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(PART-I, SECTION-I)

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT OF COMMERCE

PUBLIC NOTICE No. 167 (RE-2008)/2004-09

NEW DELHI the 30th March, 2009

In exercise of powers conferred under Para 2.4 of the Foreign Trade Policy, 2004-09, the Director General of Foreign Trade hereby makes the following amendments in the Handbook of Procedures (Vol.1) (RE-2008):

1. At the end of Paragraph 2.20, a new paragraph 2.20A related to “*Execution of Bank Guarantee/Legal Undertaking for DEPB/Freely transferable Incentive Schemes under Chapter 3*” as mentioned below, shall be added:

<i>Execution of Bank Guarantee/Legal Undertaking for DEPB/Freely transferable schemes under Chapter 3</i>	2.20 A	<i>At the time of filing application for scrip(s) under DEPB Scheme/Freely transferable incentive Scheme under Chapter 3 of FTP without Bank Realisation Certificate (BRC), the applicant shall execute BG/LUT (as per Customs circular no. 58/2004) with the RA as per Appendix 25C or Appendix 25D respectively.</i>
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2. Two new Appendices i.e. Appendix 25C and Appendix 25D related to “*Execution of Bank Guarantee and Legal Undertaking for DEPB/Freely transferable Incentive Schemes under Chapter 3*”, as Appended to this Public Notice stands added in Handbook of Procedures, Vol.1 (Appendices and Aayat Niryat Forms).

3. Last sentence of Paragraph 3.23.13 clause (i) notified vide Public Notice No. 151 dated 26.2.2009 shall be substituted by the following:

“In case there is no pending claim and there is no cash deposit towards the amount immediately after the expiry of 12 months time period from the date of issuance of the Scrip, the RA shall initiate necessary action. If the Scrip holder does not pay the amount within 60 days of the expiry of aforesaid 12 months time period, the scrip holder shall be required to pay the said amount along with 15% interest per annum from the date of issuance of the Scrip(s) for the Duty Credit for which BRC or Documentary evidence (evidencing realisation of export proceeds as required under FTP or the Procedure laid thereunder) could not be produced. In case the Scrip holder surrenders the unutilized / partially unutilized Duty Credit Scrip, then unutilized / partially unutilized credit shall be deducted from the payable amount.

3. Paragraph 4.45, as amended vide Public Notice No. 151 dated 26.2.2009 stands substituted as follows:

“RA shall monitor all such cases wherein the Scrip(s) has been issued without Bank Realisation Certificate(BRC) and ensure that the BRC is submitted within 12 months from the date of issuance of the Scrip. In case no RBI extension is produced, RA shall initiate action for recovery of the same. In such cases, DEPB holder (the original applicant) shall deposit in cash or through debit of the valid DEPB / adjustment of pending DEPB claim for an amount equivalent to the Duty Free Credit allowed. If amount realized in Free Foreign Exchange is less, then payable amount would be reduced proportionately. However, if the DEPB holder does not pay the amount within 60 days of the expiry of the 12 months time period from the date of issue of the Scrip, he shall be required to pay the said amount along with 15% interest per annum from the date of issuance of Scrip(s) for the Duty Credit for which BRC or Documentary evidence (evidencing realisation of export proceeds as required under FTP or the Procedure laid thereunder) could not be produced by the DEPB holder. In case he surrenders the unutilized / partially unutilized Duty Credit Scrip, then unutilized / partially unutilized Credit shall be deducted from the payable amount.

In case of Cash Payment, the same shall be deposited in the Head of Account of Customs as stated in paragraph 4.29 above.”

This issues in public interest.

