After studying this chapter, you would be able to:

- comprehend the conditions under which drawback is allowable on re-export of duty paid goods.
- compute the amount of drawback where the imported goods are used before re-exportation.
- analyse and apply the provisions of section 75 to determine the drawback on imported materials used in the manufacture of export goods.
- compute the amount of interest on drawback as per section 75A.
- identify the situations in which drawback is prohibited.
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 owing to any of the following mentioned reasons:

   (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) Goods after being imported are temporarily retained in the country and later taken out of the country. In other words, the very objective of the importation was limited to temporary retention in India.

(b) Where the goods are used in the manufacture of other articles and such other articles are exported.

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.

The principal method of encouraging the export of goods has been the drawback of customs and the central excise duties paid on inputs or raw materials and service tax paid on the input services used in the manufacture of export goods.

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 were 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.
2. DRAWBACK ALLOWABLE ON RE-EXPORT OF DUTY PAID GOODS [SUB-SECTION (1) AND (3) OF 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 (which declaration shall be deemed to be an entry for export for the purposes of this section) 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.

Conditions to be satisfied in this regard:-

(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 extended by the Board by such further period, as it may deem fit.

Sub-section (3) of section 74 provides that the Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may —

(a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;
(b) specify the goods which shall be deemed to be not capable of being easily identified; and

(c) provide for the manner and the time within which a claim for payment of drawback is to be filed.

Analysis of sub-sections (1) and (3) of section 74:

Conditions under section 74: 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.

(d) 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.

(e) the goods are identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and

(f) 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.

Section 74 is resorted to where there is an excess shipment or wrong shipment or goods have been imported for the purpose of participating in an exhibition and sent back etc.

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.
For instance, if the importer warehoused the imported goods, the relevant date is the date on which the warehoused goods are cleared for home consumption and not the date when the goods are imported.

**Extension of time-limit:** 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.

**Identity of the goods**

1. 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.

2. The authority who has to be satisfied in this behalf is the Assistant or Deputy Commissioner of Customs at the port of export.

3. The concerned authority 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 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.

**Power to make rules under section 74:** Central Government is empowered 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.

### 3. AMOUNT OF DRAWBACK WHERE IMPORTED GOODS ARE USED BEFORE RE-EXPORTATION [SECTION 74(2)]

Under sub-section (2) of section 74, where the imported goods are used after importation, the amount of drawback will be at the reduced rates as fixed by the Central Government having regard to the duration of use, depreciation in value and other relevant circumstances prescribed by a Notification.

In this regard, *Notification No.19/65 Cus dated 6-2-1965 as amended* provides as follows:
**List of goods which are not entitled to drawback at all under this notification:** As per this notification, no drawback of import duty will 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 implies 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.

**Reduced drawback rates having regard to duration of use:** Following percentages have been fixed as the rates at which drawback of import duty shall be allowed in respect of goods which were used after their importation and which have been out of Customs control.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Length of period between the date of clearance for home consumption and the date when the goods are placed under Customs control for export</th>
<th>Percentage of import duty to be paid as Drawback</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Not more than three months</td>
<td>95%</td>
</tr>
<tr>
<td>2.</td>
<td>More than three months but not more than six months</td>
<td>85%</td>
</tr>
<tr>
<td>3.</td>
<td>More than six months but not more than nine months</td>
<td>75%</td>
</tr>
<tr>
<td>4.</td>
<td>More than nine months but not more than twelve months</td>
<td>70%</td>
</tr>
<tr>
<td>5.</td>
<td>More than twelve months but not more than fifteen months</td>
<td>65%</td>
</tr>
</tbody>
</table>
7.8 CUSTOMS & FTP

<table>
<thead>
<tr>
<th></th>
<th>More than fifteen months but not more than eighteen months</th>
<th>60%</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>More than eighteen months</td>
<td>Nil</td>
</tr>
</tbody>
</table>

Even if imported goods are merely tested though not used, it will be treated as used after importation.

**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.

(i) **If the car or specified goods are re-exported immediately:** 98% of the duty paid is refundable.

(ii) **If the car or specified goods are re-exported after being used:** Percentage of reduction of the drawback is related to use of the motor vehicle per quarter as under:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Year</th>
<th>Drawback of duty shall be calculated by reducing the import duty by</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1st</td>
<td>4% per quarter or part thereof</td>
</tr>
<tr>
<td>2.</td>
<td>2nd</td>
<td>3% per quarter or part thereof</td>
</tr>
<tr>
<td>3.</td>
<td>3rd</td>
<td>2(\frac{1}{2})% per quarter or part thereof</td>
</tr>
<tr>
<td>4.</td>
<td>4th</td>
<td>2% per quarter or part thereof</td>
</tr>
</tbody>
</table>

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 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.

**Note:** Safeguard duties are rebatable as duty drawback.
With respect to safeguard duties which are leviable under section 8B of the Customs Tariff Act, 1975 read with section 12 of the Customs Act, CBEC vide Circular No. 23/2015 Cus dated 29.09.2015 has clarified that these are rebatable as drawback in terms of section 75 of the Customs Act.

