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Introduction

An important principle in the levy of custom duty is that the goods should be consumed within the country of importation. If the goods are not so consumed, but are exported out of the country, the cost of export goods gets unduly escalated on account of incidence of customs duty.

The re-export of goods imported into the country is broadly on two occasions:

- (a) Where the goods are sent back as such to the foreign country owing to any of the following mentioned reasons –
 - (a) Goods not conforming to the specification of the order.
 - (b) Goods not permitted to be imported into the country on account of trade-restrictions.
 - (c) Goods after being imported are temporarily retained in the country and later taken out of the country. In other words, the very objective of the importation was limited to temporary retention in India.
- (b) Where the goods are used in the manufacture of other articles and such other articles are exported.

The latest cause of relief of import duty paid is when goods are ultimately exported. This factor gained greater importance with the establishment of 100% EOU where goods manufactured are mainly exported to earn foreign exchange.

On parallel plane was placed the goods imported by tourists and other passengers transmitting through India. Under this category was the motor vehicles brought by tourists which were used in the country for a short period of 6-12 months alone.

This consequently necessitated grant of the rebate or drawback at the port of export of the goods. This in turn necessitated formulation of certain rules and the procedure for regulating the application for grant of drawback and the rates at which such drawback could be granted.

Drawback allowable on re-export of duty-paid goods (Sec 74)

(1) When any goods *capable of being easily identified* which have been *imported into India* and *upon which any duty has been paid on importation*, -

- (i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; or
- (ii) are to be exported as baggage and the owner of such baggage, for the purpose of clearing it, makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation; or
- (iii) are entered for export by post under clause (a) of section 84 and the proper officer makes an order permitting clearance of the goods for exportation,

98% of such duty shall, except as otherwise hereinafter provided, be re-paid as drawback, **if** –

- a) the goods are identified to the satisfaction of the AC/DC of Customs as the goods which were imported; and
- b) the goods are entered for export within 2 years from the **date of payment of duty** on the importation thereof :

Provided that in any particular case the aforesaid period of 2 years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit.

Conditions

Drawback allowable on re-export of duty-paid goods (Sec 74)

(2) Notwithstanding anything contained in sub-section (1), the **rate of drawback in the case of goods which have been used after the importation thereof shall be such as the CG, having regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the Official Gazette, fix.**

(3) The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may -

- (a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;
- (b) specify the goods which shall be deemed to be not capable of being easily identified; and
- (c) provide for the manner and the time within which a claim for payment of drawback is to be filed.

(4) For the purposes of this section -

- (a) goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16;
- (b) in the case of goods assessed to duty provisionally under section 18, the date of payment of the provisional duty shall be deemed to be the date of payment of duty.

Eg – Sec 74 is resorted to when goods have been imported for the purpose of participation in an exhibition and sent back etc.

Amount of Drawback Where Imported Goods are Used before Re-Exportation (Sec 74(2))

Under sub-section (2) of section 74, where the imported goods are used after importation, the amount of drawback will be at the reduced rates as fixed by the CG having regard to the duration of use, depreciation in value and other relevant circumstances prescribed by a Notification.

In this regard, Notification No. 19/65-Cus dated 6-2-1965 as amended provides as follows:

1. **List of goods which are not entitled to drawback at all under this notification**: As per this notification, no drawback of import duty will be allowed in respect of the following goods, if they have been used after their importation in India:
 - a) Wearing Apparel
 - b) Tea Chests
 - c) Exposed cinematograph films passed by Board of Film Censors in India
 - d) Unexposed photographic films, paper and plates, and X-ray films.

It implies that if these goods are not used after their importation into India and subsequently re-exported in the condition they were imported, then they would be entitled to 98% drawback.

Amount of Drawback Where Imported Goods are Used before Re-Exportation (Sec 74(2))

2. **Reduced drawback rates having regard to duration of use:** Following percentages have been fixed as the rates at which drawback of import duty shall be allowed in respect of goods which were used after their importation and which have been out of Customs control.

S.No.	Length of period between the date of clearance for home consumption and the date when the goods are placed under Customs control for export	% of import duty to be paid as Drawback
1.	Not more than 3 months	95%
2.	More than 3 months but not more than 6 months	85%
3.	More than 6 months but not more than 9 months	75%
4.	More than 9 months but not more than 12 months	70%
5.	More than 12 months but not more than 15 months	65%
6.	More than 15 months but not more than 18 months	60%
7.	More than 18 months	Nil

Even if imported goods are merely tested though not used, it will be treated as “used” after importation.

Amount of Drawback Where Imported Goods are Used before Re-Exportation (Sec 74(2))

3. **Special rate of drawback in respect of motor vehicle:** Having regard to the international practice, a different percentage of import duty to be paid as drawback has been prescribed in the case of motor vehicles and goods imported by the person for his personal and private use.
- i. **If the car or specified goods are re-exported immediately:** 98% of the duty paid is refunded
 - ii. **If the car or specified goods are re-exported after being used:** Percentage of reduction of the drawback is related to use of the motor vehicle per quarter as under

S.No.	Year	Drawback of duty shall be calculated by reducing the import duty by
1.	1 st Year	4% per quarter or part thereof
2.	2 nd Year	3% per quarter or part thereof
3.	3 rd Year	2.5% per quarter or part thereof
4.	4 th Year	2% per quarter or part thereof

It has been specifically provided that where such cars are exported after the expiry of the period of 2 years, the drawback would be allowed only if the CBIC, on sufficient cause being shown, extends the period for expiry beyond 2 years. It is further provided that no drawback shall be allowed if such motor car or goods have been used for more than 4 years.

