

11.1 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 so consumed, but are exported out of the country, the cost of export goods gets unduly escalated on account of incidence of customs duty.

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;
- (b) Where the goods are used in the manufacture of other articles for export.

The circumstances under the first situation arise due to certain trade practices. Briefly they relate to:

- (i) Goods not conforming to the specification of the order
- (ii) goods not permitted to be imported into the country on account of trade-restriction.
- (iii) the 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.

The latest cause for relief of import duty paid is when the goods are ultimately exported. This factor gained greater importance with the establishment of 100% Export Oriented Units where goods manufactured are mainly exported to earn foreign exchange.

11.2 DRAWBACK OF CUSTOMS DUTY

The principal method of encouraging the export of goods has been the drawback of customs and the central excise duties on goods manufactured out of customs duty paid and/or central excise duty paid on inputs or raw materials.

11.2 Customs

On parallel plane was placed the goods imported by tourists and other passengers transmitting through India. Under this category was the motor vehicles brought by tourists which was used in the country for a short period of 6-12 months alone. The grant of duty relief is contingent upon factual export of the goods.

This consequentially necessitated grant of the rebate or drawback at the port of export of the goods. This in turn necessitated formulation of certain rules and the procedure for regulating the application for grant of drawback and the rates at which such drawback could be granted. In subsequent paragraphs we propose to examine the matter in some detail.

11.2.1 Drawback allowable on re-export of duty paid goods [Section 74]: Sub-section (1) of section 74 provides that,:

When goods capable of being easily identified, which have been imported into India and upon which any duty has been paid on importation-

- (i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; or
- (ii) are to be exported as baggage and the owner of the baggage for the purposes of clearing it, makes a declaration of its contents to the proper officer under section 77 and such officer makes an order permitting clearance of the goods for exportation, or
- (iii) are entered for export by post under section 82 and the proper officer makes an order permitting clearance of the goods for exportation,

98% of such duty, shall except as otherwise provided hereafter, be paid back. The drawback will be permissible if

- (a) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported and
- (b) the goods are entered for export within two years from the date of payment of duty on the importation thereof.

However, in any particular case, the aforesaid period of two years may, on sufficient cause being shown, be entered by the Board by such further period, as it may deem fit.

♦ Analysis of Section 74(1):

The substance of this provision is that

- (a) The goods should have been imported into India
- (b) The duty of customs should be paid thereon
- (c) The goods should be capable of being easily identified as the goods, which were originally imported.

- (h) The goods should have been entered for export either on a shipping bill through sea or air; or on a bill of export through land; or as baggage; or through post and the proper officer after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export should have permitted clearance of the goods for export.
- (i) the goods are identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
- (j) the goods are entered for export within two years from the date of payment of duty on the importation thereof

Once these conditions are satisfied, then the export goods are entitled to payment of drawback of an amount equal to 98%. The conditions could be amended or modified depending upon other factors.

11.2.2 Time limit for section 74 drawback : Under sub-clause (b) of section 74(1), it has been provided that such imported goods should be entered for export within two years from the date of payment of duty on the importation. It may be noted that the time period is related to the date of payment of duty and not date of importation.

In any particular case, if sufficient reason is shown by the importer as to why he was prevented from exporting the goods within the said period of two years, the Central Board of Excise and Customs may, in its discretion, extend the period further depending upon the merits of each case.

11.2.3 Identity of the goods: One of the important conditions is that the identity of the goods exported should be established as the one which has been imported earlier on payment of duty. The authority who has to be satisfied in this behalf is the Assistant Commissioner of Customs at the port of export. He can be satisfied

- (a) primarily by physical examination of the goods
- (b) and as alternative through the correspondence exchanged between the overseas seller of the goods and the Indian importer. In the course of physical examination emphasis will be laid on
 - (i) description of the goods
 - (ii) quantity and weight
 - (iii) identifying markings/distinguishing features
 - (iv) original packing of the goods.

Where the goods are at the time of import itself, intended to re-export later, it is desirable to have the above aspects ascertained during the customs examination of the imported goods and recorded on the Bill of Entry. A certified copy of the Bill of Entry with the customs

11.4 Customs

examination report showing the above factors is obtained at the port of import and produced to the customs authorities at the port of export. The customs authorities would physically examine the goods with reference to the above recorded examination report recorded at the time of import. If identity is to be established through documents, the relevant materials are: -

- (i) import documents including indent, acceptance, contract, invoice, packing specification, payment documents, triplicate copy of Bill of Entry, insurance and or other survey reports;
- (ii) correspondence covering the circumstances necessitating return of the goods, the importation/test report thereon, the letter to supplier posing the problem and the subsequent full correspondence;
- (iii) the terms and conditions on which the supplier is prepared to take the goods back, the financial settlement for the cost of the goods, import duty paid on the goods and all the expenditure incurred by the importer on the goods.
- (iv) the clearance of appropriate authorities for the re-export and settlement of the financial aspect, whether refund or credit of cost etc. or free replacement etc.

