

DUTY DRAWBACK

The term 'duty drawback' means drawing back of the duties paid. Thus, this term refers to the refund of custom duty that have been charged earlier at the time of import of raw materials and indigenous materials used in the manufacture of exported goods. Under duty drawback, customs duty paid on inputs is given back to the exporter of finished product by way of 'duty drawback'.

Duty drawback is granted under the following conditions :—

- (1) When duty paid imported materials are used in the manufacture of goods;
- (2) Such manufactured goods are exported; and
- (3) When imported goods are re-exported as it is and article is easily identifiable
- (4) Imported goods are re-exported after use.

Primary objectives of duty drawback are :—

- (1) To promote export by giving incentive of duty drawback,
- (2) To face competitions in the foreign market.

Provisions regarding duty drawback in the Customs Act, 1962, are given hereunder :—

(I) Drawback allowable on re-export of duty-paid goods [Sec. 74]

This section provides facility of claiming duty drawback on the re-export of duty paid goods as it is. In the following cases such duty drawback is claimed :—

- (1) The goods should have, originally, been imported in India.
- (2) Custom duty on such original import should have been paid on importation.
- (3) The imported goods should be capable of being easily identifiable, to the satisfaction of Asstt. or Deputy Commissioner of Customs as the same goods which were originally imported.
- (4) The goods are entered for export within two years from the date of payment of duty on the importation thereof or within such extended time which the Board has allowed.
- (5) The goods have been exported after examination of the goods by the proper officer and after ensuring that there is no prohibition or restriction on their export.
- (6) The market value of such goods must not be less than the amount of drawback claimed.
- (7) The amount of drawback should be ₹ 50 or more.

If these above conditions are satisfied, 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback. 98% duty drawback is allowed only when these goods are re-exported without being used in the industry. If the goods are taken into use after importation, then, the duty drawback is allowed based on period of usage depreciation in value and other relevant circumstances as per section 74(2) of the Customs Act, 1962.

As per Customs notification No. 19 duty drawback granted to the following two categories of goods are different :—

- (i) Goods imported by a person for his personal and private use;
- (ii) Other goods.

□ Rates of duty-drawback
 (1) Rates of duty drawback when goods are re-exported without being taken into use after importation—It is 98% of the import duty paid on such goods at the time of importation.

(2) Rates of duty drawback when goods are re-exported, after its being taken into use after importation—These duty drawback rates have been notified by the Central Government u/s 74(2) of the Customs Act, 1962. These rates are applicable when the goods are re-exported only after being used in the industry.

TABLE
 (w.e.f. March 1, 2008)

S. No.	Length of period between the date of clearance for home consumption and the date when the goods are placed under custom control for exports	% of import duty to be paid as Draw back.
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

(3) Rate of duty drawback on personal goods—Under section 74(2) of the Customs Act, 1962, the following duty drawback rates are allowable on goods imported for personal use (like motor cars and other goods) after payment of duty and subsequently re-exported. These rates are applicable if the goods are re-exported after being used :—

Year	Quarter or part thereof	% of reduction in duty as drawback	Cumulative reduction	Drawback allowed
1st	First quarter	4%	4%	96%
	Second quarter	4%	8%	92%
	Third quarter	4%	12%	88%
	Fourth quarter	4%	16%	84%
2nd	First quarter	3%	19%	81%
	Second quarter	3%	22%	78%
	Third quarter	3%	25%	75%
	Fourth quarter	3%	28%	72%
3rd	First quarter	2.5%	30.5%	69.5%
	Second quarter	2.5%	33%	67%
	Third quarter	2.5%	35.5%	64.5%
	Fourth quarter	2.5%	38%	62%
4th	First quarter	2%	40%	60%
	Second quarter	2%	42%	58%
	Third quarter	2%	44%	56%
	Fourth quarter	2%	46%	54%

No duty draw-back—Draw-back of import duty is not allowed, if the following goods are exported after its use :—

1. Wearing apparel;
2. Tea-chests;
3. Exposed cinematograph film passed by the Board of Film Censors in India;
4. Unexposed photographic films;
5. Paper and plates; and
6. X-ray films.