Sd/-
(R.S. Gujral)
Director General of Foreign Trade
and ex-officio Additional Secretary to the Govt. of India

(F.No. 01/94/180/ 982 /AM09/PC 4)

APPENDIX 25C

BANK GUARANTEE FORMAT FOR DEPB SCHEME AND FREELY TRANSFERABLE INCENTIVE SCHEMES OF CHAPTER 3

To,
The President of India
Acting through the Director General of Foreign Trade

In consideration of the President of India, acting through the Director General of Foreign Trade (which expression shall be deemed to include the Joint Director General of Foreign Trade/Deputy Director General of Foreign Trade, or any other authority for the time being authorised to perform the duties of Joint Director General of Foreign Trade/Deputy Director General of Foreign Trade), Ministry of Commerce, Government of India, New Delhi (hereinafter referred to as the Government) having notified the _____ Scheme* (fill up the actual specific Scheme) in the Foreign Trade Policy, 2004-09, as amended from time to time (herein after referred to as “Scheme”). The importer/exporter _____ (full expanded name of the importer/exporter with complete address and IEC No.) (herein after referred to as ‘party’, which expression shall be deemed to include his/her heirs, successors, administrators and assignee, if the firm is Sole Proprietary firm/jointly and severally all the Partners through their legal heirs, successors, administrators, and assignee as well as the portions where body corporate or not having the control of the affairs of the said firm, if it is Partnership firm/successors in business and assignee, if firm is limited company) desires to apply for scrip(s) under the Scheme (herein after referred to as scrip(s) for import of the goods allowed under the Scheme) on fulfilling the terms and conditions of the Scheme, which inter-alia stipulates production of a Bank Guarantee in case the party applies for the scrip(s) without submission of the Bank Realisation Certificate or other documents evidencing realisation of export proceeds (as per terms and conditions of the Scheme). We _____ (indicate the name and full address and other particulars of the Bank) (hereinafter referred to as Bank) at the request of the party do hereby unconditionally and irrevocably undertake to pay the Government an amount not exceeding Rs. _____ against any loss or damage caused to or suffered by the Government by reason of any failure on the part of the said party to furnish the Bank Realisation Certificate or other documents evidencing realisation of export proceeds (as per the terms and condition of the Scheme) within the time period endorsed in the Scrip(s).

2. We _____ (indicate the name of Bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur or protest, merely on a demand from the Government stating that the amount claimed is due on account of non-realisation of export proceeds or any loss suffered by the Government by reason of breach by the party of any of the terms or conditions of the said Scheme. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under these presents.

3. We undertake to pay to the Government any money so demanded, notwithstanding any dispute or disputes raised by the party in any suit or proceeding pending before any court or Tribunal relating thereto and our liability under these presents is absolute and unequivocal.

4. We, _____ (indicate the name of Bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the scrip(s) and that it shall continue to be enforceable till all the obligations of the party under or by virtue of the scrip(s) have been fully discharged to the satisfaction of the Government or till Jt.DGFT/Dy.DGFT, or any Regional Authority for the time being authorised to perform the duties of Jt.DGFT/Dy.DGFT, Ministry of Commerce, New Delhi certifies that the terms and conditions of the scrip(s) have been fully and properly carried out by the party and accordingly discharges this guarantee. Provided, however, unless a demand or claim under this guarantee is made on us in writing on or before the _____ **, we shall be discharged from all liability under this guarantee thereafter.

5. We _____ (indicate the name of bank), further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder (i) to vary any of the terms and conditions of the scrip(s) and modify the said scheme from time to time or (ii) to extend time of performance by the said party from time to time or to postpone for any time or (iii) from time to time any of the powers exercisable by the Government against the said party and to forbear or enforce any of the terms and conditions relating to the scrip(s) and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said party, or for any forbearance, act or omission on the part of the Government, or any indulgence by the Government to the scrip holder, or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

That this shall be a continuing Bank Guarantee and shall not be discharged by any change in the constitution of the party or of the Bank.

That the guarantor shall not revoke the guarantee without prior written consent of the Government.

"Dated the _____ day of _____ year _____ for _____ indicate the name of the Bank)"

Note: 1. BG/LUT shall be as per paragraph 2.20 of HBP v.1.

2. * DEPB under Chapter 4/Specific Transferable Incentive Scheme under Chapter 3 of FTP.

3. ** The Bank Guarantee shall be valid till the expiry of the time period of 24 months from the date of export (Let Export Order Date). In case of a number of S/Bs filed against one application under DEPB Scheme / Incentive Scheme, 24 months time period shall be from the LEO date of latest S/Bs.

(Appended to PN 167 dated 30.3.09.)