11.3 RATE OF DRAWBACK

Under sub-clause (2) of section 74, where the imported goods are used after importation, the amount of drawback will be at the reduced rates prescribed by a Notification. The sub-clause reads as under:

Notwithstanding anything contained in subsection (1), the rate of drawback in the case of goods which have been used after importation thereof, shall be such as the Central Government, having regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the Official Gazette fix.

11.3.1 Notification No.19 Cus dt. 6-2-1965: Pursuant to section 74 (2) the Act, this notification has been issued. It covers the following

- (a) list of goods which are not entitled to drawback, under this notification
- (b) the rates of deduction in rates of drawback for goods which have been out of Customs Control; and
- (c) separate rates for motor cars and goods other than excluded when imported by a person, for his personal and private use.

Under this notification, draw back of import duty will not be allowed in respect of the following goods, if they have been used after their importation in India:

- (i) Wearing Apparel;
- (ii) Tea Chests;

- (iii) Exposed cinematograph films passed by Board of Film Censors in India.
- (iv) Unexposed photographic films, paper and plates, and X-ray films.

It would as a corollary follow, that if these goods are not used after their importation into India and subsequently re-exported in the condition they were imported, then they would be entitled to 98% drawback.

11.3.2 Reduction of rebate having regard to duration of use: Under notification issued by Government, the following percentage has been fixed as the amount of drawback payable in respect of goods which were used after their importation and which have been out of Customs control.

Period between the date of clearance for home consumption and the date when the goods are placed under the customs control for export	Percentage of duty paid as drawback
1. Not more than 6 months	85%
2. More than 6 months but not more than 12 month	70%
3. More than 12 months but not more than 18 months	60%
4. More than 18 months but not more than 24 months	50%
5. More than 24 months but not more than 30 months	40%
6. More than 30 months but not more than 36 months	30%
7. More than 36 months	Nil

There is a condition that in cases where the duration is more than 24 months the Commissioner of Customs should have extended the period for re-export.

11.3.3 Special rate of drawback in respect of motor vehicles: Having regard to the international practice, a different percentage of import duty to be paid as drawback has been prescribed in the case of motor vehicles. And goods imported by the person for his personal and private use. While 98% of the duty paid is refundable if the car or goods are re-exported immediately, the percentage of reduction of the drawback is related to use of the motor vehicle per quarter as under:

- (i) Use per quarter during the first year 4%
- (ii) During second year 3%
- (iii) During third year 2½ %
- (iv) During fourth year 2%

It has been specifically provided that where such cars are exported after the expiry of the period of two years, the drawback would be allowed only if the Central Board of Excise and

11.6 Customs

Customs, on sufficient cause being shown, extends the period for expiry beyond two years. It is further provided that no drawback shall be allowed if such motor car or goods have been used for more than four years.

11.4 DUTY DRAWBACK RULES

11.4.1 Power to make rules : Sub-section (3) of section 74 empowers the Central Government to make rules for the purpose of carrying out the provision of section 74 and in particular such rules may provide for the following:

- (a) Establishing the manner of identification of goods imported in different consignments which are ordinarily stored together in bulk;
- (b) specifying the goods which shall be deemed to be not capable of being easily identified and
- (c) the manner and the time within which a claim for payment of drawback is to be filed.

11.4.2 Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995: The Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 promulgated under *Notification No.36/95 Cus (NT) dated 26.05.1995*, as amended in exercise of powers of section 74 (3) *inter alia* provide that

- (i) in the case of exports by post, the outer cover should bear in bold letters an inscription "Drawback Export"; a declaration/claim in the prescribed form should be submitted along with parcel; and the date of receipt of this claim in the customs department from the postal authorities, will be deemed to be the date of filing of the drawback claim;
- (ii) in other cases the exporter should state on the shipping bill or Bill of Export:
 - (a) description, quantity and other relevant particulars of the goods;
 - (b) the goods were being exported under claim for drawback under section 74
 - (c) import duty of customs were paid on import, and enclose documentary proof thereof
 - (d) indicate whether the goods were taken for use after importation or not
 - (e) enclose copies of import, invoice, packing list, export invoice permission of the Reserve Bank of India etc.