(II) Drawback of imported materials used in the manufacture of goods which are exported [Sec. 75]

(1) When it appears to the Central Government 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 exports, 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 of such goods, and the Central Government may, by notification, direct that drawback shall be allowed in respect of such goods.

But, no drawback shall be allowed in respect of the aforesaid goods which the Central Government may, by rules, specify as below :—

- (i) when the export value of such goods or class of goods is less than the value of imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods; or
- (ii) when the export value of such goods or class of goods is not more than notified 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.
- (iii) when any drawback has been allowed on the aforesaid goods 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 FEM Act, 1999, such drawback shall be deemed never to have been allowed and the drawback allowed shall be recovered.
- (iv) when it appears to the Central Government 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 Central Government may declare, by notification, that so much of the material as is contained in the goods exported shall, for the purpose of duty drawback, be deemed to be imported material.

(2) The Central Government may make rules in respect of the followings :—

- (i) 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;
- (ii) for specifying the goods in respect of which no drawback shall be allowed;
- (iii) for specifying the procedure for recovery or adjustment of the amount of any drawback allowed or interest chargeable thereon;
- (iv) for the production of such certificates, documents and other evidence in such of each claim of drawback as may be necessary,
- (v) for requiring the manufacture or the person carrying on any process or other operations to give access to every part of his manufacturing place or office to any custom officer, specially authorised for this purpose by the Asstt. or

Deputy Commissioner of Customs to verify and actual check or otherwise the statement made in support of the claim for drawback.

(vi) for the manner and the time within which the claim for payment of drawback may be filed.

(3) The Central Government has power to give drawback with retrospective effect from a date no earlier than the date of changes in the rates of duty on inputs used in the export goods.

(III) Interest on drawback [Sec. 75A]

(1) If any drawback payable to a claimant is not paid within a period of one 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 not below 5% but not exceeding 30% (fixed u/s 27A) from the date after the expiry of the said period of one month till the date of payment of drawback.

(2) If 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 not below 10% but not exceeding 36% (fixed u/s 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.

(IV) Prohibition and regulations of drawback in certain cases [Sec. 76]

(1) No drawback shall be allowed :—

(a) in respect of any goods the market price of which is less than the amount of drawback due thereon;

(b) where the drawback due in respect of any goods is less than ₹ 50.

(2) If the Central Government is of the opinion that goods of any specified description in respect of which drawback may be claimed are likely to be smuggled back into India, it may, by notification, 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.

The Central Government by notifications from time to time has provided for non-allowances of drawback. These are as follows :—

- (i) When no customs duty is paid on the inputs.
- (ii) When goods are manufactured under customs bond inputs were obtained without payment of duty.
- (iii) When goods are manufactured by export oriented undertaking (EOU) or a unit in Special Economic Zone because they obtain inputs without payment of duty.
- (iv) When there is a case of negative value addition i.e. selling price of exported goods is less than the value of imported goods i.e. foreign exchange spent on import of raw material is more than the FOB value of exports.
- (v) When jute batching oil is used in manufacture of jute yarn, twist, twine etc.
- (vi) When imported inputs were obtained under Advance Licence (DEEC scheme) without payment of duty.
- (vii) When the sale proceeds of export goods are not received within time stipulated by RBI.
- (viii) When drawback is less than ₹ 50.

- (ix) When the wholesale market price of goods in India is less than the amount of drawback due.
- (x) When goods are exported to Nepal or Bhutan. But export to Nepal are eligible if payment is received in hard currency i.e. Dollars, Euro, Yen, British Pounds etc.
- (xi) When export is made of alcoholic liquor, cigarettes, cigar and pipe tobacco, as stores, to foreign going vessels of less than 200 tons.
- (xii) When specific rates are provided, drawback will not be paid if it is less than 1% of FOB value of product, unless drawback claim per shipment is above Rs. 500.
- (xiii) When packing materials used in relation to export of jute, yarn, jute fabrics and jute manufactures are exported.
- (xiv) When goods are exported by vessel of less than 1000 tons. But if a certificate is submitted that sale proceeds have been received in foreign currency and goods have landed at destination within 3 months, then, such export shall be eligible for duty drawback.
- (xv) When export is made of coffee, tea and agricultural produce.

