CHAPTER 14

BONDS and LUTs

1. Bonds and Letter of Undertaking

1.1 Bond is an instrument by which the obligation to pay money is created expressly. It is also a legal agreement whereby a person undertakes to do or not to do anything subject to conditions stipulated in the agreement. The primary purpose of the bond is to secure due compliance with the rules and procedures laid down under the Excise law. A bond is a collateral security , which the department is securing to ensure payment of appropriate duty in addition to the statutory provisions available .

1.2 As a measure of rationalization and simplification of excise law and procedures the number of bonds have been further reduced. Several bonds, which were in vogue prior to 1st July, 2001 have since been dispensed with. Care should be taken with regard to bonds, which were executed prior to 1st July, 2001 while discharging the same. These bonds should be discharged only after the completion/performance of the obligation.

2. Types of bonds

2.1 Bonds are basically two types ,i.e. surety and security. Under a surety bond another person stands as surety to guarantee the performance on the part of obligor. The surety should be for the full value of the bond and the person standing as surety should be solvent to the extent of the bond amount. Under the Contract Act the liability of the surety is co-extensive with that of the principal debtor and hence the department is at liberty to enforce the recovery of the dues either from the obligor or from the surety.

2.2 The following are the types of bonds, which are presently in vogue :

d. B-1 Surety / Security (General Bond) - for export of goods without payment of duty under Rule 19;
e. B-2 Bond Surety / Security(General Bond) for provisional assessment;
f. B-3 Bond Surety / Security) - to obtain matches Central Excise stamp on credit;
g. B-4 Bond Surety/Security for provisional release of seized goods (provided in this Manual by instruction); and
h. B-17 Bond (General) Surety / Security -composite bond for EPZ/ 100% EOUs for assessment, export, accounting and disposal of excisable goods obtained free of duty [continuation of the Format as specified under the erstwhile Central Excise Rules, 1944].

3. Guidelines for executing bonds

3.1 The bond should be executed on the non-judicial stamp paper of appropriate value. The bond amount should be sufficient to cover the duty liability. The bond should be signed by the obligor or by the authorised agent. The surety should be for the full amount and the person standing as surety should be solvent to extent of the amount covered. The security should normally be limited to the 25% of the bond amount.

3.2 In case of exporters, certain specific categories i.e. Super Star Trading House, Star Trading House, Exporters registered with Export Promotion Council & Registered Exporters need not furnish any bank guarantee/cash security while executing export bonds. They may furnish sureties only. This is a modification over the previous instruction contained in Board's Circular No.284/118/96-Cx dated 31.12.96.

3.3 In the case of 100% E.O.Us obtaining indigenous goods without payment of duty under a notification issued under section 5A of the Central Excise Act, 1944, acceptance of surety bond instead of bank guarantee is permissible. In respect of 100% EOUs & EPZ s units may continue to execute bond in the Format given in Form B-17 under the erstwhile Central Excise Rules, 1944. While executing combined B17 Bond security to the extent of 5% of the value of the bond in the form bank guarantee or cash deposit or any other mode of security may be accepted in lieu of surety (Board's letter F.No.305/86/98-FTT dated 19./6/98). Fresh bond may not be taken, where the existing units have already furnished bond in B-17 Form prior to 1.7.2001. The existing bond may be simply re-validated under the new rules.

3.4 The export bonds executed under rule 19 of the said Rules should be accepted within 24 Hours or the next working day and communicated to the exporter by the Deputy/Assistant Commissioner of Central Excise or Maritime Commissioner or any other officer authorised by the Board in this behalf.

3.5 Bonds should be executed in favour of and in the name of the President of India. They should be properly stamped. The prescribed wordings of the bond form must be copied out on a non judicial stamp paper of the appropriate amount (to be locally ascertained), except where arrangement can be made for embossing printed forms or where the State Government rules require otherwise. The bonds must be executed on stamp paper of the respective State Government in which the registered persons business is situated.

4. **Bonds for provisional assessment**

4.1 The amount of the bond in forms B-2 should be fixed on the following basis: -

(i) The amount of the specific bond in Form B-2 should be sufficient to cover the difference between the duty payable on provisional assessment and the probable duty payable if the highest rate / value applicable such goods has to be applied.

(ii) The amount of the general bond in Form B-2(surety)/(Security) should be equal to the difference between the duty payable on provisional assessment and the probable duty payable applying the highest rate / value applicable to such goods for a period of

3 months. If the provisional assessment cannot be completed within the 3 months and longer time is required, say a period of one year, in appropriate cases, differential duty likely to arise during such period shall be the basis/ determination of the bond amount. When the security bond is executed, the amount of security will be generally fixed at 25% of the bond amount. However, in appropriate cases, for special reasons to be recorded, the proper officer under rule 7 of the said Rules may order for a higher security amount. In the event of death or insolvency or insufficiency of the surety / security, the proper officer may demand fresh bond. If the security furnished is found to be inadequate, he may demand additional security also. In the case of provisional assessment, if the assessee fails to make the due adjustment within the period of 15 days after the final assessment made, the proper officer may proceed to enforce the bond or encash the bank guarantee after due notice to the assessee.

5. Stamps on bond

5.1 All bonds must bear stamps on the scale prescribed by article 57 of the schedule I to the Indian Stamp Act 1899, modified as may be, by State Legislation. Commissionerate should circulate to their staff the rate of stamp duty required in each State within Commissionerate for each type of bond.