11.4.3 Manner of filing drawback claim: (i) In the cases of exports other than by post, a formal drawback claim, in the prescribed form, should be filed with the proper officer of customs, within three months of the date of let export order (under section 51) and the claim should be accompanied by

- (a) triplicate copy of the Shipping Bill or Bill of Export in proof of export;
- (b) Bill of entry or other document in proof of payment of import duty

- (c) Export invoice and packing specification
- (d) Bill of lading or airway bill as proof of effective export
- (e) Permission of RBI etc.
- (f) Import invoice and packing specification
- (g) Any other document necessary.
- (ii) The drawback department shall scrutinise these documents and issue a deficiency memo for further details or documents required and the exporter shall furnish them forthwith.
- (ii) The customs department shall pay to the exporters, or an agent specially authorised by the exporter to receive the drawback amount, the eligible drawback and interest if any.
- (iv) If there is any erroneous or excess payment of drawback, it shall be demanded and if the exporters fails to pay the demand, it can be recovered in the manner prescribed under section 142
- (v) The Central Government can relax the provisions of these rules, in appropriate cases, on sufficient cause being shown by the exporter in individual cases.

11.5 DRAWDRAW ON IMPORTED MATERIALS USED IN THE MANUFACTURE OF EXPORT GOODS [SECTION 75]

The drawback under section 75 is on a totally different footing. The following important aspects should be remembered in this regard:

- (i) The goods exported are totally different from the inputs.
- (ii) The input could be either imported goods on which duty of customs has been paid or indigenous goods on which central excise duty has been paid
- (iii) The existence of the imported/indigenous excise duty paid goods in the final product is not capable of easy verification at the point of export
- (iv) The goods, namely the inputs might have undergone changes in physical shape, property etc.
- (v) The quantity of inputs per piece of final product may not be uniform and may not also be capable of verification at the time of exportation.

The underlying principle of the drawback under section 75 is that, the Government fixes a rate per unit of final article to be exported out of the country as the amount of drawback payable on such goods. This amount is dependent upon prior verification of the mode of manufacture, the quantum of raw material required, the average content of duty paid articles in the final product and lastly the standardisation of the final product conforming to these norms.

11.8 Customs

11.5.1 Statutory Provisions: Sub-section 1 of section 75 provides that where it appears to the Central Government that in respect of good of any class or description manufactured, processed or on which any operation has been carried out in India, being

- (1) the goods have been entered for export and an order permitting the clearance and holding thereof for exportation has been made under section 51 by the proper officer, or
- (2) the goods have been entered for export by port under section 82 and an order permitting clearance for exportation has been made by the proper officer,

a drawback should be allowed of the duties of customs chargeable under this Act or any imported materials class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may by notification in the Official Gazette, direct that drawback shall be allowed.

- ◆ **Explanation** In this case, the rate of duty is not determined by the officer granting the drawback. Nor is it related to the actual import duty or excise duty paid on the raw materials or the components used in the manufacture of the final product exported. It is, therefore, an average amount determined by the Government having regard to all the circumstances and the facts of the manufacturing industry.

As a corollary to this proposition, it would follow that the rate fixed by the Government would be applicable for a prescribed period only. If there is (a) any variation in the rate of duty paid on the input whether customs or excise duty; (b) variation in the composition of the final product and (c) change in the process of manufacture, the rate of duty already fixed by the Government would not be applicable. It would require to be revised. The fixation of a rate of drawback is, therefore a continuous process and the industry availing of such facility of drawback is required to furnish continuously its costing and production data to the organisation entrusted with the responsibility of fixation of rates of drawback.

11.5.2 Drawback not to be allowed in certain cases [proviso to section 75 (1)] : It will be noticed that 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:

- (a) 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

- (b) the export value is not more than such 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 as may be notified by the Central Government; or
- (c) 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.

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.

11.5.3 Power of Central Government to frame Rules [Section 75(2)] : Sub-section (2) of section 75, empowers the Central Government to make rules, providing for, *inter alia*

- (a) 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 or as is specified in the Rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying out any operation generally or by any particular manufacturer or particular person carrying on any process or other operation, and interest if any payable thereon.
- (b) Specifying the goods in respect of which no drawback shall be allowed and
- (c) Specifying the procedure for recovery or adjustment of the drawback in case where there is variation in the basic material on which the drawback rate or the interest chargeable has been prescribed
- (d) Prescribing the details of certificates, documents and other evidence necessary for determining the drawback amount and
- (e) Requiring the manufacturer or the person carrying on any processor other operation to give access to every part of his manufacturing factory or the place where any manufacture process or other operations are carried out to any officer of customs to enable such officer to make necessary examination of and study the process of manufacture, and to verify the data furnished about use of duty paid inputs etc.

