

Customs Refund

Introduction

On import or export of goods, at times, it is found that duty has been paid in excess of what was actually leviable on the goods. Such excess payment may be due to lack of information on the part of the importer/exporter or non-submission of documents required for claim of lower value or rate of duty. This excess payment may **also** be due to shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, refund of the excess amount of duty paid can be claimed by the importer or exporter.

Refund of Excess Duty

If any excess interest has been paid by the importer/exporter on the excess amount of duty paid, its refund can also be claimed. Section 27 of the Customs Act, 1962 refers to this. The refund of such duty and interest can be claimed either by a person who has paid the duty in pursuance to an order of assessment, or by a person who has borne the duty.

- Any person claiming refund of any such excess duty or interest, has to make an application in duplicate in the form as prescribed in the Customs Refund Application (Form) Regulations, 1995, to the jurisdictional Deputy/Assistant Commissioner of Customs.
- Such application is to be made before the expiry of six months from the date of payment of duty and interest.
- However, in case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, application for refund can be made before the expiry of one year from the date of payment of duty and interest.

The application for refund is required to be filed with documentary or other evidence including documents relating to assessment, sales invoice and other like documents to support the claim that the duty and interest was paid in excess and incidence of duty or interest has not been passed on by him to any other person, and the refund has not been obtained already.

Where, on scrutiny, the application is found to be complete in all respects, the Customs issues an acknowledgement in the prescribed Form as per the Customs Refund Application (Form) Regulations, 1995. However, in case the application is found to be incomplete, the Customs has to return the application to the applicant, pointing out the deficiency. The applicant has to re-submit the application after making good the deficiency, for scrutiny by Customs once again for admissibility of the refund claim.

Relevant dates for Submission of a refund application

- a) In case of goods which are exempt from payment of duty by an ad-hoc exemption order issued under sub-section (2) of section 25 of the Act, the limitation of one year or six months, as the case may be, is to be computed from the date of issue of such order;

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- b) Where any duty is paid provisionally under section 18 of the Act, the limitation of one year or six months, as the case may be, is to be computed from the date of adjustment of duty after the final assessment thereof;
- c) The date of payment of any such duty and interest in relation to a person, other than the importer shall be 'the date of purchase of goods' by such person.

Processing of refund claim

The application of refund found to be complete in all respects by Customs, is processed to see if the whole or any part of the duty and interest paid by the applicant is refundable. In case, the whole or any part of the duty and interest is found to be refundable, an order for refund is passed.

However, in view of the provisions of unjust enrichment enshrined in the Customs Act, the amount found refundable has to be transferred to the Consumer Welfare Fund.

Only in following situations, the amount of duty and interest found refundable, instead of being credited to the Consumer Welfare Fund, is to be paid to the applicant:

- if the importer has not passed on the incidence of such duty and interest to any other person;
- if imports were made by an individual for his personal use;
- if the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;
- if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26;
- if amount relates to drawback of duty payable under section 74 and 75;
- if the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.

Interest on Delayed Refund

The Customs has to finalize refund claims immediately after receipt of the refund application in proper form along-with all the documents. In case, any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund, an interest @ 15% is to be paid to the applicant. The application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, had been made.

Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal or by the Court, as the case may be, is deemed to be an order for the purpose of payment of interest on delayed refund.

The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.