

Customs, Central Excise Duties and Service Tax Drawback (Second Amendment) Rules, 2015

In exercise of the powers conferred by section 75(2) of the Customs Act, 1962, section 37 of the Central Excise Act, 1944 and section 93A read with section 94 of the Finance Act, 1994, the Central Government hereby makes the following rules Customs, Central Excise Duties and Service Tax Drawback Rules, 1995,

1. Short title and commencement -

(1) These rules may be called the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

(2) Save as expressly provided otherwise, these rules shall come into force on the date of their publication in the Official Gazette. **(UPTO 23.11.2015)**

2. Definitions. -

In these rules, unless the context otherwise requires, -

(a) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods;

(b) "excisable material" means any material produced or manufactured in India subject to a duty of excise under the Central Excises and Salt Act, 1944 (1 of 1944);

(c) "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;

(d) "imported material" means any material imported into India and on which duty is chargeable under the Customs Act, 1962 (52 of 1962);

(da) "input service" shall have the same meaning as is assigned to it in the CENVAT Credit Rules, 2004.

(e) "manufacture" includes processing of or any other operation carried out on goods, and the term manufacturer shall be construed accordingly.

CIRCULAR NO. 43/2007-CUS dated 05.12.2007

Appropriate authority for sanction and disbursement of drawback claims on supplies made by Domestic Tariff Area (DTA) units to units located in Special Economic Zone (SEZ)

it is clarified that wherever admissible, drawback claims in respect of supplies made by DTA units to units or Developers in SEZ are not to be processed or sanctioned by the Customs and Central Excise formations. The Specified Officer posted in an SEZ is the appropriate authority for granting drawback in respect of goods supplied from DTA units to Developers and units in SEZ except where the unit or Developer issues a disclaimer to the DTA supplier in which case the Commissioner at of Central Excise /Customs & Central Excise having jurisdiction over the DTA unit would sanction the drawback. The jurisdictional Commissioner of Customs in consultation with the Pay & Accounts Officer shall make arrangements for issue of authorization and

drawback cheque books (wherever EDI facilities are not available for directly crediting the said amount to the Bank Accounts of the exporters) as clarified by the Board vide Circular No.6/2005-Cus, dated 3.2.2005.

As regards applications for fixation of brand rate of drawback the same may continue to be filed with the Commissioner of Central Excise or the Commissioner of Customs and Central Excise having jurisdiction over the manufacturing unit of the manufacturer or the supporting manufacturer, as the case may be. Copies of the brand rate fixation letters may be endorsed to the Development Commissioner and the Specified Officer of the SEZ.

CIRCULAR NO. 39/2010-CUSTOMS dated 15.10.2010 issued to modify 43/2007 circular dated 05.12.2007

Commissioners of Central Excise or Customs and Central Excise, as the case may be, may issue authorization to Dy./Asstt. Commissioners of Central Excise posted in Divisions under them for the purpose of disbursing drawback to DTA units against disclaimers issued by SEZ units/developers. The cheque book issued by the Pay & Accounts Officer of the jurisdictional Central Excise or the Customs and Central Excise Commissionerate, as the case may be, to the Central Excise Division for making refunds may be used for disbursement of drawback

3. Drawback. -

(1) Subject to the provisions of -

- (a) the Customs Act, 1962 (52 of 1962) and the rules made thereunder,
- (b) the Central Excises and Salt Act, 1944 (1 of 1944) and the rules made thereunder,
- (bb) the Finance Act, 1994 (32 of 1994), and the rules made thereunder; and
- (c) these rules, a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government:

Provided that where any goods are produced or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 (52 of 1962) and the rules made thereunder, or of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, or of the Finance Act, 1994 (32 of 1994) and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained:

Provided further that **no drawback shall be allowed** -

- (i) if the said goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;
- (ii) if the said goods are produced or manufactured, using imported materials or excisable materials or taxable services in respect of which duties or taxes have not been paid; or;
- (iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Bimlipatam jute or mesta fibre), yarn, twist, twine, thread, cords and ropes;
- (iv) if the said goods, being packing materials have been used in or in relation to the export of -
 - (1) jute yarn (including Bimlipatam jute or mesta fibre), twist, twine, thread and ropes in which jute

yarn predominates in weight;

(2) jute fabrics (including Bimlipatam jute or mesta fibre), in which jute predominates in weight;

(3) jute manufactures not elsewhere specified (including Bimlipatam jute or mesta fibre) in which jute predominates in weight.