Note – Anti-dumping duty, Safeguard duties and countervailing duties are rebatable as duty drawback.

CBIC has clarified that safeguard duties, anti-dumping duties and countervailing duties are rebatable as drawback in terms of Sec 75 of the Customs Act, 1962.

Amount of Drawback Where Imported Goods are Used before Re-Exportation (Sec 74(2))

Illustration: Spatial Wireless Pvt. Ltd. imported five mainframe computer systems from Flexsonics Computers, USA on 31-01-20XX paying Customs duty of ₹ 30.45 lakhs. The computers worked for some time but in June 20XX some technical faults developed in the systems resulting in complete closure of work. On being informed about the problem, Flexsonics Computers sent his technicians from USA, to repair the systems in June 20XX itself. However, since no solution was found, the Management of Spatial Wireless Pvt. Ltd. Re-shipped/returned the goods to Flexsonics Computers, USA on 31-12-20XX. As a counsellor to Spatial Wireless Pvt. Ltd., please advice.

Answer: Yes, the import duty already paid can be claimed back on five mainframe computer systems imported by Spatial Wireless Pvt. Ltd. In accordance with the provision of sec 74 of Customs Act.

Under this section, it is provided that when goods capable of being easily identified, which have been imported into India and upon which duty has been paid on importation are entered for export and the proper officer make an order permitting clearance and loading of the goods for exportation, 98% of such duty shall be paid back as drawback. However, the goods should be identified to the satisfaction of AC of Customs as the goods that were imported and the goods should have entered for export within 2 years from the date of payment of duty on the importation thereof.

Various %ages have been fixed by Govt as the amount of drawback payable in respect of goods that are used after their importation.

In the instant case, all the conditions specified in provisions of sec 74 are satisfied. Here, the period between the date of clearance for H/c and the date when the goods are placed under the customs control for export is more than 9 months, but not more than 12 months. Therefore, Spatial Wireless Pvt Ltd will be eligible for the DBK @ 70% of import duty paid.

Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Rule 2 - Definition.-

In these rules, unless the context otherwise requires, -

*(a) "**Drawback**", in relation to any goods exported out of India ,means the refund of **duty or tax or cess as referred to in the Customs Tariff Act ,1975** and paid on importation of such goods in terms of section 74 of Customs Act;"*

*(b) "**Export**", with its grammatical variations and cognate expressions means taking out of India to a place outside India and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port or airport.*

Note - Under the GST regime, goods upon import shall be subject to integrated tax and compensation cess in terms of sections 3(7) and Sec 3(9) respectively of the CTA, 1975. Further, in terms of section 3(12) of the CTA, 1975, the provisions of the Customs Act, 1962 and rules and regulations made thereunder relating inter alia to drawback shall apply to integrated tax and compensation cess also. Accordingly, drawback under section 74 would include refund of integrated tax and compensation cess along with basic customs duty, etc. **(Notification No. 57/2017-Cus (NT) dt 29-6-2017 read with Circular No. 21/2017-Cus dt 30-6-2017)**

- Further, in order to prevent dual benefit while sanctioning drawback under Section 74 of the Customs Act, 1962, the CBIC has issued an internal circular to its officers to make sure that no ITC of Integrated tax/compensation cess paid on imported goods has been availed or no refund of such credit or integrated tax paid on re-exported goods has been claimed (Circular No. 21/2017-Customs, dt 30-6-2017)
- CBIC has clarified that safeguard duties, anti-dumping duties and countervailing duties are rebatable as drawback in terms of Sec 75 of the Customs Act,1962. (Circular No. 49/2017-Cus, dt 12-12-2017)

Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Rule 3 - Procedure for claiming drawback on goods exported BY POST.-

(1) Where goods are to be **exported by post** under a claim for drawback under these rules, -

(a) the outer packing carrying the address of the consignee **shall also carry in bold letters the words "DRAWBACK EXPORT"**;

(b) the exporter **shall deliver to the competent Postal Authority, alongwith the parcel or package, a claim in the form at Annexure I, [See Customs Series Form No. 108 in Part 5] in quadruplicate, duly filled in.**

(2) The **date of receipt of the aforesaid claim form** by the proper officer of customs from the postal authorities **shall be deemed to be DATE OF FILING OF DRAWBACK CLAIM BY THE EXPORTER FOR THE PURPOSE OF SECTION 75A** and an **intimation of the same shall be given by the proper officer of customs to the exporter** in such form as the [Commissioner of Customs] may prescribe.

(3) In case the aforesaid claim form is not complete in all respects, the **exporter shall be informed of the deficiencies therein within 15 days of its receipt from postal authorities** by a deficiency memo in the form prescribed by the [Commissioner of Customs], and such claim shall be deemed not to have been received for the purpose of sub-rule (2).

(4) When the **exporter complies with the requirements specified in the deficiency memo, within 30 days of receipt of the deficiency memo**, he shall be issued an acknowledgement by the proper officer in the form prescribed by the Commissioner of Customs and the date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Rule 4 - Statements/Declarations to be made on exports OTHER THAN BY POST.-

In the case of exports other than by post, the exporter shall at the time of export of the goods –

(a) state on the shipping bill or bill of export, the

→ description, → quantity and → such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and

make a declaration on the relevant shipping bill or bill of export that -

(i) the export is being made under a claim for drawback under section 74 of the Customs Act;

(ii) that the duties of customs were paid on the goods imported;

(iii) that the goods imported were not taken into use after importation;

OR

(iii) that the goods were taken in use;

Provided that if the Commissioner of Customs is satisfied that the exporter or his authorized agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorized agent, and for reasons to be recorded, exempt such exporter or his authorized agent from the provisions of this clause.