APPENDIX 25D

LEGAL AGREEMENT / UNDERTAKING FORMAT FOR DEPB SCHEME AND FREELY TRANSFERABLE INCENTIVE SCHEMES OF CHAPTER 3

To

The President of India

Acting through the Director General of Foreign Trade (which expression shall be deemed to include the Joint Director General of Foreign Trade/Deputy Director General of Foreign Trade/Asst, Director General of Foreign Trade), Ministry of Commerce, Udyog Bhavan, New Delhi - 110 011.

This DEED of Agreement made on _____ day of _____ month ____ year BETWEEN _____ (full expanded name of the Importer/Exporter with complete address and IEC Code No.) hereinafter referred to as the 'party', which expression shall be deemed to include his/her heirs, successors, administrators and assignee, if the firm is Sole Proprietary firm/jointly and severally all the Partners through their legal heirs, successors, administrators, and assignee as well as the portions where body corporate or not having the control of the affairs of the said firm, if it is Partnership firm/successors in business and assignee, if firm is limited company.

AND

The President of India (hereinafter referred to as 'the Government' which expression shall include his successors in office and assigns).

WHEREAS the party desires to apply for scrip(s) (herein after referred to as scrip(s) for import of goods allowed under the Scheme) on fulfilling the terms and condition of the Scheme, which inter-alia stipulates production of a Legal Undertaking (herein after referred to as 'LUT') in case the party applies for the scrip(s) without submission of the Bank Realisation Certificate or other documents evidencing realisation of export proceeds as required under the _____ Scheme (Fill up the actual specific Scheme*) (herein after referred to as 'Scheme') notified by the Government under the Foreign Trade Policy, 2004-09, as amended from time to time, with an obligation to realize the export proceeds (FOB value of exports based on which duty credit shall be allowed under the Scheme) within the time period endorsed on the scrip(s).

AND WHEREAS the Government may grant a Scrip(s) to the party for the full value applied for or for a lesser value, as it may be deemed fit and as per the terms and conditions of the Scheme.

AND WHEREAS one of the terms of the Scrip(s), which may be issued as above, is that the party is to enter into an agreement/undertaking with the Government on the terms and conditions appearing hereinafter.

AND WHEREAS the party do hereby unconditionally and irrevocably undertake to pay the Government an amount not exceeding Rs. _____ which is due and payable under this agreement without any demur or protest, merely on a demand from the Government stating that the amount claimed is due on account of non-realisation of export proceeds or any loss suffered by the Government by reason of breach by the party of any terms or conditions of the said Scheme.

AND WHEREAS the party has to furnish a Legal Agreement in anticipation of the Government issuing Scrip(s) as above, based on the obligation to realize the export proceeds against exports, based on which duty credit is to be allowed under the Scheme.

AND WHEREAS the party has agreed to realize the export proceeds to the extent of FOB value to be shown in the scrip(s) or as may be endorsed by the Government in the Scrip(s), within the time period as required under the scrip(s), which may be issued.

AND WHEREAS the party has agreed:

- a) to fulfill all the conditions of _____ Scheme (indicate the name of the scheme) under which the Scrip(s) may be issued;
- b) to fulfill all the terms and conditions of the Scrip(s) which may be issued;
- c) to fulfill the conditions subject to which the goods may be cleared for imports by the Customs authorities including conditions imposed under the relevant Customs notification pertaining to the Scheme;
- d) to send a 'Statement of export proceeds realisation' shipping bill wise, to the Regional Authority concerned, in original every 3 months beginning from the date of issuance of individual scrip;
- e) to furnish from a Nationalised / Scheduled bank, in original, a Bank Realisation Certificate (BRC) for the FOB value based on which the scrip(s) to be issued and such other documents as may be demanded by the Regional authorities as evidence for the realisation of export proceeds made;
- f) that in the event of his default in meeting the aforesaid obligations / conditions, he shall immediately pay an amount equal to the duty credit issued. If the party does not pay the amount within 60 days of the expiry of 12 months time period from the date of issue of the scrip, the party shall be required to pay the said amount alongwith 15% interest per annum from the date of issuance of Scrip(s) for the duty credit for which BRC or Documentary evidence (evidencing realisation of export proceeds), as required under FTP or Procedure laid thereunder, could not be produced by the party. In case the party surrenders the unutilized / partially unutilized Duty Credit Scrip, then unutilized / partially unutilized credit shall be deducted from the payable amount.
- g) that the Government may modify the Scheme from time to time.