11.10 Customs

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

Sub-section (3) extends the rule-making power to include the power to make rules to give drawback with retrospective effect from a date not earlier than the date of changes in the rates of duty on inputs used in the export of goods.

11.5.4 Rules made under section 75 : In exercise of the powers conferred upon it by section 75 (2), the Central Government has made the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995. The important provisions of these rules are as follows:

- (1) In regard to the definition of the term “manufacture” the term has been defined in the rules. Accordingly “manufacture” includes processing or any other operation carried out of goods and the term manufacturer has to be construed accordingly.
- (2) In terms of the new rules the amount or rate of drawback determined by the Central Government under rule 3 or revised under rule 4 can now be allowed with retrospective effect from a date to be specified by notification. However this date should not be earlier than the date of changes in the rates of duty on inputs used in the export product. Thus whereas normal announcement of rate or amount of drawback under rule 3 or rule 4 shall continue to be made by public notice as hitherto, any retrospective effect to a rate would have to be necessarily by a notification.
- (3) Specific procedure has been provided for claiming drawback on goods exported by post as well as on goods exported other than by post
- (4) Provision has been made for excluding the time taken for testing of sample. Accordingly time taken in testing of the sample in excess of one month is required to be excluded for computing the period of three months specified for filing of a claim by the exporter
- (5) Provisional payment of drawback has been provided both under rule 6 and rule 7

The drawback rules are discussed in greater detail hereunder.

DRAWBACK RULES, 1995

Customs and Central Excise [Notification No.37/95 dt. 26.05.1995]

Rule 2: Drawback in relation to any goods manufactured in India and exported, means the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such excisable goods. These are subject to the Customs Act, 1962, the Central Excise Act, 1944 and these rules.

Export with its grammatical variations and cognate expressions means **taking out of India to a place outside India or taking out from a place in Domestic Tariff Area (DTA) to a special economic zone** and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.

Duty Drawback 11.11

Rule 3: Drawback may be paid at such rates determined by Government and reduced by any amount of exemption availed. (reduced rate of duty/Cenvat Credit availed).

No drawback is allowed in the case of the following:

- (i) Packing materials for export of tea, except teabags.
- (ii) Goods manufactured out of duty free materials.
- (iii) Jute batching oil used in manufacture jute yarn, twine etc.
- (iv) Packing material used for jute yarn, fabrics etc.

Rule 4: The rates may be revised by the Central Government

Rule 5: Determination of the date of coming into force and the effective date for application of rate.

- (i) The Central Government will specify the period of validity for the drawback.
- (ii) Retrospective effect – from the date of notification.
- (iii) The rate must be determined under section 16 or under section 83(2).

A drawback schedule will be published by the Government three months after the budget. (1st June). This is called the “All Industry Rate”.

Rule 6: Where no drawback is determined the manufacturer has to apply for drawback within 60 days or extended period upto further 60/90 days seeking a brand rate from the Government giving all date and information about use of inputs, manufacture etc.

Rule 7: When the drawback rate is low a special brand rate will be applicable.

Where the rate is lower than 4/5 of the duty paid, revised rate may be applied for within 60 days/further 30 days. Proper rate will be fixed by the Government brand rate letter will be issued accordingly and provisional payment will be allowed subject to adjustment.

Rule 8: No drawback will be determined (i) if it is less than 1% of FOB value or Rs.500/-; or (ii) if the export value is less than the value of imported materials used in such export goods.

Rule 8A: The upper limit of drawback money or rate determined under rule 3 should not exceed one third of the market price of the export product.

Rule 9: The Government has power to require submission of information and documents to determine the rate of drawback.

Rule 10: Access to manufactory has to be provided to Assistant Commissioner Customs of Central Excise to verify the facts.

Rule 11: Procedure for claiming drawback for goods exported by post:

11.12 Customs

- (a) Outer packing containing the address of the consignee shall carry the words “ Draw back Export”.
- (b) Exporter to furnish Annexure I to the postal authorities containing all details.
- (c) The date of claim of drawback will be the date of filing of Annexure I to customs by the postal authorities.