(b) furnish to the proper officer of customs, → copy of the Bill of Entry or any other prescribed document against which goods were cleared on importation, → import invoice, → documentary evidence of payment of duty, → export invoice and → packing list and → permission from Reserve Bank of India to re-export the goods, wherever necessary.

Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Rule 5 - Manner and time of claiming drawback on goods exported OTHER THAN BY POST.-

(1) A claim for drawback under these rules shall be filed in the form at Annexure II [See Customs Series Form No. 109 in Part 5] within 3 months from the date on which an order permitting clearance and loading of goods for exportation under Sec. 51 is made by proper officer of customs :

Extension of due date of filing of the form and fees therefore -

Authority	Period of extension	Application Fees	Grant / refuse of extension
Assistant/Deputy Commissioner of Customs	Further 3 months (i.e. total 3+3)	(i) 1% of the value FOB value of exports or (ii) ₹ 1000/- Whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension after recording in writing the reasons for such refusal.
Principal Commissioner/ Commissioner of Customs	Further extension of 6 months (i.e. total 3+3+6)	(i) 2% of the FOB value of exports or (ii) ₹ 2000/- Whichever is less	

Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995

- (2) *The claim shall be filed alongwith the following documents, namely :-*
- i. Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.*
 - ii. Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.*
 - iii. Import invoice.*
 - iv. Evidence of payment of duty paid at the time of importation of the goods.*
 - v. Permission from Reserve Bank of India for re-export of goods, wherever necessary.*
 - vi. Export invoice and packing list.*
 - vii. Copy of Bill of lading or Airway bill.*
 - viii. Any other documents as may be specified in the deficiency memo.*
- (3) ***The date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims which are complete in all respects, and for which an acknowledgement shall be issued in such form as may be prescribed by the [Commissioner of Customs].***

Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995

*(4) (a) Any claim which is incomplete in any material particulars or is without the documents specified in sub-rule (2) **shall not be accepted** for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the [Commissioner of Customs] **within 15 days of submission and shall be deemed not to have been filed**;*

*(b) Where exporter complies with requirements specified in deficiency memo within **30 days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1)**.*

*(5) Where any **order for payment of drawback is made by the [Commissioner (Appeals)], CG or any Court against an order of the proper officer of customs, the manufacturer exporter may file a claim in the manner prescribed in this rule within 3 months from the date of receipt of the order so passed by the [Commissioner (Appeals)], CG or the Court, as the case may be.***

DBK on Imported Materials used in the Manufacture of Export Goods (Sec 75)

The drawback under sec 75 is on a totally different footing. The following important aspects should be remembered in this regard:

- (i) The goods exported are entirely different from the inputs.
- (ii) The input could be either imported goods on which duty of customs has been paid or indigenous goods on which central excise duty has been paid.
- (iii) The existence of the imported/indigenous excise duty paid goods in the final product is not capable of easy verification at the point of export.
- (iv) The goods, namely the inputs might have undergone changes in physical shape, property etc
- (v) The quantity of inputs per piece of final product may not be uniform and may not also be capable of verification at the time of exportation.

The underlying principle of the drawback under section 75 is that, the Govt fixes a rate per unit of final article to be exported out of the country as the amount of drawback payable on such goods. This amount is dependent upon prior verification of the mode of manufacture, the quantum of raw material required, the average content of duty paid articles in the final product and lastly, the standardization of the final product conforming to these norms.

DBK on Imported Materials used in the Manufacture of Export Goods (Sec 75)

(1) Where it appears to the CG that in respect of

- goods of any class or description manufactured, processed or on which any operation has been carried out in India,
 - being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under sec 51 by the PO, or
 - being goods entered for export by post under clause (a) of section 84 and in respect of which an order permitting clearance for exportation has been made by the proper officer,

a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the CG may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2):

Note – In this case, the rate of duty is not determined by the officer granting the drawback nor is it related to the actual import duty or excise duty paid on the raw materials or the components used in the manufacture of the final product exported. It is, therefore, an average amount determined by the Govt having regard to all the circumstances and the facts of the manufacturing industry. As a corollary to the this provision, it would follow that the rate fixed by the Government would be applicable for a prescribed period only. If there is (a) Any variation in the rate of duty paid on the input whether customs or excise duty (b) Variation in the composition of the final product and (c) Change in the process of manufacture, the rate of duty already fixed by the Government would not be applicable. It would be required to be revised. The fixation of a rate of drawback is, therefore a continuous process and the industry availing of such facility of drawback is required to furnish continuously its costing and production data to the organization entrusted with the responsibility of fixation of rates of drawback.

