refuse is paid as per proviso to clause (a) to sub-section (2) of section 65, the same shall be deposited manually through a Challan. The records maintained as per *Annexure-B* would be sufficient for accountal of such goods.

11. It may be noted that units operating under section 65 read with section 58 of the Customs Act, are entitled to import capital goods, machinery, inputs etc. by following the provisions under Chapter IX. In so far as domestic procurement is concerned, applicable rates of taxes shall be payable and exemptions, if any, can also be availed. By virtue of simply being a unit operating under section 65, they shall not be entitled to procure goods domestically, without payment of taxes. The records in respect of such domestically procured goods shall be indicated in the form for accounts (*Annexure B*).

12. Since the warehouse operating under section 65 also functions as a warehouse licensed under section 58, the licensees can also import goods and clear them as such, for home consumption under section 68 on payment of import duties, along with interest as per sub-section (2) of section 61 of the Act or clear them as such for export under section 69 of the Act. The licensees shall also be required to submit monthly returns in "Form B" as prescribed under Circular No. 25/2016-Cus dated 8th June 2016 in case the warehouse is used for such purposes i.e. non-section 65 purposes. This is being allowed to enable optimum utilization of available infrastructure.

13. As per Regulation 3(2)(e)(i) of the Private Warehouse Licensing Regulations, 2016, the Principal Commissioner or Commissioner has to be satisfied that the site or building of the proposed private warehouse is suitable for secure storage of dutiable goods. Regulation 8 of MOOWR, 2019 requires the licensee to provide such facilities, equipment and personnel as are sufficient to control access to the warehouse, provide secure storage of the goods and ensure compliance to the regulations. Thus, the regulations do not mandate that a structure fully closed from all sides is a pre-requisite for grant of license. What is important is that the site or building is suitable for secure storage of goods and discharge of compliances, such as proper boundary walls, gate(s) with access control and personnel to safeguard the premises. Moreover, depending on the nature of goods used, the operations conducted and the industry, some units may operate without fully closed structures. Therefore, Principal Commissioner/Commissioners should take into consideration the facilities, equipment and personnel put in place for secure storage of goods, while considering grant of license.

14. The issue of procurement of imported goods that are exempt from duty or are chargeable to nil rate of duty into a warehouse operating under section 65 has also been raised. The objective of section 65 is to enable manufacture and other operations in customs bonded warehouses. For this purpose, the units should be able to procure required raw materials, consumables, capital goods etc., imported or procured from domestic market. The goods may include dutiable goods, exempt goods or those chargeable to nil rate of duty. Denial of the facility to exempt goods or those chargeable to nil rate of duty, which may be required for manufacturing, would defeat the objective of Section 65. It is therefore clarified that imported goods, that are exempt from duty or are chargeable to nil rate of duty, may be brought into the warehouse, upon filing a bill of entry for home consumption and clearance, at the customs station of import. Such goods shall not be considered as warehoused goods in terms of section 60 of the Act.

15. Sections 67, 68 and 69 of the Act provides for permission of the proper officer for removal of the goods from one warehouse to another, for home consumption and for export, respectively. Even in cases, the resultant goods are being removed, permission of the proper officer would be required for removal of the (imported) warehoused goods contained in the resultant goods.

15.1 Given the continuous nature of operations in warehouses under section 65, and the potential need to clear resultant goods expeditiously, the requirement to obtain prior permission of the proper officer for each clearance could pose a challenge to making clearances on time to meet delivery schedules. Therefore to facilitate such timely clearances and for convenience of the trade, recourse has been taken to the powers vested under Section 143AA, and it is provided under regulation 13, 14 and 15 of MOOWR, 2019 that while a licensee shall file the due documentation (such as the Form for transfer of goods from a warehouse, bill of entry and shipping bill, respectively) and pay the duties due, prior permission of the proper officer is not an essential

condition for removal of the warehoused goods (as part of the resultant goods). The licensees who wish to avail self-sealing facility for exports can avail the facility made available under circular 26/2017 customs dated 1-7-2017 [2017 (351) E.L.T. (T22)] and its linked circulars.

16. Board has partnered with Invest India under the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India to launch a microsite for the promotion of the scheme and facilitation of investors. The same can be accessed at <https://www.investindia.gov.in/bonded-manufacturing>. The microsite also hosts a digitized application that an applicant can fill online, upload the supporting documents, submit online and also print the application form.

17. Clarification required, if any, may be sought from the Board

18. Hindi version follows.

Annexure-A

Application for License for a private bonded warehouse under section 58 and permission for manufacturing and other operations under section 65 of the Customs Act, 1962.

Part I

(to be filled by the applicant)

1. Name of the Applicant :
2. PAN No :
3. GSTIN :
4. IEC :
5. Constitution of business (Tick as applicable and attach copy)
 - (i) Proprietorship
 - (ii) Partnership
 - (iii) Limited Liability Partnership
 - (iv) Registered Public Limited Company
 - (v) Registered Private Limited Company
 - (vi) Registered Trust
 - (vii) Society/Cooperative society
 - (viii) Others (please specify)

Note : Copy of certificate of incorporation along with Memorandum of Objects and Article of Association in case of companies and partnership deed in case of partnership firms should be attached.

6. Registered office :

Address :

Tel :

Fax :