Rule 12 : Procedure for export other than by post:

- (1) Declaration is to be given in shipping bill stating that drawback is being claimed and all duties have been paid.
- (2) The exporter shall furnish to the proper officer copy of shipping invoices and any other document.
- (3) In respect of brand rates (rules 6 & 7) additional declaration is to be given that:
 - (a) materials or components; and
 - (b) The materials continue to be imported and not being obtained from indigenous there has been no change in manufacturing formula or quantum per unit of imported sources.
- (4) In respect of duties of customs and central excise paid on the containers, packing materials and materials used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 has been or will be made to the Central Excise authorities.

The Commissioner is empowered to exempt any importer or his agent from the provisions of this clause for reasons for to be recorded in the order (2/6/98).

Rule 13 : Manner and time of claiming : Triplicate copy of the shipping bill is the document for the claim. Documents are to be enclosed to application Form Annexure II which is to be made within 3 months from the date of order of clearance are the following:

- (a) Copy of export contract or letter of credit
- (b) Copy of packing list
- (c) Copy of AR4
- (d) Insurance certificate
- (e) Copy of drawback brand rate letter.

After giving acknowledgement, a deficiency memo will be issued calling for wanting details within 10 days. Compliance and re-submission by the exporter is to be done within the time frame.

Rule 14 : Payment of drawback and interest : One or more claims can be combined and

Duty Drawback 11.13

adjustments of all dues can be made and cheque issued or amount credited to exporter or his Custom House account.

Rule 15 : Supplementary claim : Supplementary claims can be made in Form Annexure III within 3 months from

- (a) Date of publication of such rate in case of revised rate granted
- (b) Date of communication of the said rate in case of brand rate (rule 6 & 7)
- (c) Date of payment of original drawback in other cases.

The three months period can be extended by further 3 months by Assistant Commissioner or by a further period of 9 months by the Commissioner.

Rule 16 : Repayment of erroneous or excess payment of drawback and interest : Erroneous payments are to be repaid on demand or otherwise recovered u/s 142 of Customs Act with interest.

Rule 16A : If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Deputy/Assistant Commissioner of Customs shall issue a notice to the exporter to produce evidence of realisation of export proceeds within 30 days. Recovery of drawback will be effected in case of non – receipt of payment from the consignee, based on R.E. I or bank certificate.

Rule 17 : Power to relax : Any relaxation in procedure may be made by the Government after recording the reasons in writing.

11.6 INTEREST ON DRAWBACK [SECTION 75A]

Section 75 A provides for payment of interest on delayed payment of drawback.

- (a) Accordingly, where any drawback payable to a claimant under section 74 or 75 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 the claimant, in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback.
- (b) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the Rules, 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 fixed under section 28AB 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.

11.14 Customs

11.7 PROHIBITION AND REGULATION OF DRAWBACK [SECTION 76]

- (a) Notwithstanding anything herein before contained, no drawback shall be allowed
- (i) in respect of any goods, the market price of which is less than the amount of drawback due thereon,
 - (ii) where the amount of drawback in respect of any goods is less than fifty rupees.
- (b) Without prejudice to the provision of sub- section (I) if the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this chapter are likely to be smuggled back into India, it may by notification in the Official Gazette, direct that drawback shall no be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

♦ CASE LAW:

In order to appreciate the importance of the basic principles underlying the law relating to grant of drawback, we have discussed below two important cases:

1. *ABC India Vs. Union of India* : There is distinction between section 74 and 75 of the Customs Act- section 74 of the Customs Act comes into operation when articles are imported and thereupon exported, such articles being easily identifiable; and section 75 comes into operation when imported materials are used in the manufacture of goods which are exported.

Facts: The Government of Andhra Pradesh floated an international tender for the transportation of Monolithic Buddha statue. The statue was required to be transported from Raigir, Nalgonda District, where the statue was rough – dressed and transported to the foreshore of Hussain Sagar Lake, Hyderabad, where it was to be installed. The transportation of this Monolithic statue was a highly technical work and a special equipment for transportation as well as special lifting and erection equipment called Hydra – jack was required. This Hydra – jack was imported from a firm in Holland on hire. The equipment was imported on a customs clearance permit on an undertaking to export the equipment within a specified period. However, the job of installation of statue in the rock at the centre of the lake could not be completed as during transportation of the statue from the shore to the central rock, the statue sank in the lake. The Hydra – jack was therefore shipped back to the suppliers from whom it was hired. A claim for drawback under section 74 of Customs Act was made claiming drawback of 98% of the total duty paid in respect of the goods. The Assistant Commissioner, however allowed drawback only at the rate of 85% of the total import duty paid.