DBK on Imported Materials used in the Manufacture of Export Goods (Sec 75)

THERE SHOULD NOT BE NEGATIVE VALUE ADDITION

*Provided that **no drawback** shall be allowed under this sub-section in respect of any of the aforesaid goods which the **CG may, by rules** made under sub-section (2), specify, if the*

- **export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation** on such goods or class of goods, or*
- **export value of such goods or class of goods is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation** on such goods or class of goods as the **CG may, by notification** in the Official Gazette, specify in this behalf.*

*Provided further that where any **drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are NOT received** by or on behalf of the exporter in India **within the time allowed under the FEMA, 1999, such drawback shall** except under such circumstances or such conditions as the CG may, by rule, specify, **be deemed never to have been allowed** and the CG may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.*

*(1A) Where it appears to the CG that the **quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured, processed or on which any operation** has been carried out in India and exported outside India, then, the **CG may, by notification** in the Official Gazette, **declare that so much of the material as is contained in the goods exported shall, for the purpose of sub-section (1), be deemed to be imported material.***

DBK on Imported Materials used in the Manufacture of Export Goods (Sec 75)

(2) The **CG may make rules** for the purpose of carrying out the prov. of sub-sec (1) &, in particular, such rules may provide –

(a) for the **payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any operation on the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or other operation, and interest if any payable thereon;**

(aa) for specifying the goods in respect of which **no drawback shall be allowed;**

(ab) for specifying the **procedure for recovery or adjustment of the amount of any drawback which had been allowed under sub-section (1) or interest chargeable thereon;**

(b) for the **production of such certificates, documents and other evidence in support of each claim of drawback as may be necessary;**

(c) for requiring the manufacturer or the person carrying out any process or other operation **to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the AC/DC of Customs to enable such authorised officer to inspect the processes of manufacture, process or any other operation carried out and to verify by actual check or otherwise the statements made in support of the claim for drawback.**

(d) for the **manner and the time within which the claim for payment of drawback may be filed;**

(3) The power to make rules conferred by sub-section (2) **shall include the power to give drawback with retrospective effect from a date** not earlier than the date of changes in the rates of duty on inputs used in the export goods.

Customs and Central Excise Duties Drawback Rules, 2017

Rule 2 - Definitions-

In these rules, unless the context otherwise requires, -

- (a) **“Drawback”** in relation to any goods manufactured in India and exported, means the rebate of duty **excluding** integrated tax leviable under sub-section (7) and compensation cess leviable under subsection (9) respectively of section 3 of the Customs Tariff Act, 1975 (51 of 1975) chargeable on any imported materials or excisable materials used in the manufacture of such goods;
Note – W.e.f. 1-10-2017, definition of Drawback has been amended to exclude IGST and Cess. The assessee can claim refund of GST, paid on inputs used in manufacture of goods exported, separately under GST Laws.
- (b) **“Excisable Material”** means any material produced or manufactured in India subject to a duty of excise under the Central Excise Act, 1944;
- (c) **“Export”**, with its grammatical variations and cognate expressions, means
- taking out of India to a place outside India or
 - taking out from a place in Domestic Tariff Area (DTA) to a special economic zone and
 - **includes** loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port;
- (d) **“Imported Material”** means any material imported into India and on which duty is chargeable under the Customs Act, 1962 (52 of 1962);
- (e) **“Manufacture”** includes processing of or any other operation carried out on goods, and the term manufacturer shall be construed accordingly;
- (f) **“Tax Invoice”** means the tax invoice referred to in section 31 of the CGST Act, 2017.

Customs and Central Excise Duties Drawback Rules, 2017

All Industry Rate (A.I.R.) of Duty Drawback

Rule 3 – Drawback –

(1) Subject to the provisions of –

(a) the Customs Act, 1962 and the rules made thereunder;

(b) the Central Excise Act, 1944 and the rules made thereunder; and

(c) these rules,

a drawback may be allowed on the export of goods at such amount, or at such rates*, as may be determined by the Central Government :

Provided that where any goods are produced or manufactured from imported materials or excisable materials,

→ on some of which only the duty chargeable thereon has been paid and **not on the rest**, or

→ only a part of the duty chargeable has been paid; or

→ the duty paid has been rebated or refunded in whole or in part or

→ given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder,

the **drawback admissible** on the said goods **shall be reduced** taking into account the lesser duty paid or the rebate, refund or credit obtained:

***Note** - This rate is general rate of duty drawback, which is allowed to every exporter. Therefore, this rate of duty drawback is called **All Industry Rate (A.I.R.) of Duty Drawback**. All industry rates are fixed usually as a fixed percentage of the FOB price of the export goods.

Customs and Central Excise Duties Drawback Rules, 2017

Provided further that no drawback shall be allowed –

- (i) if the said goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;*
 - (ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid;*
 - (iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Bimlipatam jute or mesta fibre) yarn, twist, twine, thread, cords and ropes;*
 - (iv) if the said goods, being packing materials have been used in or in relation to the export of –*
 - A. jute yarn (including Bimlipatam jute or mesta fibre), twist, twine, thread and ropes in which jute yarn predominates in weight;*
 - B. jute fabrics (including Bimlipatam jute or mesta fibre), in which jute predominates in weight;*
 - C. jute manufactures not elsewhere specified (including Bimlipatam jute or mesta fibre) in which jute predominates in weight.*
- (2) In determining the amount or rate of drawback under this rule, the Central Government shall have regard to, -*
- (a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;*
 - (b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;*

Customs and Central Excise Duties Drawback Rules, 2017

(c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;

(d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:

Provided *that if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;*

(e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;

(f) any other information which the Central Government may consider relevant or useful for the purpose.