5.2 Whoever affixes an adhesive stamp to any instrument chargeable with duty which has been executed by any person shall when affixing such stamp cancel the same so that it cannot be used again and whom so ever has executed any instrument on any paper bearing an adhesive stamp shall at the time of execution unless such stamp has been already been cancelled in the manner aforesaid, cancel the same so that it cannot be used again. Any instrument bearing an adhesive stamp, which has not been cancelled so that it cannot be used again, shall so far as such stamp is concerned be deemed to be un-stamped. The person required to cancel an adhesive stamp may cancel it by writing on or cross the stamp with his name or initials or the name or initial of his firm with the true date of his so writing, or in any other effectual manner.

6. **Execution of bond by Government Undertaking or Autonomous Corporations**

6.1 The Board has decided that every undertaking owned and managed directly through any Ministry, Directorate or Directorates by the Central Government is exempt from the execution of any bond; or a State Government is hereby exempt from furnishing any security or surety for bond, where the execution of such bond, or, as the case may be furnishing of security or surety is required by or under any other provision of the rules made under Central Excise Act, 1944.

6.2 An undertaking owned or controlled by the Central Government or State Government does not include-any undertaking belonging to corporation owned or controlled by the Central Government or State Government and established by or under a Central Provisional or State Act; or any undertaking belonging to

Government Company within the meaning of Section 617 of the Companies Act, 1956 (I of 1956).

7. **Security**

7.1 The security to be furnished in respect of the bonds will be, as follows:

(i) The security furnished should either be cash, Government promissory notes, post office savings, bank deposits, national savings Certificates, National Defence Bonds, National Defence Gold Bonds, 1980 or similar realizable Government papers. Promissory Notes and stock Certificates of the Central Government or a State Government shall be accepted subject to the conditions laid down in clause (ii) of Rule 274 of GFR.

(ii) Deposit receipt of bank can also be pledged as securities for Central Excise - Bonds subject to certain specific conditions under Rule 274 (vi) of G.F.R. The conditions inter alia are:

(a) The deposit receipt shall be made out in the name of the pledgee or if it is made out in the name of the pledger, the bank shall certify on it that the deposit can be withdrawn only on demand or with the sanction of the pledgee.

(b) The depositors shall agree in writing to undertake any risk involved in the investment and make good the depreciation, if any.

(c) The depositors shall receive the interest when due, direct from the bank on a letter from the pledgee authorising the bank to pay it to him.

(d) The responsibility of the pledgee in connection with the deposit and the interest on it will cease when he issues a final withdrawal order to the depositor and sends an intimation to the Bank that he has done so.

(e) Only the larger Scheduled banks are to be considered as recognized banks approved by Government for the purpose of item of Rule 274 of G.F.R.

(f) Interest on the securities will, however, continue to accrue and will be realised by the holders on discharge of the bond and return of the securities.

(g) Where the same bond and security continue for over one year, arrangements must be made for credit or payment of the interest on such securities to the bonders.

(h) On cash securities no interest is payable. In the case of Savings Bank Account, the interst may be paid to the parties on claim preferred by them periodically or can be collected after the amount is returned to them. In respect of other securities, arrangements are to be made for the payment of interest at regular intervals of 6 months.

8. **Surety**

8.1 Whenever surety bond is executed it is to be ensured that both the obligor and surety sign the bond. Field officers will ensure that surety is financially sound and have been verified from time to time. Whenever bank guarantee is accepted for security, care should be taken to get the guarantee renewed before expiry from time to time, so as to enable the enforcement of liability as and when such need arises. Execution of B17 Bonds is optional and if the assessee does not wish to avail of this facility, he may execute individual bonds prescribed for different purposes.

8.2 A partner or a director of a limited company can also stand as surety in his individual capacity to guarantee the performances of the firm or a company as the case may be. Since, in law, a limited company is a distinct legal entity and the member of the company including directors are distinct from the company, there should be no objection to allow the directors of the limited company to stand as surety for the companies provided they fulfil all the other conditions applicable to sureties. (F. No. 8/10/16/CX II dt 5/8/1960)

9. **Guarantee bond executed by bank**

9.1 The provisions governing the execution of bonds by banks are, as follows:

(i) When the State Bank of India or a scheduled bank gives a guarantee for a registered person with or without deposit of security, the guarantee bond should provide a period of validity and an extra period during which obligations arising during the period of validity to be enforced. The time limit for enforcement of obligation should be at least two years.

(ii) Where there is a need for extension of the period of validity of bank guarantee furnished by the bank on behalf of a party in pursuant to an order of an original or appellate authority or any other reasons, it should be done by means of supplementary deed of bank guarantee on a stamp paper.

10. **Preservation of bond and retention of securities**

10.1 Proper preservation of bonds is to be ensured in the interest of the revenue.

(i) Bonds must be preserved as long as they are valid and should be returned only after all the obligations under the bond had been discharged.

(ii) All officers who filled Central Excise bonds must be careful not to enforce the words " cancelled" on the bonds even after the apparent fulfilment of obligation ; otherwise it is likely to be argues that persons liable under the bond have been their by discharge from the liabilities imposed by the bond. The obligations under the bond are not legally extinguished so long as the bond is not returned to the obligor or is not cancelled on execution of a deed of cancellation.

11. **Verification of sureties**

11.1 In respect of surety bonds, periodical verification, preferably on an annual basis will be made by the jurisdictional Central Excise Officers so as to ensure the sureties are financially sound, solvent and alive. The enquiry to verify the financial stability of the sureties will be made by any of the following methods:

(i) By reference to the surety's bankers.

(ii) By making personal enquiries and ascertaining whether the surety possesses a house or other immovable property, industrial equipment, shop etc. which would cover the bond amount. Alternatively, the sureties may themselves be asked to furnish a list of their property, which may be verified by the Officer.

(iii) By reference to Revenue Officer not below the rank of Tahsildar or a Mamalakdar.

(iv) The result of enquiry as well as the solvency of the surety should be incorporated in the records of the Department.