Issue: The question that needed to be determined is whether the drawback is to be granted at 98% or 85% as has been allowed by the department. The Delhi High Court held that the reduction in the rate of drawback was applicable in case where the goods had been used after importation and this reduction was sanctified in accordance with a notification issued under section 74 prescribing the rates of drawback admissible in case of goods used in India before

their re- export.

In deciding the matter, the court took a clear view that whether the jack in question was used or not is a question of fact. Since the statue did not reach the central rock (Gibraltar) where the statue had to be hoisted for installation, it is clear that the Hydra – jack could not be used in India.

The Court held that in these circumstances, the drawback was admissible under section 74.

2. *Commissioner of Customs Vs. India Steel Industries* : Rule of interpretation in tariff need not be extended to interpretation of classification under the Drawback Rules.

Facts: In the schedule II to Customs and Central Excise Drawback Rules, two entries occurred namely:

3606	All type of bright steel bars and shaftings	Rs. 395/- PMT
3803	Articles made of stainless steel including stainless steel castings, not otherwise specified, made of austenitic variety of stainless steel	Rs . 890/- PMT

The issue was whether the words “all types” occurring in the entry against 3606 referred to “steel bars” alone or qualified the next nomenclature “shaftings”. In the Customs Tariff, a clear distinction is made between bars and shaftings. The department argued that in the commercial parlance bars were not known to be made up of stainless steel and shaftings did not come under the same category as bars. It was therefore, argued by the department that shafting would appropriately fall under the description articles made of stainless steel including stainless steel castings.

Decision: The Government of India held that the words “all types” did not refer to dimensional distinction alone but referred to the nature of the material used such as mild steel, carbon austenitic steel etc. It was further held that the rules of the interpretation of a tariff would not apply to rules of interpretation of the entries to the Schedule II to drawback, but they would have persuasive value. It was further held when two different descriptions or words are used, it would be necessary to give them the natural and separate meaning to make them meaningful.

Self-examination questions

1. What are the basic requirements for claiming duty drawback?
 2. What is the permissible time limit for paying drawback?
 3. With reference to section 75 of the Customs Act, 1962, state the cases where drawback on imported materials used in the manufacture of export goods is not allowed.
 4. Discuss the prohibition and regulation of drawback as provided under section 76 of the
- © The Institute of Chartered Accountants of India

11.16 Customs

Customs Act, 1962.

5. Spatial Wireless Pvt. Ltd. imported five mainframe computer systems from Flextronics Computers, USA on 31.10.2008 paying customs duty of Rs.30.45 lakhs. The computers worked for some time but in March 2009 some technical faults developed in the systems resulting in complete closure of work. On being informed about the problem, Flextronics Computers sent his technicians from USA, to repair the systems in March 2009 itself. However, no solution was found, as a result of which, in June 2009, the Management of Spatial Wireless Pvt. Ltd decided to re-ship/return the goods to Flextronics Computers, USA.

You are the Financial Controller of the Spatial Wireless Pvt. Ltd. Board of Directors have approached you for advising whether import-duty paid can be taken back from the Central Government when goods are sent back. Advise, in the light of the provisions of Customs Act, 1962.

Answer

5. Yes, the import duty already paid can be claimed back on five mainframe computer systems imported by Spatial Wireless Pvt. Ltd. in accordance with the provision of section 74 of Customs Act.

Under this section, it is provided that when goods capable of being easily identified, which have been imported into India and upon which duty has been paid on importation are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation, 98% of such duty shall be paid back as drawback. However, the goods should be identified to the satisfaction of Assistant Commissioner of Customs as the goods that were imported and the goods should have entered for export within two years from the date of payment of duty on the importation thereof.

Further, it is provided in the section that 98% of drawback shall be allowed only in those cases where the goods have not been used at all after the importation. Various percentages have been fixed by the Government as the amount of drawback payable in respect of goods that are used after their importation.

In the instant case of Spatial Wireless Pvt. Ltd all the conditions specified in provisions of section 74 are satisfied. The goods are identifiable, import duty has been paid and they are scheduled to be exported within the prescribed time limit. However, the goods have been used for some time. Here, the period between the date of clearance for home consumption and the date when the goods are placed under the customs control for export is more than 6 months but not more than 12 months. Therefore, Spatial Wireless Pvt. Ltd will be eligible for the drawback claim at the rate of 70% of the duty (rate notified by the Government in such case).