Rule 4 - Revision of rates

*The Central Government may revise amount or rates determined under **rule 3**.*

Customs and Central Excise Duties Drawback Rules, 2017

Rule 5 - Determination of date from which the amount or rate of drawback is to come into force and the effective date for application of amount or rate of drawback –

- (1) The Central Government may specify the period upto which any amount or rate of drawback determined under rule 3 or revised under rule 4, as the case may be, shall be in force.*
- 2) Where the amount or rate of drawback is allowed with retrospective effect, such amount or rate shall be allowed from such date as may be specified by the Central Government by notification in the Official Gazette which shall not be earlier than the date of changes in the rates of duty on inputs used in the export goods.*
- 3) The provisions of section 16 (i.e. the date on which proper officer makes an order permitting clearance and loading of the goods for exportation u/s 51, in case of normal exports), or section 83(2), (i.e. the date on which exporter delivers such goods to the postal authorities for exportation, in case of exports by post) of the Customs Act, 1962 (52 of 1962) shall determine the amount or rate of drawback applicable to any goods exported under these rules.*

Customs and Central Excise Duties Drawback Rules, 2017

Brand Rate in cases where all industry rates of drawback has not been determined

Rule 6 - Cases where amount or rate of drawback has not been determined -

(1)(a) Where no amount or rate of drawback has been determined in respect of any goods,

- any exporter of such goods may,
- within 3 months from the date relevant for the applicability of the amount or rate of drawback in terms of rule 5(3),
- apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export,
- for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components:

Provided that-

- (i) in case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner or Commissioner of Customs, having jurisdiction over any one of the said places of export;

Extension of due date of filing of the form and fees therefore -

Authority	Period of extension	Application Fees	Grant / refuse of extension
Assistant/Deputy Commissioner of Customs	Further 3 months (i.e. total 3+3)	(i) 1% of the value FOB value of exports or (ii) ₹ 1000/- , Whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension after recording in writing the reasons for such refusal.
Principal Commissioner/ Commissioner of Customs	Further extension of 6 months (i.e. total 3+3+6)	(i) 2% of the FOB value of exports or (ii) ₹ 2000/- ,Whichever is less	

Customs and Central Excise Duties Drawback Rules, 2017

(b) On receipt of an application under clause (a), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall, after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods.

*(2)(a) Where an exporter desires that he may be granted **drawback provisionally**, he may, while making an application under clause (a) of sub-rule (1) apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the amount or rate of drawback under clause (b) of that sub-rule.*

*(b) The Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, after considering the application, **allow provisionally payment of an amount not exceeding the amount claimed by the exporter in respect of such export:***

***Provided** that the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, for the purpose of allowing provisional payment of drawback in respect of such export, **require the exporter to enter into a general bond for such amount**, and subject to such conditions, as he may direct; or to enter into a bond for an **amount not exceeding the full amount claimed by such exporter as drawback** in respect of a particular consignment and binding himself, -*

- (i) to refund the amount so allowed provisionally, if for any reason, it is found that the duty drawback was not admissible;*
or
- (ii) to refund the excess, if any, paid to such exporter provisionally if it is found that a lower amount was payable as duty drawback:*

Customs and Central Excise Duties Drawback Rules, 2017

*Provided further that when the amount or rate of **drawback payable on such goods is finally determined**, the amount provisionally paid to such exporter shall be adjusted against the drawback finally payable and if the amount so adjusted is in excess or falls short of the drawback finally payable, such exporter shall repay to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, the excess or be entitled to the deficiency, as the case may be.*

*(c) The bond referred to in clause (b) may be **with such surety or security** as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may direct.*

*(3) Where the **CG** considers it necessary so to do, it **may**,-*

(a) revoke the rate of drawback or amount of drawback, determined under clause (b) of sub-rule (1) by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be; or

(b) direct the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, to withdraw the rate of drawback or amount of drawback determined.

Explanation.- For the purpose of this rule, “place of export” means customs station or any other place appointed for loading of export goods under section 7 of the Customs Act, 1962 from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

Instruction No. 04/2019-Customs, dt 11-10-2019

Incidence of levies such as Education Cess, Secondary and Higher Education Cess, Social Welfare Surcharge (SWS) and Clean Environment Cess (erstwhile Clean Energy Cess) and National Calamity Contingent Duty (NCCD) suffered on the inputs utilized in the exports products are required to be taken into consideration for the calculation of Brand Rate of duty drawback as these are levied as duties of customs or central excise.

Customs and Central Excise Duties Drawback Rules, 2017

Special Band Rates (Cases where amount or Rate of Drawback determined is Low)

Rule 7 - Cases where amount or rate of drawback determined is low –

(1) Where, in respect of any goods, the **EXPORTER** finds that the amount or rate of **drawback** determined under rule 3 or, as the case may be, revised under rule 4, for the class of goods **is less than 80% of the duties paid** on the materials or components used in the production or manufacture of the said goods, he may, except where a claim for drawback under rule 3 or rule 4 has been made, within 3 months from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule 5, make an application to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components:

Provided that –

(i) in case an exporter is **exporting** the aforesaid goods from **more than one place of export**, he shall apply to the Principal Commissioner or Commissioner of Customs, **having jurisdiction over any one of the said places of export;**

Extension of due date of filing of the form and fees therefore -

Authority	Period of extension	Application Fees	Grant / refuse of extension
Assistant/Deputy Commissioner of Customs	Further 3 months (i.e. total 3+3)	(i) 1% of the value FOB value of exports or (ii) ₹ 1000/-, Whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension after recording in writing the reasons for such refusal.
Principal Commissioner/ Commissioner of Customs	Further extension of 6 months (i.e. total 3+3+6)	(i) 2% of the FOB value of exports or (ii) ₹ 2000/-, Whichever is less	