~~(v) on any of the goods falling within heading 0401, 0402, 0403, 0404, 0405, 0406, 1006 or 3501 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). (OMITTED w.e.f 23.11.2015)~~

0401-MILK AND CREAM, NOT CONCENTRATED NOR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER (W.E.F.23.11.2015)

0402-MILK AND CREAM, CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER (W.E.F.23.11.2015)

0403-BUTTERMILK, CURDLED MILK AND CREAM, YOGURT, KEPHIR AND OTHER FERMENTED OR ACIDIFIED MILK AND CREAM, WHETHER OR NOT CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR FLAVOURED OR CONTAINING ADDED FRUIT, NUTS OR COCOA. (W.E.F.23.11.2015)

0404-WHEY, WHETHER OR NOT CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER; PRODUCTS CONSISTING OF NATURAL MILK CONSTITUENTS, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER, NOT ELSEWHERE SPECIFIED OR INCLUDED. (W.E.F.23.11.2015)

0405-BUTTER AND OTHER FATS AND OILS DERIVED FROM MILK; DAIRY SPREADS (W.E.F.23.11.2015)

0406-CHEESE AND CURD (W.E.F.23.11.2015)

1006-RICE (W.E.F 13.02.2015)

3501-CASEIN, CASEINATES AND OTHER CASEIN DERIVATIVES; CASEIN GLUES. (W.E.F.23.11.2015)

(2) In determining the amount or rate of drawback under this rule, the Central Government shall have regard to, -

(a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;

(b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;

(c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;

(d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:

Provided that if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;

(e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;

(ea) the average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the export goods.

(f) any other information which the Central Government may consider relevant or useful for the purpose.

Circular No. 16/2009-Customs dated 25.05.2009

Grant of All Industry rate of duty drawback to merchant exporters

Thus merchant exporters who purchase goods from the local market for export shall henceforth be entitled to full rate of duty drawback (including the excise portion). However, such merchant exporters shall have to declare at the time of export, the name and address of the trader from whom they have purchased the goods. They shall also have to declare that no rebate (input rebate and also the final product rebate) shall be taken against the Shipping bills under which they are exporting the goods. The merchant exporters who purchase goods from traders may therefore furnish the declaration, at the time of export, in the format annexed with this circular.

4. Revision of rates. -

The Central Government may revise amount or rates determined under rule 3.

5. Determination of date from which the amount or rate of drawback is to come into force and the effective date for application of amount or rate of drawback. -

(1) The Central Government may specify the period up to which any amount or rate of drawback determined under rule 3 or revised under rule 4, as the case may be, shall be in force.

(2) Where the amount or rate of drawback is allowed with retrospective effect, such amount or rate shall be allowed from such date as may be specified by the Central Government by notification in the Official Gazette which shall not be earlier than the date of changes in the rates of duty on inputs or tax on input services used in the export goods.

(3) The provisions of section 16, or sub-section (2) of section 83, of the Customs Act, 1962 shall determine the amount or rate of drawback applicable to any goods exported under these rules.

6. Cases where amount or rate of drawback has not been determined. -

(1)(a) Where no amount or rate of drawback has been determined in respect of any goods, any manufacturer or exporter of such goods may, within ~~sixty days~~ three months from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule (5), apply in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, having jurisdiction over the manufacturing unit, of the manufacturer or, of the supporting manufacturer, as the case may be, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components or inputs services are used in the production or manufacture of goods and the duties paid on such materials or components or the tax paid on input services:

~~Provided that such Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, may, if he is satisfied that the manufacturer or exporter was prevented by sufficient cause from filing the application within the aforesaid time allow such manufacturer or exporter to file such application within a further a period of thirty day;~~

