

Duty Drawback and its Applicability

Introduction

An important principle in the levy of customs duty is that the goods should be consumed within the country of importation. If the goods are not consumed, but instead are exported out of the country, the cost of export goods gets unduly escalated on account of incidence of customs duty. Drawback is the refund of duties, taxes, and fees imposed on imported merchandise which is subsequently exported.

Duty Drawback

Various schemes like EOU, SEZ, DEEC, manufacture under bond etc. are available to obtain inputs without payment of customs duty/excise duty or obtain refund of duty paid on inputs. In case of Central Excise, manufacturers can avail Cenvat credit of duty paid on inputs and utilize the same for payment of duty on other goods sold in India, or they can obtain refund. Schemes like manufacture under bond are also available for customs. Manufacturers or processors who are unable to avail any of these schemes can avail 'duty drawback'.

The re-export of the 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:-
 - Goods not conforming to the specification of the order.
 - Goods not permitted to be imported into the country on account of trade-restriction.
 - 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.

Section 75 of Customs Act provides for drawback on materials used in manufacture or processing of export product and section 74 provides for drawback where imported goods are re-exported. Processing is also eligible for Drawback - Drawback is allowed if any manufacture, process or any operation is carried out in India [section 75(1) of Customs Act]. Thus, drawback is available not only on manufacture, but also on processing and job work, where goods may not change identity and no 'manufacture' has taken place.

Section 37 of Central Excise Act allows the Central Government to frame rules for the purpose of the Act. Under these powers, 'Customs and Central Excise Duties Drawback Rules, 1995' have been framed. Drawback is not to be allowed in certain cases [proviso to section 75(1)]:

In the case of drawback under **Section 74**, the amount of drawback was related to the actual duty paid on the goods. It did not have any correlation to either the valuation of the goods at the time of exportation or the prevailing rates of duty on the goods at the time of export. However, in the case of section 75 drawback, since the identity of the inputs which have suffered customs or excise duty as the case may be, is extinguished in the final product, there has been a necessity to correlate the grant of drawback with the value of the goods exported. It has therefore been prescribed under proviso to section 75(1) of the Customs Act that no drawback of duty shall be allowed under this section if:

- the export value of the finished goods or the class of goods is less than the value of the imported material used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods; or

Shikha Singhania

- the export value is not more than such percentage of the value of the imported material used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as may be notified by the Central Government; or
- any drawback has been allowed on any 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 the Foreign Exchange Management Act (FEMA). In such a case, the drawback shall be deemed never to have been allowed and the Central Government, may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback. In this regard, the Central Government is empowered to prescribe the circumstances under which duty drawback will not be disallowed even though the export remittances are not received within the period allowed under FEMA.

Section 75(1A): Where 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, 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.