Customs and Central Excise Duties Drawback Rules, 2017

*(2) On receipt of the application referred to in sub-rule (1), the **Principal Commissioner of Customs or Commissioner of Customs**, as the case may be, may, after making or causing to be made such inquiry as it deems fit, allow payment of drawback to such exporter at such amount or at such rate as may be determined to be appropriate, if the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, is in fact less than 80% of such amount or rate determined under this sub-rule.*

*(3) **Provisional drawback amount**, as may be specified by the CG, **shall be** paid by the proper officer of Customs and where the exporter desires that he may be granted further drawback provisionally, he may, while making an application under sub-rule (1), apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, in this behalf in the manner as has been provided in clause (a) of sub-rule (2) of rule 6 for the application made under that rule along with details of provisional drawback already paid and the grant of further provisional drawback shall be considered in the manner and subject to the conditions specified in clauses (b) and (c) of sub-rule (2), and sub-rule (3) of rule 6, subject to the condition that*

- bond required to be executed by the claimant shall only be for the **difference** between amount or rate of drawback determined under rule 3 (**All Industry Rate of Duty Drawback**) or, as the case may be, revised under rule 4 by the Central Government **and** the **provisional drawback** authorised by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under this rule.*

Customs and Central Excise Duties Drawback Rules, 2017

(4) Where the CG considers it necessary so to do, it **may**—

- (a) revoke the rate of drawback or amount of drawback determined under sub-rule (2) by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be; or
- (b) direct the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, to withdraw the rate of drawback or amount of drawback determined.

Explanation.- For the purpose of this rule, “place of export” means customs station or any other place appointed for loading of export goods under section 7 of the Customs Act, 1962 from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

Minimum Value Addition Criteria

Rule 8 - Cases where no amount or rate of drawback is to be determined –

- No amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be,
- if the export value of each of such goods or class of goods in the bill of export or shipping bill
- is less than the value of the imported materials used in the manufacture of such goods or class of goods, or
- is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Upper Limit of Drawback

Rule 9 - Upper Limit of Drawback amount or rate –

The drawback amount or rate determined under rule 3 shall not exceed 1/3 of the market price of the export product.

Customs and Central Excise Duties Drawback Rules, 2017

Rule 10 - Power to require submission of information and documents –

For the purpose of –

- (a) determining the class or description of materials or components used in the production or manufacture of goods or for determining the amount of duty paid on such materials or components; or*
- (b) verifying the correctness or otherwise of any information furnished by any manufacturer or exporter or other persons in connection with the determination of the amount or rate of drawback; or*
- (c) verifying the correctness or otherwise of any claim for drawback; or*
- (d) obtaining any other information considered by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, to be relevant or useful, any officer of the Central Government specially authorised in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may require any manufacturer or exporter of goods or any other person likely to be in possession of the same to furnish such information and to produce such books of account and other documents as are considered necessary by such officer.*

Rule 11 - Access to manufactory –

Whenever an officer of the CG specially authorised in this behalf by an AC/DC of Customs, considers it necessary, the manufacturer shall give access at all reasonable times to the officer so authorised to every part of the premises in which the goods are manufactured, so as to enable the said officer to verify by inspection the process of, and the materials or components used for the manufacture of such goods, or otherwise the entitlement of the goods for drawback or for a particular amount or rate of drawback under these rules.

Customs and Central Excise Duties Drawback Rules, 2017

Rule 12 - Procedure for claiming drawback on goods exported by post –

(1) Where goods are to be exported by post under a claim for drawback under these rules,-

(a) the outer packing carrying the address of the consignee shall also carry in bold letters the words “DRAWBACK EXPORT”;

(b) the exporter shall deliver to the competent Postal Authority, alongwith the parcel or package, a claim in the Form at Annexure I, in quadruplicate, duly filled in.

(2) The date of receipt of the aforesaid claim form by the proper officer of Customs from the postal authorities shall be deemed to be date of filing of drawback claim by the exporter for the purpose of section 75A and an intimation of the same shall be given by the proper officer of Customs to the exporter in such form as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may prescribe.

(3) In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within fifteen days of its receipt from postal authorities by a deficiency memo in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, and such claim shall be deemed not to have been received for the purpose of subrule (2).

(4) When the exporter complies with the requirements specified in the deficiency memo within thirty days of its return, he shall be issued an acknowledgement by the proper officer in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, and the date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

Customs and Central Excise Duties Drawback Rules, 2017

Rule 13 - Statement/Declaration to be made on exports other than by Post –

(1) In the case of exports other than by post, the exporters shall at the time of export of the goods –

(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that-

(i) a claim for drawback under these rules is being made;

(ii) in respect of duties of Customs and Central Excise paid on containers, packing materials and materials used in the manufacture of the export goods on which drawback is claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 or any other law has been or will be made to the Central excise authorities:

Provided *that if the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from the provisions of this clause;*

(b) furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported.

(2) Where the amount or rate of drawback has been determined under rule 6 or rule 7, the exporter shall make an additional declaration on the relevant shipping bill or bill of export that –

(a) there is no change in the manufacturing formula and in the quantum per unit of the imported materials or components, if any, utilised in the manufacture of export goods; and

(b) the materials or components, which have been stated in the application under rule 6 or rule 7 to have been imported, continue to be so imported and are not being obtained from indigenous sources.