Provided that-

(i) the Assistant Commissioner of Central Excise or Assistant Commissioner of Customs and Central Excise or Deputy Commissioner of Central Excise or Deputy Commissioner of Customs and Central Excise, as the case may be, may extend the aforesaid period of three months by a period of three

months and that the Commissioner of Central Excise or Commissioner of Customs and Central Excise, as the case may be, may further extend the period by a period of six months;

(ii) the Assistant Commissioner of Central Excise or Assistant Commissioner of Customs and Central Excise or Deputy Commissioner of Central Excise or Deputy Commissioner of Customs and Central Excise or Commissioner of Central Excise or Commissioner of Customs and Central Excise, as the case may be, may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;

(iii) an application fee equivalent to 1% of the FOB value of exports or Rs. 1000/- whichever is less, shall be payable for applying for grant of extension by the Assistant Commissioner of Central Excise or Assistant Commissioner of Customs and Central Excise or Deputy Commissioner of Central Excise or Deputy Commissioner of Customs and Central Excise, as the case may be and an application fee of 2% of the FOB value or Rs. 2000/- whichever is less, shall be payable for applying for grant of extension by the Commissioner of Central Excise or Commissioner of Customs and Central Excise, as the case may be. **(w.e.f 17.06.2010)**

(b) On receipt of an application under clause (a) the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be shall, after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods.

(2)(a) Where a manufacturer or exporter desires that he may be granted drawback provisionally, he may, while making an application under clause (a) of sub-rule (1) apply in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the amount or rate of drawback under clause (b) of that sub-rule.

(b) The Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, may, after considering the application, allow provisionally payment of an amount not exceeding the amount claimed by the manufacturer or exporter in respect of such export: Provided that the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, may, for the purpose of allowing provisional payment of drawback in respect of such export, require the manufacturer or exporter to enter into a general bond for such amount, and subject to such conditions, as he may direct; or to enter into a bond for an amount not exceeding the full amount claimed by such manufacturer or exporter as drawback in respect of a particular consignment and binding himself,-

(i) to refund the amount so allowed provisionally, if for any reason, it is found the duty drawback was not admissible; or

(ii) to refund the excess, if any, paid to such manufacturer or exporter provisionally if it is found that a lower amount was payable as duty drawback:

Provided further that when the amount or rate of drawback payable on such goods is finally determined, the amount provisionally paid to such manufacturer or exporter shall be adjusted against the drawback finally payable and if the amount so adjusted is in excess or falls short of the drawback finally payable, such manufacturer or exporter shall repay to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, the excess or be entitled to the deficiency, as the case may be;

(c) The bond referred to in clause (b) may be with such surety or security as the **Commissioner of**

Central Excise or the Commissioner of Customs and Central Excise, as the case may be may direct.

(3) Where the Central Government considers it necessary so to do, it may-

(a) revoke the rate of drawback or amount of drawback, determined under clause (b) of sub-rule (1) by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be; or

(b) direct the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, to withdraw the rate of drawback or amount of drawback determined.

~~(4) No amount or rate of drawback shall be determined in respect of any of the goods falling within heading 0401, 0402, 0403, 0404, 0405, 0406, 1006 or 3501 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).~~ **(w.e.f 23.11.2015)**

7. Cases where amount or rate of drawback determined is low. -

(1) Where, in respect of any goods, the manufacturer or exporter finds that the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, for the class of goods is less than four-fifth of the duties or taxes paid on the materials or components or input services used in the production or manufacture of the said goods, ~~he may within sixty days three months~~ he may, except where a claim for drawback under rule 3 or rule 4 has been made, within three months **(22.11.2014)** from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule (5), make an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise having jurisdiction over the manufacturing unit, of the manufacturer or, of the supporting manufacturer, as the case may be, for determination of the amount or rate of drawback thereof stating all relevant facts including the proportion in which the materials or components or input services are used in the production or manufacture of goods and the duties or taxes paid on such materials or components or input services :

~~Provided that the Commissioner of Central Excise or the Commissioner of Customs and Central Excise may, if he is satisfied that the manufacturer or exporter was prevented by sufficient cause from making the application within the aforesaid time, allow such manufacturer or exporter to make such application within a further period of thirty days;~~

