

Duty Drawback

Question 1

Write short notes on "Prohibition and regulation of drawback" with reference to the provisions of section 76 of the Customs Act, 1962:

Answer

Section 76 of the Customs Act, 1962 contains the provisions in respect of prohibition and regulation of drawback. The provisions are:

- (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 ₹ 50.
- (b) Without prejudice to the provisions of sub-section (1), 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 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.

Question 2

Briefly explain the term 'export' for the purpose of duty drawback under section 75 of the Customs Act, 1962. Is duty drawback available if the goods do not reach the destination?

Answer

As per **rule 2(c)** of the **Customs, Central Excise Duties and Service Tax Drawback Rules, 1995**, 'export' with its grammatical variations and cognate expressions, means-

- (i) taking out of India to a place outside India, or
- (ii) taking out from a place in Domestic Tariff Area (DTA) to a special economic zone (SEZ), and
- (iii) loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.

Export is defined as taking out of India to a place out of India and India includes Indian Territorial Waters. Hence, **export is complete when goods leave territorial waters of India**. Drawback is available once 'export' is complete i.e., the goods cross the territorial waters even if they do not reach the destination or they are destroyed. However, if goods are

11.2 Indirect Tax Laws

destroyed in territorial waters of India, drawback will not be available as the export is not complete [*UOI v. Rajindra Dyeing and Printing Mills (2005) 180 ELT 433(SC)*].

Question 3

Your client loaded a machine on the vessel for export. He has paid import duty and central excise duty on the components used in the manufacture. The vessel set sail from Mumbai, but runs into trouble and sinks in the Indian territorial waters. The customs department refuses to grant duty drawback for the reason that the goods have not reached their destination. Advise your client citing case law, if any.

Answer

Rule 2(a) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 provides that “**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. **Rule 2(c)** of the said Drawback rules *inter alia* provides that “**export**” **means** “taking out of India to a place outside India”. Section **2(27)** of the Customs Act, 1962 provides that India includes the territorial waters of India..

In case of **CC v. Sun Industries 1988 (35) ELT (241)**, the Supreme Court held that the expression “taking out to a place outside India” would also mean a place in high seas, if **that place is beyond territorial waters of India**. Therefore, the goods taken out to the high seas outside territorial waters of India would come within the ambit of expression “taking out to a place outside India”.

The emphasis in the aforementioned judgment was on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have been taken place. In the instant case, the vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. Similar decision was given by the Supreme Court in the case of **UOI v. Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC)**.

Question 4

Explain briefly the provisions regarding drawback allowable on re-export of duty paid goods as such.

Answer

For allowing duty draw back on re-export of duty paid goods, **sub-section (1) of section 74** of the Customs Act, 1962 provides that:

- (i) the goods should have been imported into India;
- (ii) the import duty should have been paid thereon;
- (iii) the goods should be capable of being easily identified as the goods, which were originally imported;

11.3 Indirect Tax Laws

- (iv) 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 such goods for export;
- (v) the goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
- (vi) the goods should have been 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 extended by the Board by such further period, as it may deem fit. Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback.

Question 5

Ascertain whether the exporter is entitled to duty drawback in the following independent cases and if yes, what the quantum of such duty drawback is:

- (i) *FOB value of goods exported is ₹ 50,000. Rate of duty drawback on such export of goods is 1%.*
- (ii) *FOB value of 2,000 kgs goods exported is ₹ 2,00,000. Rate of duty drawback on such export is ₹ 30 per kg. Market price of goods is ₹ 50,000 (in wholesale market)*

Answer

- (i) As per **Rule 8(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995**, no amount of drawback shall be allowed if the rate of drawback is less than 1% of the FOB value, except where the amount of drawback per shipment exceeds ₹ 500. Further, as per **section 76(1)(c) of the Customs Act, 1962** drawback is not allowed where the drawback due in respect of any goods is less than ₹ 50.

In the given case, since the rate of duty drawback is not less than 1% and drawback due is ₹ 500 (1% of FOB value) which is more than ₹ 50, duty drawback shall be allowed.

- (ii) Section 76(1)(b) of the Customs Act, 1962 *inter alia* provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is ₹ 50,000, which is less than the amount of duty drawback, i.e. 2,000 kgs x ₹ 30 = ₹ 60,000. Hence, no drawback shall be allowed.