Customs and Central Excise Duties Drawback Rules, 2017

Rule 14 - Manner and time for claiming drawback on goods exported other than by post-

- (1) Electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback or triplicate copy of the shipping bill for export of goods under a claim of drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.*
- (2) The said claim for drawback should be accompanied by the following documents, namely:-*
 - (i) copy of export contract or letter of credit, as the case may be;*
 - (ii) copy of ARE-1, wherever applicable;*
 - (iii) insurance certificate, wherever necessary; and*
 - (iv) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under rule 6 or rule 7 of these rules.*
- (3)(a) If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), shall be returned to the claimant with a deficiency memo in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, within 10 days and shall be deemed not to have been filed for the purpose of section 75A.*
- (b) where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A.*
- (4) For computing the period of one month prescribed under section 75A for payment of drawback to the claimant, the time taken in testing of the export goods, not more than one month, shall be excluded*

Customs and Central Excise Duties Drawback Rules, 2017

Rule 15 - Payment of drawback and interest –

- (1) The drawback under these rules and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest.*
- (2) The officer of Customs may combine one or more claims for the purpose of payment of drawback and interest, if any, as well as adjustment of any amount of drawback and interest already paid and may issue a consolidated order for payment.*
- (3) The date of payment of drawback and interest, if any, shall be deemed to be, in the case of payment –
 - (a) by cheque, the date of issue of such cheque; or*
 - (b) by credit in the exporter's account maintained with the Custom House, the date of such credit.**

Customs and Central Excise Duties Drawback Rules, 2017

Rule 16 - Supplementary claim –

(1) Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Government or Principal Commissioner of Customs or Commissioner of Customs, as the case may be, he may prefer a supplementary claim in the form at Annexure II:

Provided that the exporter shall prefer such supplementary claim within a period of three months, -

- (i) where the rate of drawback is determined or revised under rule 3 or rule 4, from the date of publication of such rate in the Official Gazette;
- (ii) where the rate of drawback is determined or revised upward under rule 6 or rule 7, from the date of communicating the said rate to the person concerned;
- (iii) in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer

Extension of due date of filing of the form and fees therefore -

Authority	Period of extension	Application Fees	Grant / refuse of extension
Assistant/Deputy Commissioner of Customs	Further 9 months (i.e. total 3+9)	(i) 1% of the value FOB value of exports or (ii) ₹ 1000/-, Whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension after recording in writing the reasons for such refusal.
Principal Commissioner/ Commissioner of Customs	Further extension of 6 months (i.e. total 3+9+6)	(i) 2% of the FOB value of exports or (ii) ₹ 2000/-, Whichever is less	

Customs and Central Excise Duties Drawback Rules, 2017

(2) Save as otherwise provided in this rule, no supplementary claim for drawback shall be entertained.

*(3) The date of filing of the supplementary claim for the purpose of section 75A shall be **the date of affixing the Dated Receipt Stamp** on such claims which are complete in all respects and for which an acknowledgement shall be issued in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.*

(4)(a) Claims which are not complete in all respects or are not accompanied by the required documents shall be returned to the claimant with a deficiency memo in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be within 15 days of submission and shall be deemed not to have been filed.

(b) Where the exporter resubmits the supplementary claim after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A.

Customs and Central Excise Duties Drawback Rules, 2017

Rule 17 - Repayment of erroneous or excess payment of drawback and interest –

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962.

Rule 18 - Recovery of amount of Drawback where export proceeds not realised –

When Drawback Recoverable

(1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall, except under circumstances or conditions specified in sub-rule (5), be recovered in the manner specified below:

Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.

Customs and Central Excise Duties Drawback Rules, 2017

Recovery of Drawback

(2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India,

- the AC of Customs or the DC of Customs, as the case may be, shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of 30 days from the date of receipt of such notice and*
- where the exporter does not produce such evidence within the said period of 30 days, the AC of Customs or DC of Customs, as the case may be, shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within 30 days of the receipt of the said order:*

***Provided** that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.*

(3) Where the exporter fails to repay the amount under sub-rule (2) within said period of 30 days referred to in sub-rule (2), it shall be recovered in the manner laid down in rule 17.

Repayment of drawback recovered on realization of sale proceeds

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within a period of 3 months from the date of realisation of sale proceeds, the amount of drawback so recovered shall be repaid by the AC of Customs or DC of

Customs and Central Excise Duties Drawback Rules, 2017

Customs, as the case may be, to the claimant provided the sale proceeds have been realised within the period permitted by the RBI:

Provided that-

- (i) the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may extend the aforesaid period of 3 months by a period of 9 months provided the sale proceeds have been realised within the period permitted by the RBI;*
- (ii) an application fee equivalent to 1% of the FOB value of exports or ₹ 1,000 whichever is less, shall be payable for applying for grant of extension by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.*

No Recovery of drawback if sale proceeds compensated by Export Credit Guarantee Corporation of India Ltd. (EPCG) and collection waived by RBI -

(5) Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act(FEMA), 1999, but such non-realisation 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 realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of nonrecovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered.