Provided that-

(i) the Assistant Commissioner of Central Excise or Assistant Commissioner of Customs and Central Excise or Deputy Commissioner of Central Excise or Deputy Commissioner of Customs and Central Excise, as the case may be, may extend the aforesaid period of three months by a period of three months and that the Commissioner of Central Excise or Commissioner of Customs and Central Excise, as the case may be, may further extend the period by a period of six months;

(ii) the Assistant Commissioner of Central Excise or Assistant Commissioner of Customs and Central Excise or Deputy Commissioner of Central Excise or Deputy Commissioner of Customs and Central Excise or Commissioner of Central Excise or Commissioner of Customs and Central Excise, as the case

may be, may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;

(iii) an application fee equivalent to 1% of the FOB value of exports or Rs. 1000/- whichever is less, shall be payable for applying for grant of extension by the Assistant Commissioner of Central Excise or Assistant Commissioner of Customs and Central Excise or Deputy Commissioner of Central Excise or Deputy Commissioner of Customs and Central Excise, as the case may be and an application fee of 2% of the FOB value or Rs. 2000/- whichever is less, shall be payable for applying for grant of extension by the Commissioner of Central Excise or Commissioner of Customs and Central Excise, as the case may be. **(w.e.f 17.06.2010)**

(2) On receipt of the application referred to in sub-rule (1), the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be may, after making or causing to be made such inquiry as it deems fit, allow payment of drawback to such exporter at such amount or at such rate as may be determined to be appropriate, if the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, is in fact less than four-fifth of such amount or rate determined under this sub-rule.

(3) ~~Where manufacturer or exporter desires that he may be granted drawback provisionally,~~ Provisional drawback amount, as may be specified by the Central Government, shall be paid by the proper officer of Customs and where the manufacturer or exporter desires that he may be granted further drawback provisionally **(23.11.2015)** he may, while making an application under sub-rule (1), apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, in writing in this behalf in the manner as has been provided in clause (a) of sub-rule (2) of rule 6 for the ~~applications made under that rule and the grant of provisional drawback~~ applications made under that rule along with details of provisional drawback already paid and the grant of further provisional drawback **(23.11.2015)** shall be considered in the manner and subject to the conditions specified in clauses (b) and (c) of sub-rule (2), and sub-rule (3) of rule 6, subject to the condition that bond required to be executed by the claimant shall only be for the difference between amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4 by the Central Government and the provisional drawback authorised by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, under this rule.

(4) Where the Central Government considers it necessary so to do, it may- (a) revoke the rate of drawback or amount of drawback, determined under sub-rule (2) by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, or (b) direct the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, to withdraw the rate of drawback or amount of drawback determined.

~~(5) No amount or rate of drawback shall be determined in respect of any of the goods falling within heading 0401, 0402, 0403, 0404, 0405, 0406, 1006 or 3501 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).~~ **(w.e.f 23.11.2015)**

Circular No. 23/2015 Customs dated 29.09.2015

Refund/Claim of Safeguard Duties as Duty Drawback.

Attention is invited to the Circular No. 106/95-Cus, dated 11.10.1995 regarding refund/claim of Anti-Dumping Duty leviable under Section 9A of the Custom Tariff Act, 1975 as Duty Drawback

2. With respect to Safeguard Duties which are leviable under Section 8B or Section 8C of the Customs Tariff Act, 1975 read with Section 12 of the Customs Act, the Board clarifies that these are rebatable as Drawback in terms of Section 75 of the Customs Act. Since Safeguard Duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of such Safeguard Duties can be claimed under an application for Brand Rate under Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. This would necessarily mean that drawback shall be admissible only where the inputs which suffered Safeguard Duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

3. Where imported goods subject to Safeguard Duties are exported out of the country as such, then the Drawback payable under Section 74 of the Customs Act would also include the incidence of Safeguard Duties as part of total duties paid, subject to fulfilment of other conditions.

CIRCULAR NO. 26 / 2005-Cus dated 08.06.2005

Applicability of drawback on exports in CKD/SKD condition?

