

Chapter 22

Duty Drawback

1. Drawback on re-export of imported goods:

1.1 There is a Duty Drawback facility on export of duty paid imported goods in terms of Section 74 of the Customs Act, 1962 read with Re-export of Imported Goods (Drawback of Customs Duty) Rules, 1995. In this case goods are to be entered for export within two years from date of payment of duty on importation thereof. Under certain circumstances this period may be extended by Chief Commissioner of Customs and then by the Board.

1.2 A portion of the Customs duty paid at the time of import is given back as duty drawback, subject to certain procedure and conditions including identification of export goods with those imported on duty payment and use criteria. Where the goods are not put into use ninety eight per cent of Duty Drawback is admissible otherwise drawback is granted based on extent of use. Used goods do not get Drawback if exported 18 months after import.

[Refer Notification No.19-Cus., dated 6-2-1965]

1.3 All cases of drawback processing or denial under section 74 are to be handled by way of detailed speaking order, following the principles of natural justice, on the issue of compliance to Rule 5 of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 relating to manner and time of claiming drawback, identification, determination of and extent of use and other attendant aspects.

Refer Circular No.35/2013-Cus dated 5-9-2013]

1.4 Application for such Drawback is required to be made within 3 months, from the date of export of goods, which may be extended up to 12 months subject to conditions and payment of requisite fee as provided

[Refer Circular No.13/2010-Cus., dated 24-6-2010]

2. All Industry Rates (AIR) of Duty Drawback:

2.1 Duty Drawback rebates duty or tax chargeable on any imported / excisable materials and input services used in the manufacture of export goods. The duties and tax neutralized under the scheme are (i) Customs and Union Excise Duties in respect of inputs and (ii) Service Tax in respect of input services. Duty Drawback is of two types: (i) All Industry Rate and (ii) Brand Rate. The legal framework is provided by Sections 75 and 76 of the Customs Act, 1962 and the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 (Drawback Rules, 1995) issued under the Customs Act, 1962, the Central Excise Act, 1944 and the Finance Act, 1994.

2.2 The All Industry Rates (AIR) are notified, generally every year, by the Government in the form of a Drawback Schedule based on the average quantity and value of inputs and duties (both Excise & Customs), and Service Tax on input services, borne by export products. The AIR are essentially average rates based on assessment of average incidence.

2.3 AIR are fixed after extensive discussions with stake holders like Export Promotion Councils, Trade Associations, individual exporters so as to obtain relevant data, which includes procurement prices of inputs, indigenous as well as imported, applicable duty

rates, consumption ratios and FOB values of export products. Data is also sought from Central Excise and Customs field formations and information received from Ministries taken into account.

- 2.4 The AIR may be fixed as a percentage of FOB price of export product or as specific rates. Drawback Caps are imposed in most cases to obviate the possibility of misuse.
- 2.5 The scrutiny, sanction and payment of Duty Drawback claims at EDI locations is carried out with the aid of the EDI system which also facilitates payment directly to the exporter's bank account once the EGM has been correctly filed by the airlines / shipping lines, if other conditions are fulfilled.
- 2.6 Field formations are to monitor levels of EGM pendency to ensure trade facilitation. The mismatch of declaration made in the shipping Bill (item details vis-à-vis drawback details) should be verified to avoid the excess payment of drawback.

[Refer Notifications No. 98/2013-Cus(N.T.), dated 14.09.2013,
Circular No.37/2013-Cus., dated 14.09.2013 and
Instruction No. 603/01/2011-DBK dated 31.07.2013]

3. Brand Rates of Duty Drawback:

- 3.1 The Brand Rate of Duty Drawback may be fixed in terms of Rules 6 and 7 of the Drawback Rules, 1995 in cases where the export product does not have the AIR of Duty Drawback or the AIR neutralizes less than 4/5th of the duties/tax paid on materials/ input services used in the manufacture of export goods. Brand rate is fixed by the Commissioners of Central Excise having jurisdiction over the manufacturing unit.
- 3.2 An exporter, who has declared at the time of export on the shipping bill his intention to claim the Brand Rate by specifying the drawback Sr. No. as 9801, has to file an application for fixation of the brand rate within 3 months from the date of the 'Let Export' Order which can be extended up to 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995. This application has to be made before the Commissioner of Central Excise having jurisdiction over the manufacturing unit.

