

## Chapter 22

### Duty Drawback Scheme

#### 1. Introduction:

- 1.1 The Duty Drawback seeks to rebate 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. The Duty Drawback is of two types: (i) All Industry Rate and (ii) Brand Rate.
- 1.2 The All Industry Rate (AIR) is essentially an average rate based on the average quantity and value of inputs and duties (both Excise & Customs) borne by them and Service Tax suffered by a particular export product. The All Industry Rates are notified by the Government in the form of a Drawback Schedule every year and the present Schedule covers more than 3900 entries. The legal framework in this regard is provided under Sections 75 and 76 of the Customs Act, 1962 and the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 (henceforth referred as Drawback Rules). The Brand Rate of Duty Drawback is allowed in cases where the export product does not have any AIR of Duty Drawback or the same neutralizes less than 4/5th of the duties paid on materials used in the manufacture of export goods. This work is handled by the jurisdictional Commissioners of Customs & Central Excise. Exporters who wish to avail of the Brand Rate of Duty Drawback need to apply for fixation of the rate for their export goods to the jurisdictional Central Excise Commissionerate. The Brand Rate of Duty Drawback is granted in terms of Rules 6 and 7 of the Drawback Rules, 1995.
- 1.3 The Duty Drawback facility on export of duty paid imported goods is available in terms of Section 74 of the Customs Act, 1962. Under this scheme part of the Customs duty paid at the time of import is remitted on export of the imported goods, subject to their identification and adherence to the prescribed procedure.

[Refer Circular No.46/2011–Cus., dated 20.10.2011]

#### 2. All Industry Rate (AIR) of Duty Drawback:

- 2.1 The AIR of Duty Drawback are notified for a large number of export products every year by the Government after an assessment of average incidence of Customs, Central Excise duties and Service Tax suffered by the export products. The AIR are fixed after extensive discussions with all stake holders viz. Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analysed and forms the basis for the AIR of Duty Drawback.

- 2.2 The AIR of Duty Drawback is generally fixed as a percentage of FOB price of export product. Caps have been imposed in respect of many export products in order to obviate the possibility of misuse by unscrupulous exporters through over invoicing of the export value.
- 2.3 The scrutiny, sanction and payment of Duty Drawback claims in major Custom Houses is done through the EDI system. The EDI system facilitates credit/disbursal of Drawback directly to the exporter's bank accounts once the EGM has been filed by respective airlines / shipping lines. The correct filing of EGM is essential for speedy processing and disbursal of Drawback claims.
- 2.4 Notification No.68/2011-Cus(N.T.) dated 22.09.2011 as amended by Notification No.75/2011-Cus(N.T.) dated 28.10.2011 is relevant for ascertaining the current AIR of Duty Drawback for various export products.

[Refer Circulars No.42/2011-Cus., dated 22-9-2011; No48/2011-Cus., dated 31-10-2011]

### **3. Brand Rate of Duty Drawback:**

- 3.1 Where the export product has not been notified in AIR of Duty Drawback or where the exporter considers the AIR of Duty Drawback insufficient to fully neutralize the duties suffered by his export product, he may opt for the Brand Rate of Duty Drawback. Under this scheme, the exporters are compensated by paying the amount of Customs, Central Excise duties and Service Tax incidence actually incurred by the export product. For this purpose, the exporter has to produce documents/proof about the actual quantity of inputs / services utilized in the manufacture of export product along with evidence of payment of duties thereon.
- 3.2 The exporter has to make an application to the Commissioner having jurisdiction over the manufacturing unit, within 3 months from the date of the 'Let Export' order. The application should include details of materials/components/input services used in the manufacture of goods and the duties/taxes paid on such materials/ components/input services. The period of 3 months can be extended up to 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.
- 3.3 In terms of Rule 6 of the Drawback Rules, 1995 on receipt of the Brand Rate application, the jurisdictional Commissioner shall verify the details furnished by the exporter and determine the amount/rate of Drawback. Where exporter desires that he may be granted Drawback provisionally, the jurisdictional Commissioner may determine the same, provided the exporter executes a general bond, binding himself to refund the Drawback amount granted to him, if it is found later that the Duty Drawback was either not admissible to him or a lower amount was payable. The Brand Rate letter is thereafter issued to the exporter. The Custom House of the port of export is also given a copy to facilitate payment of Drawback to the exporter.

#### **4 Section 74 Drawback:**

- 4.1 In case of goods which were earlier imported on payment of duty and are later sought to be exported within a specified period, Customs duty paid at the time of import of the goods, with certain cuts, can be claimed as Duty Drawback at the time of export of such goods. Such Duty Drawback is granted in terms of Section 74 of the Customs Act, 1962 read with Re-export of Imported Goods (Drawback of Customs Duty) Rules, 1995. For this purpose, the identity of export goods is cross verified with the particulars furnished at the time of import of such goods.
- 4.2 Where the goods are not put into use after import, 98% of Duty Drawback is admissible under Section 74 of the Customs Act, 1962. In cases the goods have been put into use after import, Duty Drawback is granted on a sliding scale basis depending upon the extent of use of the goods. No Duty Drawback is available if the goods are exported 18 months after import. Application for Duty Drawback is required to be made within 3 months from the date of export of goods, which can be extended up to 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

#### **5. Supplementary claims of Duty Drawback:**

- 5.1 Where any exporter finds that the amount of Duty 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, 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 can be extended up to 18 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

#### **6. Procedure for claiming Duty Drawback:**

- 6.1 The Duty Drawback on export goods (whether AIR or Brand Rate) is to be claimed at the time of export and requisite particulars filled in the prescribed format of Shipping Bill/Bill of Export under Drawback. 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 to be

accompanied by certain documents as laid down 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.

## **7. Limitations on admissibility of Duty Drawback:**

7.1 The Customs Act, 1962 lays down certain limitations and conditions for grant of Duty Drawback. No Duty Drawback shall be admissible where:

- I. The Duty Drawback amount is less than Rs.50/-.
- II. The Duty Drawback amount exceeds one third of the market price of the export product.
- III. The Duty Drawback amount is less than 1% of FOB value of export (except where the amount of Duty Drawback per shipment exceeds Rs.500/-).
- IV. Where value of export goods is less than the value of imported material used in their manufacture. If necessary, certain minimum value addition over the value of imported materials can also be prescribed by the Government.

7.2 In case there is a likelihood of export goods being smuggled back, the Government can impose certain conditions which need to be fulfilled before the Duty Drawback is granted. Notifications have been issued under Section 76 of the Customs Act, 1962.

7.3 The prior repatriation of export proceeds is not a pre-requisite for grant of Duty Drawback. However, 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.