

How do you enforce a bond?

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RECENTLY, a good friend of mine, who is a good serving IRS officer, asked me the following questions:

How to enforce a Bond?

Can we take recovery action directly under Section 142 of Customs Act?

Should we issue SCN as to why bond should not be enforced?

In Customs, Central Excise and now GST, there is a great bond between the Government and the assesseees. The taxpayers were/are required to execute several bonds to facilitate ease of doing business for government. In the olden days, this bonding was a great circus where chief executives of companies had to present themselves before the Assistant Commissioners - the powerful representatives of the President of India, to sign these bonds. Elaborate records were maintained to monitor bonds which resulted in invariable failure to locate and enforce these bonds. In Custom Houses, there used to be an Assistant Commissioner(bonds).

Bonds have a hoary past.

In Shakespeare's 'Merchant of Venice', Portia says, **"Pay him six thousand, and deface the bond."**

Shylock says,

I'll have my bond; I will not hear thee speak:

I'll have my bond; and therefore speak no more.

Shylocks and their bonds still exist for their pound of flesh.

Shylock and Antonio make a contract in which Antonio will lose a pound of his flesh if he does not pay back money borrowed.

Enforcing contracts with Shylock's stringency and vengeful motives is not really possible. To Shylock, the original understanding is valid according to the law, regardless of the contract's brutal repercussions. Portia voids Shylock's contract on a technicality of wording, in which Shylock can take **"just a pound of flesh"**, not blood.

Perhaps, Shakespeare understood the arbitrary and harmful nature of contract law.

Coming back to the present, a typical bond would state as this IGST bond: -

I/We.....of.....,hereinafter called "**obligor(s)**"

, am/are held and firmly bound to the President of India (hereinafter called "**the President**"

) in the sum of.....rupees to be paid to the President for which payment will and truly to be made.

I/We jointly and severally bind myself/ourselves and my/our respective heirs/ executors/ administrators/ legal representatives/successors and assigns by these presents; Dated this.....day of.....;

WHEREAS the above bounden obligor has been permitted from time to time to supply goods or services for export out of India without payment of integrated tax; and whereas the obligor desires to export goods or services in accordance with the provisions of clause (a) of sub-section (3) of section 16;

OTHERWISE and on breach or failure in the performance of any part of this condition, the same shall be in full force and virtue: AND the President shall, at his option, be competent to make good all the loss and damages, from the amount of bank guarantee or by endorsing his rights under the above-written bond or both;

I/We further declare that this bond is given under the orders of the Government for the performance of an act in which the public are interested ;

So, the taxpayer gives a bond promising to perform something, failing which, he would be liable for penal consequences. But how does the government go about enforcing the bond? The Tax laws are deafeningly silent about this. Obviously, it is beyond those tax laws to explain how to go about enforcing all those bonds from truant taxpayers.

In the Indian Legislative Council meeting on 14th March 1919 (yes, more than a hundred years ago), the government stated,

The enforcement of bonds

is a matter for the District Magistrate rather than for the Sessions Judge. The bond here is imposed or taken on the motion of an executive authority and the enforcement and realisation of it should be entrusted to a Magistrate.

But how to enforce the bond?

In its Report No.6 of 2006 (Indirect Taxes), the CAG observed,

Department too did not initiate action to enforce the bond and recover differential duty with interest amounting to Rs.27.98 crore. On this being pointed out, Ministry stated that adjudication proceedings were under way.

Kolkata Customs Commissioner in his Public Notice No.14/2013 dated, the 4th June, 2013, stated,

If landing certificates are not produced within the stipulated time the Running Bond/Bank Guarantee shall be immediately enforced by the Superintendent (Container cell). On the basis of the remarks on the landing certificates from the ICD action should be taken to enforce the bond, as the case may be.

In Circular No. [32/95-Customs](#), dated: April 05, 1995, the CBEC stated,

if re-export does not take place within the prescribed time limit, prompt action to enforce the bond should be initiated.Â

They all wanted to enforce the bond, but how?

Should a Show Cause Notice be given to recover the tax and or to enforce the bond? When the bond and the Statute provide for recovery of the same tax/duty, should a demand be issued under the Act or should the bond be enforced?

In **Collector of Customs and Ors. vs Juggilal Kamlapat Udyog Limited** in 1986, the Calcutta High Court held

a clause in the bond does not in any way derogate or take away the jurisdiction of the respondents which they have and the Customs Authority can proceed in respect of any amount payable under the Customs Act.

