

Ministry of Finance - Clarification on Duty Drawback claims

Abhijit Nagee
abhijit@vinodkothari.com

Check at:

www.indiafinancing.com/staffpublications.htm

for more write ups.

Copyright:

This is the property of Vinod Kothari Consultants Pvt Ltd and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a

Article

Duty drawback scheme was introduced by the Ministry of Finance as a rebate for duty chargeable on any imported materials or excisable materials used in manufacture or processing of goods, manufactured in India and exported. The scheme promotes exports and to ensure that exported products are revenue neutral.

The Central Government is empowered to grant duty drawback under section 74 and 75 of the Customs Act, 1962. Under section 74 of the Customs Act, duty drawback to the extent of 98 per cent of the duty paid on imported goods can be claimed for re-export, provided the goods are re-exported within 2 years of payment of import duty. Section 75 of the Act, empowers drawback on export of manufactured articles.

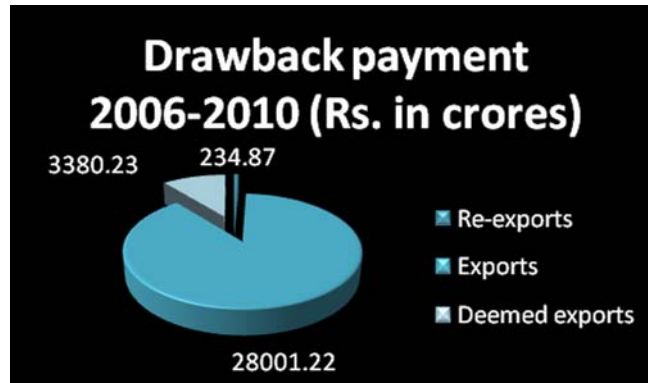
The C&AG in its latest review had found fault with the Revenue in administration of Drawback Scheme and the same has been highlighted in its Report No. 15/2011-12¹ (Indirect Taxes – Service Tax and Customs).

The report reveals the quantum of duty drawback paid during the period between April 2006 and March 2010 was Rs. 36, 000 crore. The bulk of these payments were made on Section 75 cases.

1

http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/union_audit/recent_reports/union_performance/2011_2012/Indirect_Taxes/Report_no_15/section-2-CUS.swf

Article



Procedural Deficiencies and Absence of Clear Provisions duty drawback scheme as observed by the C&AG are as under:

- **Markings on the export items** were used as important criteria for identification. However, scope for markings identification by markings was not a fool proof in case of Chemicals and testing of samples was essential to avoid risk of erroneous identification. Moreover, instances of discrepancy in other parameters like dimensions, gross weight, chemical properties etc were found.
- Ambiguity in the qualification criteria of "*identification of goods*" in the absence of supplementary rules under section 74(3) laying down parameters for identification of goods in case of re-export.
- No instructions of the board specifying "*determination of use*" and in the absence of specific parameter, all opinion becomes subjective.
- In the revision petition against the order of Commissioner of Customs(Appeals) in Chennai in the case of M/s Seljगत Printers v. U.O.I (2002(143) ELT 719), it was clarified by the Revisionary Authority, Department of Revenue that the term '**use after import**' need not be only **commercial use**. Usage for a short period demonstration, exhibition or tests also amounts to use after import.

Article

- **Variation** in gross weight and number of units between import and re-export in many cases where drawback claims were paid had been observed but the significant rise in gross/net weight was not explained
- **Delays** in claim processing and absence of floor value in the Customs Valuation rules for freight charges on exported goods.
- **Market verification** of the declared price **not been initiated** in cases where there was material difference between the declared price and declared market value.
- Fixation of **All Industries Rate of drawback** had not been fully documented.
- Instances of **non compliance to rules and provisions** on processing of time barred claims, delay in fixation of brand rates, sanction of drawback on products not specified in brand rate letters and excess payment of drawback due to mis-classification.