NOW, THEREFORE THE CONDITIONS OF THE AGREEMENT ARE AS FOLLOWS:

In anticipation of granting the said Scrip(s) by the Government as aforesaid, the party hereby declare(s) and agree(s):

- (i) That the party shall comply with all the obligations under the aforesaid Scheme specified by the Government and the conditions specified in the Scrip(s) to be issued for import and other conditions specified herein above.

(ii) That if the party fails to realise the whole or part of the export proceeds under the Scheme, including the terms and conditions stipulated in the Scrip(s) or fails to furnish any information required under the Foreign Trade (Development & Regulation) Act, 1992, or the Orders made thereunder or the Rules framed thereunder, on the written demand made by the Government of the amount, in whole or part, the party shall forthwith without any demur or protest, pay to the Government the sum demanded.

(iii) That notwithstanding any right Government may have directly against the party in any form, and notwithstanding any dispute raised by the party in any form, the Government's written demand to the party shall be final and binding.

(iv) That this Agreement shall continue and shall not be discharged by any change in the constitution of the party.

(v) The party undertakes to pay simultaneously a sum equivalent to the duty credit issued by way of liquidated damages to the Government. The decision of the Government shall be final and binding on the party.

(vi) That this Agreement is executed by the party in public interest.

(vii) That the payment of the amount demanded by the government under this Agreement shall not affect the liability of the party to any other action, including the initiation of legal proceedings for confiscation of the imported material and refusal of further Scrip(s) / Authorisation(s), and all other liabilities, penalties and consequences under the provisions of the Foreign Trade (Development and Regulation) Act, 1992, and the Orders and Rules made thereunder, that may be decided by the Government.

(viii) That this Agreement shall remain in full force until all the obligations of the party are fulfilled to the full and final satisfaction of the Government as specified above and till such satisfaction is communicated to the party.

(ix) That the party unconditionally and irrevocably undertakes that in the event of his default in meeting the aforesaid obligation of furnishing the Bank Realisation Certificate evidencing realisation of export proceeds within 12 months time period from the date of issue of the Scrip(s), they shall immediately pay an amount equal to the duty credit issued. If the party does not pay the amount within 60 days of the expiry of 12 months time period from the date of issue of the scrip, the party shall be required to pay the said amount alongwith 15% interest per annum from the date of issuance of Scrip(s) for the duty credit for which BRC or Documentary evidence (evidencing realisation of export proceeds), as required under FTP or Procedure laid thereunder, could not be produced by the party. In case the party surrenders the unutilized / partially unutilized Duty Credit Scrip, then unutilized / partially unutilized credit shall be deducted from the payable amount.

(x) That the party shall also abide by the conditions imposed by the relevant Customs notification for the Scheme in addition to the aforesaid conditions.

(xi) That the party unconditionally and irrevocably undertakes that in the event of his default in meeting the aforesaid condition of export proceeds realisation, they shall execute a Bank Guarantee for an amount as required by the Government.

(xii) The party further agrees with the Government that the Government shall have the fullest liberty without any consent of the party and without effecting in any manner the obligations of the party hereunder: (a) to vary any of the terms and conditions of the scrip(s) and modify the said scheme from time to time or (b) to extend time of performance by the said party from time to time or to postpone for any time or (c) from time to time any of the powers exercisable by the Government against the said party and to forbear or enforce any of the terms and conditions relating to the scrip(s) and the party shall not be relieved from the said liability by reason of any such variation, or extension being granted to the party for any forbearance, act or omission on the part of the Government or any indulgence by the Government to the scrip holder or by any such matter or thing whatsoever which under the law relating to Legal Undertaking would, but for this provision, have effect of so relieving the party.

IN WITNESS WHEREOF the party hereto has duly executed this Agreement on this ____ day of ____ month ____ year ____ signed, sealed and delivered by the party in the presence of:

(Signature) _____

(full and expanded description of the party with residential address)

Witness: _____

(Signature)

1. Name _____

Residential _____

Address _____

2. Name _____

Residential _____

Address _____

(To be authenticated/affirmed by 1st Class Magistrate/Notary Public)

Accepted by me on behalf of the President of India.