The bond only gave an additional right against the Petitioner to the respondent authorities for the **institution of a suit** for enforcement of rights under the bond, whereas the impugned action was taken under the Act.

In a case where the Customs authorities were contending that the conditions for exemptions had not been fulfilled and as such the Petitioner was not entitled to claim exemption, the Customs authorities need not enforce their rights in respect of the bonds and as such the existence of the bonds did not disentitle them to proceed with the proceedings under the Customs Act.

In ***Phthalo Colours and Chemicals India Ltd Vs Commissioner of Central Excise and Service Tax*** - [2019-TIOL-1176-CESTAT-AHM](#), the CESTAT held:

Bond B17 can be enforced only in case where the demand of duty is determined in accordance with law. In the present case undisputedly a SCN was issued and demand was proposed under proviso to section 11A(1), wherein there is no explanation carried out for the purpose of limitation of 1 year or 5 years for clearance made from 100% EOU. Therefore, once the demand is raised under proviso to section 11A(1), the ingredient of proviso for invoking longer period of 5 years should exist in the facts of the case. B17 Bond is only enforced for recovery of the confirmed demand; otherwise whole process of adjudication such as issuance of SCN, adjudication, appeal, etc will not be required and straight away, the Revenue can enforce Bond and recover the duty without exercising the process of adjudication. Such provision is not available in the statute.

In ***Reliance Transport and Travels Ltd Vs Commissioner of Customs*** - [2018-TIOL-3620-CESTAT-DEL](#)

, the Commissioner dropped the demand under Section 28 of the Customs Act but demanded it under the bond. The Tribunal observed,

We further find that the impugned order is also bad in law and the Id. Commissioner has travelled beyond the scope of the show cause notice as the duty was demanded under Section 28 of the Act whereas the demand under the said Section has been dropped but duty has been confirmed by way of enforcement of the bond, in absence of any such proposal in the show cause notice, the demand is bad and fit to be set aside.

The appeal against the above order was dismissed by the Supreme Court.

In ***Binrajka Steel Tubes*** - [2006-TIOL-122-CESTAT-BANG](#), the Tribunal observed,

for enforcement of the bond a proper forum is neither the adjudicating authority nor even the Tribunal but is a court of law. Hence the Order-in-Original enforcing the bond and the impugned order upholding the same are bad in law and liable to be set aside.

In ***Sterlite Optical Technologies*** - 2011 (270) ELT.266 (Tri. Mumbai), the Tribunal held,

Parliament has not enacted any special provision for collection of duty from any person by way of enforcement of bond executed by that person. A bond executed by an importer at the time of clearance of the imported goods, as a condition for total or partial exemption from payment of customs duty under a notification issued under Section 25 of the Customs Act, is the importer's covenant to pay the duty or the differential duty, as the case may be, in the event of breach of mandatory post-import conditions of such notification. When such post-import condition of the notification is violated by the importer, the duty or the differential duty, as the case may be, becomes leviable and, ipso facto, the provisions of Section 28 get attracted for collection of such duty. Of course, it can be rightly said that, in the process of collection of the duty amount, the bond is enforced against the importer. To put it differently, Section 28 of the Act is the provision for enforcing the bond executed by the importer.

The Board had long ago in Circular No. 35/88-CX.8, dated 1-8-1988 directed,

Since a substantial amount of revenue is involved, the Board has decided that action should be taken by the Collectors to enforce these bonds even if need by filing a civil suit in the matter.

In *S Balasubramanian Vs Commissioner of Central Excise, Customs And Service Tax* - [2019-TIOL-2213-CESTAT-HYD](#), the CESTAT observed, "***The usual method of enforcing any bond is by filing of civil suit..***"

Section 195B(3) of the Sea Customs Act, 1878 stipulated:

(3) If the thing is not done within the time specified in the bond, the Customs-collector shall be entitled to proceed upon the bond in accordance with law; and in such a case the person concerned shall also be liable to the penalty provided in this Act or, as the case may be, in such other law for such contravention as aforesaid.

The Tribunal in the above-mentioned case - [2019-TIOL-2213-CESTAT-HYD](#) summarised the whole issue so succinctly as:

To summarise, in all cases, where a bond is executed under the Customs Act, Rules or Regulations and the person executing the bond violates the conditions of the bond, the following options are available to the department:

- a) A demand under Section 28 by the officer who can raise a demand.
- b) Enforcement of the Bond executed under Section 143 through appropriate legal action such as a civil suit;
- c) Recovering the amount under Section 142(2) if the Bond that is signed has such a clause incorporated in it.

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