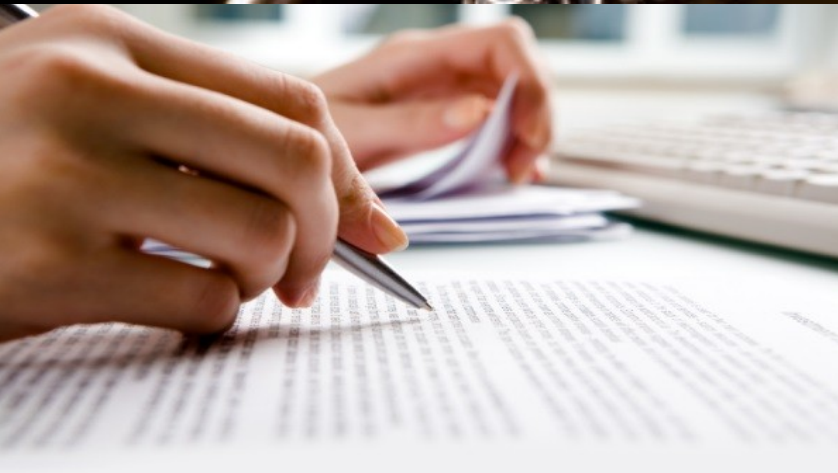




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**Drawback cannot be demanded in the absence of machinery provision
under Drawback Rules**

Famina Knit Fabs v. Union of India, 2019 (9) TMI 970 (P&H)

Facts

An exporter of textile goods ('Petitioner') exported goods during 2010-11 to 2012-13 and availed drawback under the Central Excise and Service Tax Drawback Rules, 1995 ('Drawback Rules'). The proper officer physically examined the goods, their quantity, value etc. at the time of export. The Petitioner also realised the export proceeds within the stipulated period. In 2012, the DRI initiated investigation against the Petitioner by alleging over-valuation of export goods. The investigations culminated into issuance of Show Cause Notice on February 9, 2018 ('SCN'), proposing to reject FOB value of exported goods and demand excess drawback under Rule 16 of the Drawback Rules. The present decision stems from the writ petition filed by the Petitioner.

Contentions of the parties

Issue	Petitioner's Contentions	Revenue's Contentions
Limitation	SCN having been raised after 5 years from date of export, is beyond reasonable period and barred by limitation.	Proceedings to recover drawback can be initiated within reasonable time period as Rule 16 of the Drawback Rules stipulates no time limit to raise demand.
Savings Clause	No demand for drawback survives as Rule 16 of the Drawback Rules is not saved by the Customs and Central Excise Duties Drawback Rules, 2017 ('Drawback Rules 2017').	Investigation was underway at time of repeal of Drawback Rules. Thus, proceedings under Rule 16 are saved. Further, power to reject value and re-value export goods exists under provisions of Customs Valuation (Determination of Value of Export Goods) Rules, 2007 ('Valuation Rules').
Machinery provision	Rule 16 of Drawback Rules does not provide any machinery to re-assess already exported goods and demand any drawback availed on such exports.	Proper officer has power to reject declared value and re-determine value of export goods under the Valuation Rules. Since drawback is granted as percentage of FOB value of export goods, Rule 16 of the Drawback Rules read with Section 14 of the Customs Act and Valuation Rules provide sufficient machinery to raise demand of drawback

The Court **quashed the SCN** on the following grounds:

- Though Rule 16 of Drawback Rules does not stipulate any time limit for issuance of notice but every action must be initiated within a reasonable period where no limitation is prescribed in the law. Section 28 of the Customs Act prescribes a maximum period of 5 years even in cases of fraud, wilful mis-statement etc. and exported goods were physically examined and exported only after due verification by proper officer in the instant case. Under such circumstances, issuance of SCN after expiry of 5 years is unsustainable.
- Rule 20(2) of the Drawback Rules 2017 specifically saves the operation of some rights and liabilities under *erstwhile* Drawback Rules but does not save drawback claims granted prior to October 1, 2017.

Savings clause of Section 159A under the Customs Act also does not save such a demand when a different intention of the Government is apparent from its non-inclusion under Rule 20(2). Section 6 of General Clauses Act, 1897 does not apply to repealed Rules but only to Acts repealed without any savings clause. Further, no right to raise demand of drawback survives under the Valuation Rules as the Drawback Rules are neither subject to nor subservient to the Valuation Rules and function independently to determine drawback.

- The determination of drawback is solely governed by the Drawback Rules. Therefore, the procedure to reject declared value and re-value already export goods must exist under Rule 16 of the Drawback Rules itself. Rule 16 provides for recovery of excess or erroneous drawback on account of calculation error or similar mistakes. The absence of any requirement to issue show cause notice within stipulated or reasonable time clearly indicates that there is no need to re-open the assessment, issue notice or adjudicate in such cases. Further, Rule 16 does not contemplate cases where value of goods was duly assessed by the proper officer at the time of export, export proceeds are duly realized and drawback stands released.

NITYA's Comments:

There have been several instances where the Courts have struck the tax demands in the absence of machinery provisions. In this case, the Court has rightly quashed the demand for drawback for absence of machinery provisions. The decision also establishes sound jurisprudence in the sphere of repeal and savings clause including inter-play with Section 6 of the General Clauses Act.

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