Customs and Central Excise Duties Drawback Rules, 2017

Clarification regarding duty drawback allowed in cases of short realisation of export proceeds due to bank charges deducted by foreign banks [Circular No. 33/2019-Customs, dated 19.09.2019]

Issue:

Customs officers are issuing Show Cause Notices for recovery of duty drawback on account of short realisation of export sale proceeds due to bank charges deducted from export invoice by the banks. Exporters have contended that these short realisations are actually service charges deducted by intermediary banks while remitting payments from abroad and that said charges are documented by the banks. It has been requested such short realised export sale proceeds may be considered as full realisation and that duty drawback not be recovered for such short realisation.

Clarification:

In this regard, RBI has clarified that such deductions are enabled under notification issued under FEMA. In view of the above, it is clarified that duty drawback may be permitted on FOB value without deducting foreign bank charges. Customs officers may consider exporter's requests for regularising such short realisation on account of foreign bank charges based on documentary evidence such as export invoice, bank's confirmation regarding foreign bank charges, etc. to justify such deductions.

Rule 19 - Power to relax - *If the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorised agent has, for reasons beyond his control, failed to comply with any of the provisions of these rules, and has thus been entitled to drawback, it may, after considering the representation, if any, made by such exporter or agent, and for reasons to be recorded in writing, exempt such exporter or agent from the provisions of such rule and allow drawback in respect of such goods.*

Customs and Central Excise Duties Drawback Rules, 2017

Important Note:

Drawback : When exported goods get destroyed in “transit” –

- For the purpose of export, “India” includes territorial waters of India. Therefore, if exported goods are destroyed while in transit, before they cross the territorial waters of India, there would be no “export” as the goods did not move out of India.
- BUT
- If goods are destroyed in high seas then for the purpose of drawback, the export shall be completed & the same shall be eligible for drawback.

Interest on Drawback (Sec 75A)

- (1) *Where any drawback payable to a claimant under section 74 or section 75 **is not paid within a period of 1 month from the date of filing a claim for payment of such drawback**, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of 1 month till the date of payment of such drawback: [6% p.a.]*
- (2) *Where **any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act** or the rules made thereunder, the **claimant shall**, within a period of 2 months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback. **[15% p.a.]***

Illustration – (1) Mr. A filed a claim for payment of duty drawback amounting to ₹ 50,000 on 30-07-20XX. However, the amount was received on 28-10-20XX. You are required to calculate the amount of interest payable to Mr. A on the amount of duty drawback claimed.

(2) Mr X was erroneously refunded a sum of ₹ 20,000 in excess of actual drawback on 20-06-20XX. A demand for recovery of the same was issued by the Department on 28-8-20XX. Mr X returned the erroneous refund to the Department on 20-10-20XX. You are required to calculate the amount of interest chargeable from Mr. X

Interest on Drawback (Sec 75A)

(1) Computation of interest payable to Mr. A on duty drawback claimed

Particulars	₹
Duty Drawback	₹ 50,000
No. of days of delay (31-8-20XX to 28-10-20XX)	59 days
Rate of interest	6%
Quantum of interest (rounded off) [$₹ 50,000 * 59/365 * 6/100$]	485

(2) Computation of interest payable to Mr. X on excess duty drawback paid

Particulars	₹
Duty Drawback erroneously refunded	₹ 20,000
No. of days of delay (21-06-20XX to 20-10-20XX)	122 days
Rate of interest	15%
Quantum of interest (rounded off) [$₹ 20,000 * 122/365 * 15/100$]	1,003

Prohibition and Regulation of Drawback (Sec 76)

Prohibition and Regulation of Drawback (Sec 76)

(1) Notwithstanding anything herein before contained, no drawback shall be allowed -

- i. in respect of any goods the market-price of which is less than the amount of drawback due thereon.*
- ii. where the drawback due in respect of any goods is less than ₹ 50.*

(2) Without prejudice to the provisions of sub-section (1), if the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

Upper Limit of Drawback Customs and Central Excise Duties Drawback Rules, 2017

Rule 9 - Upper Limit of Drawback amount or rate –

The drawback amount or rate determined under rule 3 shall not exceed 1/3 of the market price of the export product.

Harmonious Reading of Sec 76 and Rule 9

- If the amount of Duty Drawback exceeds market price of the exported goods, then no duty drawback shall be allowed.
- But, if the amount of Duty Drawback is less than the market price of the exported goods but more than 1/3rd of the market price of the exported goods, then Duty Drawback will be allowed but only upto 1/3rd of the market price of the exported goods.

Prohibition and Regulation of Drawback (Sec 76)

The market price is as prevailing in India and not the price which exporter expects to receive from the foreign customer (Om Prakash Bhatia vs CC 2003 (155) ELT 423 (SC))

Illustration – Ascertain whether the exporter is entitled to duty drawback in the following case and if yes, what is the quantum of such duty drawback?

FOB value of 2,000 kg of goods exported is ₹ 2,00,000. Rate of duty drawback on such export is ₹ 30 per kg. Market price of goods is ₹ 50,000 (in wholesale market).

Answer – Sec 76(1)(b) of the Customs Act, 1962 inter alia provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is ₹ 50,000, which is less than the amount of duty drawback, i.e. 2,000 kgs * ₹ 30 = ₹ 60,000. Hence, no drawback shall be allowed.

Relevant Case Law –

ABC India vs Union of India 1992 (61) ELT 205 (Del) [maintained by Supreme Court]

There is a distinction between sec 74 and 75 of the Customs Act – sec 74 of the Customs Act comes into operation when articles are imported and thereupon exported, such articles being easily identifiable; and sec 75 comes into operation when imported materials are used in the manufacture of goods which are exported.