Thus, drawback is not allowed in case excise or custom duty or service tax has not been paid on inputs or manufacturer has availed some other benefits in respect of duty paid on inputs or input services. No one can be doubly benefited.

TYPES OF DRAWBACK RATES

Duty drawback rates are of following types :—

- (1) All industry rates
- (2) Brand rate
- (3) Special brand rate

(1) All industry drawback rates

All industry drawback rates are fixed by the Directorate of Drawback, Dept. of Revenue, Ministry of Finance, Government of India. These rates are, generally, fixed once in every year on 1st June. This rate is fixed under rule 3 of Drawback Rules by considering average quantity and value of each class of inputs imported and manufactured in India. Average amount of excise or customs duties and service tax paid are taken into consideration. These rates are fixed for broad categories of products and also include drawback on packing materials. High speed diesel or furnace oil is also considered in calculations of drawback of duty.

As already discussed that drawback shall be payable only if the amount is more than 1% of FOB, except when the drawback claim per shipment exceeds Rs. 500.

As per Rule 8A, the upper limit of duty drawback rate shall be 33% of market price of export goods.

Non-applicability of All Industry Rates—All Industry Drawback rates do not apply to followings :—

- (1) Goods manufactured in Customs bonded warehouse.
- (2) Goods manufactured in discharge of obligations against Advance License Scheme. But excise portion of duty drawback rate is allowable.
- (3) Goods imported against Duty Free Replenishment Certificate (DFRC). But excise portion of duty drawback rate is allowable.
- (4) Goods exported by Export Oriented Unit (EOU).
- (5) Goods exported after obtaining rebate of excise duty on inputs.

(b) Goods manufactured or exported under Duty Entitlement Pass Book (DEPB) Scheme.

(2) Brand Rate of duty drawback

All Industry Rates can be fixed for some standard products. It cannot be fixed for special type of products. In such cases *brand rate* is fixed under rule 6. For this the manufacturer has to submit an application to the commissioner, Central Excise. Such application which contains all details must be made within 60 days of export. The Central Government can extend this period by further 30 days. Further extension can also be granted even upto one year, if the delay was due to such abnormal situations as specified.

As per rule 8A the upper limit of duty drawback rate shall be 33% of the market price of export goods.

(3) Special Brand Rate of duty drawback

All Industry Rate is fixed on average basis. But when a particular manufacturer or exporter finds that the actual excise/customs duty paid on inputs or input services is higher than All Industry Rate fixed for his product, he can apply under rule 7 of Drawback Rules for fixation of special Brand Rate. Such application for fixation of Special Brand Rate should be made within 30 days from export subject to the fulfilment of the following conditions :—

- (a) The All Industry Rate fixed should be less than 80% of the duties paid by him.
- (b) The rate should be less than 1% of FOB value of product except when the amount of drawback per shipment is more than ₹ 500.
- (c) The export value of the goods exported is not less than the value of imported materials used in them, i.e. there should not be 'negative value addition'.

QUESTIONS

1. What is duty drawback ? When it is granted and why ? How are the rates of duty drawback fixed ?
2. What is the procedure of claiming duty drawback under section 74 and 75 of the Customs Act, 1962.
3. When the duty drawback is claimed ? What categories of goods are entitled to duty drawback ? State the rates of duty drawback.
4. What are the provisions of section 75 of Customs Act, 1962 with regard to drawback of imported materials used in the manufacture of exported goods ? When duty drawback is not allowed ?
5. What are the cases of non-allowance of duty drawback by the notification of the Central Government ?
6. What types of duty drawback rates are ? Discuss.
7. Give brief description and legal provisions in regard to the followings :—
 - (i) Rates of duty drawback
 - (ii) Case of no duty drawback
 - (iii) Interest on drawback
 - (iv) Prohibition and regulation of drawback u/s 76
 - (v) Types of duty drawback.