(_____)

Asstt. DGFT/ Foreign Trade Development Officer

Note: 1. Bank Guarantee (BG) / Legal Undertaking (LUT) shall be as per paragraph 2.20 of HBP v.1.

2. * DEPB under Chapter 4/Specific Transferable Incentive Scheme under Chapter 3 of FTP.

3. LUT is required for the application(s) to be filed for DEPB under Chapter 4 of FTP/Specific Transferable Incentive Scheme under Chapter 3 of FTP without furnishing the Bank Realisation Certificate or the documents evidencing realisation of export proceeds (as prescribed for the purpose) at the time of filing application.
4. ** “The LUT shall be valid for a time period of 24 months from the date of export (Let Export Order Date). In case of a number of S/Bs filed against one application either for DEPB or for any specific freely transferable Incentive Schemes under Chapter 3 of FTP, 24 months time period shall be from the LEO date of latest S/Bs.”

**NOTE FOR GUIDANCE IN THE MATTER OF EXECUTING BANK GUARANTEE (BG) /
LEGAL AGREEMENT(LUT)**

1. The Bank Guarantee /Legal Agreement is to be executed and signed by the importer/exporter (party) and the surety Bank (Guarantor) on a non-judicial stamp paper of the minimum value of Rs. 15/-, or any amount as may be prescribed by the concerned State Government under the Indian Stamp Act, 1899 or State Act, as the case may be.
2. Any stamp duty payable on the B.G./LUT or any document executed thereunder shall be borne by the party.
3. If the party is a sole proprietary firm, the Bond/Legal Agreement shall be executed by the Sole Proprietor of the firm, along with his permanent and complete residential address.

"In such a case, the expression "Importer/Exporter" or "Party" used in the opening paragraph of the Legal Agreement should include his/her heirs, successors, administrators and assignee".

4. If the party is a partnership firm, the B.G./LUT shall be executed in the name of the partnership firm, through the partners to be specified, or the Managing partner, if so specified in the Partnership Deed, along with the address of the partner/Managing Partner, and the place where the Registered Office of the partnership firm is situated.

"In that case, the expression "Importer/Exporter" or "Party" used in the opening paragraph of the Legal Agreement should include jointly and severally all the partners, through respective legal heirs, successors, administrators and assignee as well as the portions where body corporate or not having the control of the affairs of the said Firm".

5. If the party is a Limited Company, the B.G./ LUT shall be executed by the Managing Director or two Directors of the Company, along with the seal of the Company and also specifying the address of the Registered Office of the Company.

Alternatively the B.G./ LUT shall be executed by a senior executive of the Company of the rank of General Manager and one of the Directors of the Company who have been authorised by the board of Directors for this purpose, along with the seal of the Company and also specifying the address of the Company. In such cases B.G./ LUT shall be countersigned by the Company Secretary.

"In that case, the expression "Importer/Exporter" or "Party" used in opening paragraph of the Legal Agreement should include its successors in business and assignee".

6. Each page of the Bond / Legal Agreement is to be signed.

7. Normally the BG / LUT shall have a validity of at least 24 months from the date of LEO. In case a number of S/Bs are filed against one application either for DEPB or for any specific freely transferable Incentive Schemes under Chapter 3 of FTP, 24 months time period shall be from the LEO date of latest S/Bs.

8. In case, extension in time period for export proceeds realisation is allowed by RBI or Authorized Dealers, the exporter shall get the validity of BG / LUT extended accordingly and the original copy of the same shall be submitted to the RA concerned along with the evidence of extension allowed by RBI or the Authorized Dealer.

9. Applicant shall have the option to file BG/ LUT against each application or a Revolving BG / LUT. Such a revolving BG / LUT shall be valid at least for a period as stated in the guidelines issued for the purpose. Further the revolving BG/LUT shall be limited to a specific scheme, which means that for an exporter/party filing application for different schemes under the aforesaid laid down guidelines, shall be required to file separate BG/LUT for each scheme. BG/LUT filed in one RA shall not be utilized for BG/LUT to be filed in another RA for different application.

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