[Refer Circular No.13/2010-Cus., dated 24-6-2010]

- 3.3 The application is to include, inter alia, details of materials/ components/ input services used in the manufacture of goods and the duties/taxes paid on such materials/ components/ input services.
- 3.4 The exporter is compensated the incidence actually incurred in the export product based on a verification of documents and proof of usage of actual quantity of inputs /services utilized in the manufacture of export product and duties/tax paid thereon. There are provisions for provisional drawback payment. Five categories of exporters can seek provisional brand rate based on their declaration subject to post verification. Other exporters who file application for fixation of Brand Rate under rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 may provisionally seek drawback equivalent to AIR pending verification. Time limits prescribed for fixation of provisional brand rates and final brand rates should be adhered to. The work related to fixation of brand rates should be daily monitored by the Commissioner.

[Refer Instruction F.No. 603/01/2011- DBK dated 11.10.2013]

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- 3.5 The brand rate fixation letter issued by Central Excise Commissionerates has to indicate full and comprehensive details of the exported goods and other details. A copy thereof is to be made available to Custom House at port of export to facilitate payment of brand rate of Drawback to the exporter. A receipt and acknowledgement procedure for brand rate letters (issued by Central Excise formations) filed at Custom Houses is to be ensured.

[Refer Instruction F.No. 603/01/2011- DBK dated 31-7-2013 and 11.10.2013]

4. Procedure for claiming Duty Drawback:

- 4.1 Either the AIR or the Brand Rate may be claimed at the time of export and requisite particulars filled in the prescribed format of Shipping Bill/Bill of Export. In case of exports under electronic Shipping Bill, the Shipping Bill itself is treated as the claim for Drawback. In case of manual export, triplicate copy of the Shipping Bill is treated as claim for Drawback. The claim is complete only when accompanied by prescribed documents described in the Drawback Rules 1995. If the requisite documents are not furnished or there is any deficiency, the claim may be returned for furnishing requisite information/documents. The export shipment, however, will not be stopped for this reason.
- 4.2 Duty Drawback on goods exported by post is also allowed on following the procedure prescribed under Rule 11 of the Drawback Rules, 1995.

5. Supplementary claims of Duty Drawback:

- 5.1 Where any exporter finds that the amount of Duty Drawback under section 75 paid to him is less than what he is entitled to on the basis of the amount or rate of Drawback determined, he may prefer a supplementary claim. This claim has to be filed within 3 months of the relevant date, which is fixed, as follows:
- (i) where the rate of Duty Drawback is determined or revised under Rules 3 or 4 of the Drawback Rules, 1995 from the date of publication of such rate in the Official Gazette;
 - (ii) where the rate of Duty Drawback is determined or revised upward under Rules 6 or 7 of the Drawback Rules, 1995, from the date of communicating the said rate to the person concerned; and
 - (iii) In all other cases, from the date of payment or settlement of the original Duty Drawback claim by the proper officer:
- 5.2 The period of 3 months may be extended up to 18 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

[Refer Circular No.13/2010-Cus., dated 24-6-2010]

6. Limitations on admissibility of Duty Drawback:

- 6.1 The Customs Act, 1962 and the Drawback Rules, 1995 lay down certain limitations and conditions for grant of duty drawback. For example, no duty drawback shall be allowed where the drawback due in respect of any goods is less than Rs.50/- or in respect of any goods the market price of which is less than the amount of drawback due thereon. No amount or rate of drawback shall be determined in respect of any goods, the amount or rate of drawback of which would be less than 1% of FOB value of export thereof except where the amount of drawback per shipment exceeds Rs. 500/-. No drawback is allowed

where value of export goods is less than the value of imported material used in their manufacture. In this regard, if necessary, certain minimum value addition over the value of imported materials can also be prescribed by the Government.

