

Circular No. 19/2021-Customs

F. No. 15021/10/2020-ICD-CBEC
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

North Block, New Delhi
Dated 16th August, 2021

To,

All Principal Chief Commissioners/Chief Commissioners of Customs
All Principal Chief Commissioners/Chief Commissioners of Customs (Prev.)
All Principal Chief Commissioners/Chief Commissioners of GST & Customs
All Principal Directors General/Directors General under CBIC

Sir/Madam,

Subject: Amendment in Circular No. 38/2016-Customs with the insertion of a new entry 5(d) to enable Pr. Commissioners/Commissioners of Customs to decide the amount of security required in certain cases of provisional assessments - reg.

Reference is drawn to Board's Circular no. 38/2016-Customs dated 22.08.2016, which provides guidelines for provisional assessment under section 18 of the Customs Act 1962.

2. Reference is also drawn to Circular no. 18/2020-Customs dated 11.04.2020, which allows provisional clearance of goods imported under India's Trade Agreements without original Certificate of Origin (CoO) in certain situations. The said Circular 18/2020-Customs was issued to mitigate the difficulties faced by importers in producing original CoO at the time of import clearance owing to COVID-19 pandemic. It provides that the import consignments, where preferential treatment of goods under a Free Trade Agreement has been claimed but the original hard copy of CoO has not been submitted or only digitally signed copy or unsigned copy of CoO is submitted, may be assessed and cleared provisionally in terms of section 18 of the Customs Act, 1962; the final assessment may be done subsequently on submission of the original CoO by the importer; and the revenue may be secured through undertaking and appropriate security.

3. Further, *vide* Instruction No. 04/2020-Customs dated 04.05.2020, the scope of the facilitation extended by the above Circular no. 18/2020-Customs was aligned to the requirements of extant Circular No. 38/2016-Customs governing guidelines for provisional assessments under Section 18 of the Customs Act. It was stated that the cases covered by Circular no. 18/2020-Customs may be treated at par with category listed at serial no. 5(c) of the Circular 38/2016-Customs, provided that the matter is not covered under 5(a), wherein there is reasonable belief that it involves mis-declaration of origin/value addition. The aforesaid serial no. 5(c) under then existing Circular 38/2016-Customs provided flexibility to the Principal Commissioner/Commissioner of Customs to decide the security/BG amount.

4. Subsequently, *vide* Circular No. 42/2020-Customs dated 29.09.2020 certain entries in the Circular No. 38/2016-Customs were substituted with new entries primarily to reflect and align the requirements of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR) issued on 21.08.2020. In the amended Circular 38/2016-Customs, as

it exists today, there is requirement of 100% security at serial no. 5(c) and no flexibility is available with Principal Commissioner/ Commissioner.

5. The above amendment dated 29.09.2020 in Circular no. 38/2016-Customs effectively nullified powers of field officers in exercising discretion on the subject matter as the entry 5 (c) now stood irrevocably linked to the provisions of Rule 6(1)(a) of CAROTAR 2020 which is reproduced below for ease of reference –

“6. Verification request. – (1) The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from Verification Authority where:

- (a) there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement;”

6. As elucidated above, the aforesaid amendment done in September 2020 had the unintended consequence of negating the flexibility extended earlier in the year *vide* Circular 18/2020-Customs in view of the exceptional circumstances created by the ongoing Covid-19 pandemic.

7. In order to rectify the situation and facilitate legitimate trade impacted by the pandemic, Circular 38/2016-Customs is further amended as below:

- (i) entry at serial no. 5(c) of Table at paragraph 3 of the said Circular 38/2016-Customs is substituted with a new entry 5(c) as below:

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| 5 (c) | Cases related to verification of signatures and seals under FTAs, where there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement | 100% | In terms of Rule 6(1)(a) of CAROTAR,2020 (notification no. 81/2020-Customs (NT), dated 21.08.2020) |
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- (ii) after entry at serial no. 5(c) of Table at paragraph 3 of the said Circular 38/2016-Customs, a new entry 5(d) is inserted as below:

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| 5 (d) | Cases covered under Circular no. 18/2020-Customs dated 11.04.2020 where original hard copy of certificate of origin (COO) under FTA has not been submitted or only digitally signed copy or unsigned copy of COO is submitted | 100% | (i) Where there is a reasonable belief that the case involves misdeclaration of origin or value addition. (ii) In other cases, the Principal Commissioner of Customs or Commissioner of Customs, after considering the facts and circumstances of the case and for reasons to be recorded in writing, |
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| | | | may reduce the amount of security or remove it completely, as deemed fit, for such provisional assessments. |
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- (iii) in view of insertion of the new entry 5(d), appropriate amendment is also made in entry at serial no. 1, in its column 3, so as to make the security requirement of 5(d)(i) above applicable to AEO - T3, as below:

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| 1 | Imports by Authorised Economic Operators (AEO - T3) | 0% (including cases at serial no. 4 to 6(b), except 5(a), 5(c) and 5(d)(i)). | In terms of Circular no. 33/2016-Customs dated 22nd July 2016, as amended. |
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8. The above amendments in Circular no. 38/2016-Customs de-link the cases covered under Circular 18/2020-Customs from entry at serial no. 5(c) and create a separate entry 5(d) for handling such cases with sufficient flexibility for Principal Commissioner/Commissioner to reduce the amount of security required under provisional assessments in suitable cases.

9. The new entry 5(d) is applicable to all fresh import consignments and those pending Customs clearances, including those pending finalisation of assessment under Section 18 of the Customs Act on the date of issuance of this Circular.

10. With the above amendments in Circular 38/2016-Customs, the Instruction No. 04/2020-Customs dated 04.05.2020 becomes redundant and is hereby rescinded.

11. Difficulties faced, if any, in implementing this Circular may be brought to the notice of the Board.

12. Hindi version follows.

Yours faithfully

Neetisha
16/08/2021
(Neetisha Verma)
OSD (ICD)