All Industry Rate of Drawback and Brand Rate of Drawback are extended to goods exported in CKD/SKD/unassembled condition only if the exporters furnish adequate evidence to substantiate that all the components /parts, etc. Being exported constitute the complete export product.

Type of claim	Previous time limits	Revised time limits
Brand rate claim(Rules 6 and 7 of Customs, Central Excise & Service Tax Drawback Rules, 1995)	The claim was required to be filed within 60 days from the date of Let Export Order. This time limit could be extended by 30 days by the Commissioner if he was satisfied that the exporter was prevented by sufficient cause from filing the application within the aforesaid time period.	The claim may be filed within 3 months from the date of Let Export Order. This time limit may be extended by 3 months by the AC / DC and by another 6 months by the Commissioner.

8. Cases where no amount or rate of drawback is to be determined. -

(1) No amount or rate of drawback shall be determined in respect of any goods under rule 3, rule 6 or, as the case may be, rule 7, the amount or rate of drawback of which would be less than one per cent of the F.O.B. value thereof, except where the amount of drawback per shipment exceeds five hundred rupees.

Provided that this sub-rule shall not apply in the case of -

(a) drawback on exports made in discharge of export obligation against an Advance Licence issued under the Export and Import Policy notified by the Central Government under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), or

(b) export made by post.

(2) No amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf.

CIRCULAR No.25/2006 –CUSTOMS dated 19.09.2006

**Computation of Value Addition where some Materials are Supplied Free of Cost -
Determination of Drawback under Rule 6 or Rule 7 of Drawback Rules**

whether the value of imported materials supplied 'free of cost' by the foreign buyer should be added to the export value of the goods for the purpose of calculation of value addition stipulated under Section 75 (1) of the Customs Act, 1962 read with Rule 8 (2) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 while determining the brand rate of duty drawback under rule 6 or rule 7 of the said Rules?

It has been decided that, for the purpose of calculation of value addition under brand rate claims, the notional value of imported materials supplied 'free of cost' by the foreign supplier should be added both to the CIF value of inputs and the FOB value of export goods

8A. Upper Limit of Drawback money or rate. -

The drawback amount or rate determined under rule 3 shall not exceed 1/3rd of the market price of the export product.

9. Power to require submission of information and documents. -

For the purpose of -

(a) determining the class or description of materials or components or input services used in the production or manufacture of goods or for determining the amount of duty or tax paid on such materials or components or input services, or

(b) verifying the correctness or otherwise of any information furnished by any manufacturer or exporter or other persons in connection with the determination of the amount or rate of drawback, or

(c) verifying the correctness or otherwise of any claim for drawback, or

(d) obtaining any other information considered by **Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, to be relevant or useful**, any officer of the Central Government specially authorized in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of Customs or of Central Excise, may require any manufacturer or exporter of goods or any other person likely to be in possession of the same to furnish such information and to produce such books of account and other documents as are considered

necessary by such officer.

10. Access to manufactory. -

Whenever an officer of the Central Government specially authorized in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of Customs or of Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, considers it necessary, the manufacturer shall give access at all reasonable times to the officer so authorized to every part of the premises in which the goods are manufactured, so as to enable the said officer to verify by inspection the process of, and the materials or components used for the manufacture of such goods, or otherwise the entitlement of the goods for drawback or for a particular amount or rate of drawback under these rules.

11. Procedure for claiming drawback on goods exported by post. -

(1) Where goods are to be exported by post under a claim for drawback under these rules, -

(a) the outer packing carrying the address of the consignee shall also carry in bold letters the words "DRAWBACK EXPORT";

(b) the exporter shall deliver to the competent Postal Authority, along with the parcel or package, a claim in the form at Annexure I, in quadruplicate, duly filled in.

(2) The date of receipt of the aforesaid claim form by the proper officer of Customs from the postal authorities shall be deemed to be date of filing of drawback claim by the exporter for the purpose of section 75A and an intimation of the same shall be given by the proper officer of customs to the exporter in such form as the Commissioner of Customs may prescribe.