- 6.2 The drawback amount or rate determined under Rule 3 of Drawback Rules 1995 shall not exceed one-third of the market price of the export product.
- 6.3 In case the Central Government forms an opinion that there is likelihood of export goods being smuggled back into India, the Government may not allow drawback or allow it subject to specified conditions or limitations. Notifications have been issued under Section 76 of the Customs Act, 1962. An example is Notification No. 208-Cus., dated 1-10-1977.
- 6.4 While prior repatriation of export proceeds is not a pre-requisite for grant of Duty Drawback, the law prescribes that if sale proceeds are not received within the period stipulated by the RBI, the Duty Drawback will be recovered as per procedure laid down in the Drawback Rules, 1995. An exception is where non-realization of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

7. Monitoring of realization of export proceeds:

- 7.1 Each Custom House is to have a special cell for monitoring of realization of export proceeds. Officers are to be specially designated by the Commissioner to verify the BRC/ negative statement and to make entries in the BRC module. Exporters should not be asked to submit BRC/negative statement more than once and therefore BRC submissions should be monitored through a proper receipt and acknowledgement procedure. Notices are to be issued for recovering drawback paid on export consignments in respect of which export proceeds have not been realized within prescribed period so that necessary action is initiated against the defaulter exporters.
- 7.2 Complete and effective implementation would mean that there should not remain any cases in the Custom Houses where the export realization has become due but the exporter has not submitted BRC /negative statement and the SCN for such non-submission has not been issued within a reasonable time. Thus, the work of feeding the details of BRCs /negative statements into the system and of issuing Show Cause Notices (SCNs) to exporters wherever they are not submitted and taking further action including adjudication of the cases for recovery of drawback has to be accomplished in a methodical and time bound manner.
- 7.3 For cases where the show cause notices, which have been issued for non-submission of BRCs/ negative statements, are returned undelivered as the recipient/ address was non-existent, the Commissioners should also report the names of exporters to the Regional Authorities of DGFT at regular intervals or during joint meetings so that action can be taken against them and their IE Codes got cancelled for furnishing wrong addresses.
- 7.4 The Commissioners are required to, by way of audit, exercise special checks in case of first time exporters, exporters who have taken large amounts of drawback suddenly, sensitive destinations, sensitive products etc. so as to ensure that there is no misuse of the drawback facility. Also, random audit checks are to be exercised in respect of other exporters to ensure that all export proceeds are realized. It needs to be confirmed on a

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random basis whether the certificates given by the authorized dealer or the chartered accountant (in his capacity as a statutory auditor of the exporter's account) are genuine or not by on the spot verification.

[Refer Circulars No.5/2009-Cus., dated 2-2-2009,
Instruction No.609/119/2010-DBK, dated 18-1-2011 and
603/01/2011-DBK,dated 11-10-2013]

8. Certain aspects relating to Duty Drawback:

8.1 The AIR of duty drawback is of two types, one of which is applicable when Cenvat facility has not been availed any of the inputs or input services used in the manufacture of the export product. This needs to be ensured at the time of export.

8.2 It is also to be ensured that exporters do not avail of the refund of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods through any other mechanism while claiming the higher AIR.

[Refer Circular No.19/2006-Cus., dated 13-07-2006, etc]

8.3 While processing Drawback claims, whether under Section 74 or Section 75, wherever any deficiency is noticed in the claim, it is to be communicated to the exporter in a clear unambiguous manner within a period of 10 days, from the date of filing of the claim. Commissioners of Customs are to undertake a periodic review and monitoring of the status of pending drawback claims.

[Refer Circular No.46/2011-Cus., dated 20-10-2011]

8.4 The field formations are to ensure that periodic sample checks and verifications are carried out with respect to the export declarations accepted for AIR drawback purposes. These shall include checks on value, present market value, non-availing of Cenvat facility on inputs and input services/reversal of Cenvat credit, declarations that goods have not been manufactured or exported in terms of rule 19(2) of Central Excise Rules or by availing rebate on material used in manufacture or processing in terms of rule 18 of Central Excise Rules, actual freight payment certificates in case of value declared on CIF or C&F basis, realization of the export proceeds/ BRC including for correctness of negative statement, genuineness of positive statement, debit notes raised by foreign buyers after initial realization by exporter, reduction in invoice value after proceeds are negotiated or realized, etc. Such checks are to be regarded as a form of audit checks and their proper record maintained. Detections that indicate lower FOB/realization should also be intimated to RA/DGFT for necessary action when any benefit under FTP is involved.

[Refer Circular No.46/2011-Cus., dated 20-10-2011,
Instruction No. 603/01/2011-DBK dated 11-10-2013]

8.5 Further, Commissioners are to ensure their Internal Audit wings achieve desired diligence levels and a significantly improved performance in areas such as payment of re-export drawback, cases of manual processing of drawback and the determination/fixation of brand rates.

[Refer Instruction No. 603/01/2011-DBK dated 11-10-2013]