Recommendations in the report:

- i. Necessary instructions may be issued/ rules may be framed by the department under section 74(3) indicating parameters for identification of re-exported goods with the originally imported items. Physical properties of goods placed for re-export, along with documentary declarations, should be cross verified with particulars of related imports on the basis of instructions issued.
- ii. Suitable instructions to clarify the typical conditions under which goods are to be treated as “used after import” may be issued by the department.
- iii. The department needs to streamline the verification procedures to enable faster processing of claims. Further, whenever the documents filed are found to be deficient, these should be communicated to the applicant in clear, unambiguous terms within the stipulated time frame of 10 days

Article

- iv. The Board may consider examining whether a suitable floor value for freight could be determined and fixed
- v. To enable meaningful verification of information and ensure uniformity in fixation of Brand rates, the Department may consider creation of standard industry norms.
- vi. Adequate p[rovisions may be made in the ICES to ensure that the data entered for drawback claims is consistent with the "shipping bills" data already available in the system

In view of the aforesaid observations and recommendations, the Department of Revenue recently issued instructions with regard to section 74 and 75 of the Customs Act, 1962 in matters relating to assessment of export goods and the payment of drawback to exporters vide **Circular No. 46/2011 – Customs dated 20th October 2011**² for strict compliances:

1. Clarification in relation to "*identification of goods*" and "*determination of use*" in terms of Section 74 of the Customs Act, 1962 which deals with Drawback allowable on re-export of duty-paid goods-
 - The export goods are to be identified to the satisfaction of the Assistant/Deputy Commissioner of Customs. [Identification of the goods to be done by examination and verification of various parameters, including but not limited to physical properties, weight, marks and numbers, test reports, if any, documentary evidences vis-à-vis import documents etc.]
 - In case such export goods have been 'used after import', the same is to be determined besides establishing the identity of the goods.
 - It should be ensured that in all such cases where drawback under section 74 is claimed, the Assistant/Deputy Commissioner while sanctioning Duty Drawback or otherwise shall pass a speaking order giving detailed reasons with regard to establishing the identity or otherwise of the goods under re-export, and determination of use, if any, while sanctioning Duty Drawback or otherwise.

² <http://www.cbec.gov.in/customs/cs-circulars/cs-circulars11/circ46-2k11-cus.htm>

Article

- The detailed speaking orders, following the principles of natural justice, are to be issued in both cases, i.e. where drawback is proposed to be sanctioned (either in full or part) or proposed to be denied.
2. General Instructions with regard to expeditious processing of drawback claims under section 74 and section 75 of the Customs Act, 1962 regarding drawback on imported materials used in the manufacture of goods which are exported:
- (a) While processing Drawback claims, under Section 74 or Section 75, any deficiency noticed in the claim shall be communicated to the exporter in a clear unambiguous manner within a period of 10 days, from the date of filing of the claim.
 - (b) The drawback claims shall be disbursed expeditiously in accordance with the timelines as specified in the Citizen's charter adopted by the department and the Sevottam standards prescribed in this regard.
 - (c) Periodic review and monitoring of the status of pending drawback claims shall be undertaken by the Commissioners of Customs.
 - (d) The field formations shall ensure :
 - that periodic sample checks and verifications are carried out with respect to the export declarations including classification, descriptions, weight etc.;
 - that the brand rate drawback claims are disposed off in a time bound manner.
 - the proper data entry in BRC module of EDI system.
 - (e) Commissioner of Customs shall constitute a special monitoring cell in their respective formations for periodic verification and monitoring of the same and to ensure that necessary action is taken against the defaulter exporters.

These clarification issued by the Ministry of Finance, Department of Revenue under section 74 and section 75 of the Customs Act, 1962 is a welcome step taken to ensure unambiguity in matters relating to assessment of export goods and the payment of drawback to exporters. At this instance it is too early to determine how far it will be effective in terms of expeditious processing of drawback claims. Since there were no such clear provisions and guidelines with regard to

Article

duty drawback scheme earlier, hope these instructions fulfill the very purpose of removing **procedural deficiencies** under section 74 and 75 of the Act for which these have been issued as pointed out in the report above.