(3) In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within fifteen days of its receipt from postal authorities by a deficiency memo in the form prescribed by the Commissioner of Customs, and such claim shall be deemed not to have been received for the purpose of sub-rule (2).

(4) When the exporter complies with the requirements specified in the deficiency memo within thirty days of its return, he shall be issued an acknowledgement by the proper officer in the form prescribed by the Commissioner of Customs and the date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

12. Statement / Declaration to be made on exports other than by Post. -

(1) In the case of exports other than by post, the exporters shall at the time of export of the goods -

(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that -

(i) a claim for drawback under these rules is being made;

(ii) in respect of duties of Customs and Central Excise paid on the containers, packing materials and materials and the service tax paid on the input services used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty or service tax under the

Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities :

Provided that if the Commissioner of Customs is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from the provisions of this clause;

(b) furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported.

(2) Where the amount or rate of drawback has been determined under rule 6 or rule 7, the exporter shall make an additional declaration on the relevant shipping bill or bill of export that -

(a) there is no change in the manufacturing formula and in the quantum per unit of the imported materials or components, if any, utilised in the manufacture of export goods; and

(b) the materials or components, which have been stated in the application under rule 6 or rule 7 to have been imported, continue to be so imported and are not being obtained from indigenous sources.

13. Manner and time for claiming drawback on goods exported other than by post. -

(1) Triplicate copy of the Shipping Bill for export of goods under a claim for drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.

(2) The said claim for drawback should be accompanied by the following documents, namely :-

(i) copy of export contract or letter of credit, as the case may be,

(ii) copy of Packing list,

(iii) copy of ARE-1 , wherever applicable,

(iv) insurance certificate, wherever necessary, and

(v) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the **Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be** under rule 6 or rule 7 of these rules.

(3) (a) If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), shall be returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days and shall be deemed not to have been filed for the purpose of section 75A.

(b) Where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A.

(4) For computing the period of ~~two~~ one month prescribed under section 75A for payment of drawback to the claimant, the time taken in testing of the export goods, not more than one month, shall be excluded.

(5) Subject to the provisions of sub-rules (2), (3) and (4), where the exporter has exported the goods under electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback, the electronic shipping bill itself shall be treated as the claim for drawback.

14. Payment of drawback and interest. -

(1) The drawback under these rules and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest.

(2) The officer of Customs may combine one or more claims for the purpose of payment of drawback and interest, if any, as well as adjustment of any amount of drawback and interest already paid and may issue a consolidated order for payment.

(3) The date of payment of drawback and interest, if any, shall be deemed to be, in the case of payment -

(a) by cheque, the date of issue of such cheque, or

(b) by credit in the exporter's account maintained with the Custom House, the date of such credit.

15. Supplementary claim. -

(1) Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the **Central Government or Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be**, he may prefer a supplementary claim in the form at Annexure III:

Provided that the exporter shall prefer such supplementary claim within a period of three months, -

(i) where the rate of drawback is determined or revised under rule 3 or rule 4, from the date of publication of such rate in the official Gazette;

(ii) where the rate of drawback is determined or revised upward under rule 6 or rule 7, from the date of communicating the said rate to the person concerned;

(iii) in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer.

~~Provided further that the aforesaid period of three months may be extended by the Assistant Commissioner of Customs or Deputy Commissioner of Customs for a further period of nine months on being satisfied that the exporter was prevented by sufficient cause from filling his supplementary claim within the aforesaid period of three months.~~

Provided further that-

(i) the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may extend the aforesaid period of three months by a period of nine months and that the Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be, may further extend the period by a period of six months;

(ii) the Assistant Commissioner of Customs or Deputy Commissioner of Customs or Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be, may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;

(iii) an application fee equivalent to 1% of the FOB value of exports or Rs. 1000/- whichever is less, shall be payable for applying for grant of extension by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be and an application fee of 2% of the FOB value or Rs. 2000/- whichever is less, shall be payable for applying for grant of extension by the Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be. **(w.e.f 17.06.2010)**

(2) Save as otherwise provided in this rule, no supplementary claim for drawback shall be entertained.

(3) The date of filing of the supplementary claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on such claims which are complete in all respects and for which an acknowledgement shall be issued in the form prescribed by the Commissioner of Customs.