Question 6

M/s. RIL Ltd. claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All Industry Rates under the Customs and Central Excise Duties Drawback Rules, 1995 were fixed taking into account the incidence of customs duty on imported inputs. Explain briefly with reference to Rule 3(1)(ii) of the said rules whether the claim of M/s. RIL will merit consideration by the authorities.

11.4 Indirect Tax Laws

Answer

Clause (ii) of second proviso to rule 3 of the Customs and Central Excise Duties Drawback Rules, 1995 *inter alia* provides that no drawback shall be allowed if the exported goods have been produced or manufactured using imported materials or excisable materials on which duties have not been paid.

In the given case, there was no duty incidence on 97% of the inputs of the export product except the duty incidence on remaining 3% of the inputs, which was insignificant. All Industry Rates fixed for particular export products are applicable to all exporters who export the same. However, in a case where there is clear evidence, as in the present one, that the inputs of such export products have not suffered any duty, no drawback can be claimed. Same view was expressed by the Tribunal in the case of **Rubfila International Ltd. v. CCus. Cochin 2005 (190) ELT 485 (Tri.-Bang.)**. (later maintained by supreme court)

Note: Circular No. 19/2005 Cus. dated 21.03.2005 clarifies that All Industry Rates of Duty Drawback shall be allowed on export goods manufactured partly of non-duty paid inputs. However, in the given case the said Circular shall not apply as almost whole of the inputs have not suffered duty at all.

Question 7

Can the rate of drawback be determined provisionally by the exporter? Briefly explain.

Answer

The exporter may be granted provisional duty drawback when he executes a bond binding himself to repay the entire or excess amount of drawback. Where an **exporter desires that he may be granted drawback provisionally**, he may make an application in writing to the Commissioner of Central Excise or Commissioner of Customs and Central Excise that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the final amount or drawback. The manufacturer may be allowed provisional duty drawback of an amount not exceeding the amount claimed by him in respect of such export.

Question 8

Write short note on "Interest on drawback" with reference to the Customs Act, 1962:

Answer

Interest on drawback : Section 75A of the Customs Act provides for payment of interest on delayed payment of drawback. 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, **interest @ 6% p.a.** shall be paid along with the amount of drawback. Such interest shall be paid from the date after the expiry of the said period of one month till the date of payment of such drawback [Section 75A(1)].

Similarly, if the drawback has been paid to a **claimant erroneously**, the claimant is required to repay the amount of drawback within a period of two months from the date of such demand.

11.5 Indirect Tax Laws

If he fails to do so, he shall have to **pay interest at the rate fixed under section 28AA [presently such interest has been fixed @ 18% p.a.** along with the amount of drawback. Such interest shall be paid from the date after the expiry of the said period of two months till the date of recovery of such drawback **[Section 75A(2)]**.

Question 9

What is the minimum and maximum rate or amount of duty drawback prescribed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 made under section 75 of the Customs Act, 1962? Explain with a brief note.

Answer

Minimum rate of duty drawback - Rule 8(1) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 provides that no amount or rate of drawback shall be determined in respect of any goods, 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.

Maximum rate of duty drawback - Rule 8A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 provides that the drawback amount or rate shall not exceed one third of the market price of the export product.

Question 10

State briefly the provisions under the Customs Act, 1962 relating to duty drawback on re-export of goods.

Answer

When imported goods on which duty has been paid on importation are exported, 98% of the customs duty will be paid back as drawback on satisfaction of the following conditions:

- (i) Goods must be easily identified.
- (ii) Proper Officer makes an order permitting clearance for loading of the goods for exportation.
- (iii) If goods are exported as baggage, the owner of the baggage makes a declaration of its contents to the proper officer which will be considered as entry for export and such officer permits clearance of the goods for exportation.
- (iv) If exported through post, the Proper Officer makes an order for clearance for export.
- (v) the goods are entered for export within two years from the date of payment of duty on the importation thereof.

Exercise

1. What are the basic requirements for claiming duty drawback?
2. What is the permissible time limit for paying drawback?

11.6 Indirect Tax Laws

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 Customs Act, 1962.*
5. *Spatial Wireless Pvt. Ltd. imported five mainframe computer systems from Flextronics Computers, USA on 31.10.2011 paying customs duty of ₹ 30.45 lakhs. The computers worked for some time but in March 2012 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 2012 itself. However, no solution was found, as a result of which, in September 2012, 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 has 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: 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 9 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).