(4) (a) Claims which are not complete in all respects or are not accompanied by the required documents shall be returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

(b) Where the exporter resubmits the supplementary claim after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A.

Type of claim	Previous time limits	Revised time limits
Supplementary claim(Rule 15 of Customs, Central Excise & Service Tax Drawback Rules, 1995)	The claim has to be filed within 3 months from the date of publication of All Industry Rate (AIR) of Drawback or from the date of communication of the brand rate of drawback. This period may be extended by another 9 months by the AC/DC if he is satisfied that the exporter was prevented by sufficient cause from filing application within the aforesaid time period.	The claim may be filed within 3 months from the date of publication of All Industry Rate (AIR) of Drawback or from the date of communication of the brand rate of drawback. This period may be extended by 9 months by the AC/DC and by another 6 months by the Commissioner.

16. Repayment of erroneous or excess payment of drawback and interest. -

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the

claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 (52 of 1962).

16A. Recovery of amount of Drawback where export proceeds not realised. -

(1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under **the Foreign Exchange Management Act, 1999 (42 of 1999)**, including any extension of such period, such drawback shall except under circumstances or conditions specified in sub-rule (5), be recovered in the manner specified below.

Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.

(2) 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 Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be or Deputy Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be or Deputy Commissioner of Customs shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within) thirty days of the receipt of the said order :
Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.

(3) Where the exporter fails to repay the amount under sub-rule (2) within said period of) thirty days referred to in sub-rule (2), it shall be recovered in the manner laid down in rule 16.

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation ~~within one year from the date of such recovery of the amount of drawback~~, within a period of three months from the date of realisation of sale proceeds the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India.

Provided that-

(i) the Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be, may extend the aforesaid period of three months by a period of nine months provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India;

(ii) an application fee equivalent to 1% of the FOB value of exports or Rs. 1000/- whichever is less, shall be payable for applying for grant of extension by the Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be. **(w.e.f 17.06.2010)**

(5) Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but such non- realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered. **(W.e.f 11.04.2011)**

17. Power to relax. -

If the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorised agent has, for reasons beyond his control, failed to comply with any of the provisions of these rules, and has thus been entitled to drawback, it may, after considering the representation, if any, made by such exporter or agent, and for reasons to be recorded in writing, exempt such exporter or agent from the provisions of such rule and allow drawback in respect of such goods.

18. Repeal and saving. -

(1) As from the commencement of these rules, the Customs and Central Excise Duties Drawback Rules, 1971 (hereinafter in this rule referred to as the 1971 Rules) shall cease to operate.

(2) Notwithstanding such cesser of operation -

(a) every application made by a manufacturer or exporter for the determination or revisions of the amount or rate of drawback in respect of goods exported before the commencement of these rules but not disposed of before such commencement shall be disposed of in accordance with the provisions of the 1971 Rules as if these rules had not been made;

(b) any claim made by an exporter or his authorised agent for the payment of drawback in respect of goods exported before the commencement of these rules but not disposed of before such commencement shall be disposed of in accordance with the provisions of these rules;

(c) where a manufacturer or exporter has exported any goods before the commencement of the Customs and Central Excise Duties Drawback (Third Amendment) Rules, 1996 and has not filed any claim for payment of drawback or the claim filed has been returned to him for complying with any deficiencies, such manufacturer or exporter may file his claim in the form of triplicate copy of Shipping Bill for export of goods under a claim for drawback along with documents prescribed in sub-rule (1) of rule 13 by 30th June, 1997 and the same shall be deemed to be a claim filed under that rule;

(d) every amount or rate of drawback determined under the 1971 Rules and in force immediately before the commencement of these rules shall be deemed to be the amount or rate of drawback determined under these rules until altered or superseded by the Central Government.

SECTION 76. Prohibition and regulation of drawback in certain cases. - (1) notwithstanding anything here in before contained, no drawback shall be allowed -

(a) Omitted

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

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

(2) Without prejudice to the provisions of sub-section (1), if the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, 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.

Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test? (ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?

M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)

Decision: The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export.

Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.