Illustration

Spatial Wireless Pvt. Ltd. imported five mainframe computer systems from Flexsonics Computers, USA on 31.01.20XX paying customs duty of ₹30.45 lakhs. The computers worked for some time but in June 20XX some technical faults developed in the systems resulting in complete closure of work. On being informed about the problem, Flexsonics Computers sent his technicians from USA, to repair the systems in June 20XX itself. However since no solution was found, the Management of Spatial Wireless Pvt. Ltd re-ship/returned the goods to Flexsonics Computers, USA on 31.12.20XX.

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, 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% (rate notified by the Government in such case) of the import duty paid.

4. 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 the powers conferred by section 74 of the Customs Act, 1962 (52 of 1962), the Central Government has notified the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 which provide as follows:-

 Definitions: In these rules, unless the context otherwise requires, -

(a) “drawback”, in relation to any goods exported out of India, means the refund of duty paid on importation of such goods in terms of section 74 of the Customs Act.

(b) “export”, with its grammatical variations and cognate expressions means taking out of India to a place outside India and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port or airport.

 Procedure for claiming drawback on goods exported by post [Rule 3]

(a) Goods exported by post

Where goods are to be exported by post under a claim for drawback,-

(a) the outer packing shall carry the words “DRAWBACK EXPORT”.

(b) the exporter shall deliver to the competent Postal Authority a claim in the prescribed form.
(b) **Date of filing of drawback claim for the purpose of section 75A:** In case of export by post, the date of filing of drawback claim for the purpose of section 75A would be the date on which the aforesaid claim form is received by the proper officer of customs from the postal authorities.

(c) **Deficiencies in the claim:** In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within 15 days by a deficiency memo and such claim shall be deemed not to have been received.

When the exporter complies with the requirements specified in deficiency memo within 30 days, he shall be issued an acknowledgement.

The date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

 Statements/Declarations to be made on exports other than by post [Rule 4]: In the case of exports other than by post, the exporter 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 under section 74 and make a declaration on the relevant shipping bill or bill of export that-

(i) the export is being made under a claim for drawback under section 74 of the Customs Act;

(ii) that the duties of customs were paid on the goods imported;

(iii) that the goods imported were not taken into use after importation;

or

(iii) that the goods were taken in use:

However, the Principal Commissioner/Commissioner of Customs may exempt the exporter or his authorized agent from the provisions of this clause if he is satisfied that failure to comply with the said provisions is due to the reasons beyond his (exporter/authorized agent) control.

(b) furnish to the proper officer of customs, copy of the Bill of Entry or any other prescribed document against which goods were cleared on importation, import invoice, documentary evidence of payment of duty, export invoice and packing
list and permission from Reserve Bank of India to re-export the goods, wherever necessary.

**Manner and time of claiming drawback on goods exported other than by post [Rule 5]**

(a) **Time-limit for filing drawback claim**

A claim for drawback under these rules shall be filed:

- in the prescribed form
- within **three months** (extendable by another three months)

from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

**Extension of the aforesaid time-limit**

<table>
<thead>
<tr>
<th>Authority</th>
<th>Period of extension</th>
<th>Application fee</th>
<th>Grant / refuse of extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistant/Deputy Commissioner of Customs</td>
<td>three months</td>
<td>(i) 1% of the FOB value of exports or (ii) ₹ 1000/- whichever is less</td>
<td>The concerned authority 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</td>
</tr>
<tr>
<td>Principal Commissioner/Commissioner of Customs or Principal Commissioner/Commissioner of Customs and Central Excise, as the case may be</td>
<td>further extension of six months</td>
<td>(i) 2% of the FOB value of exports or (ii) ₹ 2000/- whichever is less</td>
<td></td>
</tr>
</tbody>
</table>

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(b) **Documents to be filed alongwith drawback claim:** The claim shall be filed alongwith the following documents, namely:

(a) Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.

(b) Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.

(c) Import invoice.

(d) Evidence of payment of duty paid at the time of importation of the goods.

(e) Permission from Reserve Bank of India for re-export of goods, wherever necessary.

(f) Export invoice and packing list.

(g) Copy of Bill of lading or Airway bill.

(h) Any other documents as may be specified in the deficiency memo.

(c) **Date of filing of the claim for the purpose of section 75A:** The date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims.

(d) **Deficiencies in the claim:** In case of incomplete claim/claim without the specified documents, such claim shall be returned to the claimant with the deficiency memo within 15 days of submission and shall be deemed not to have been filed.

Where exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1).

### 5. DRAWBACK 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 entirely 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 standardization of the final product conforming to these norms.

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 exploration has been made under section 51 by the proper officer, or

2. the goods have been entered for export by post 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.

**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. In this regard, Central Government is empowered to prescribe the circumstances under which duty drawback would not be disallowed even though the export remittances are not received within the period allowed under FEMA.

**Section 75(1A):** Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured, processed or on which any operation has been carried out in India and exported outside India, then the Central Government, may, by notification in the Official Gazette declare that so much of the material as is contained in the goods exported shall for the purpose of sub-section (1) be deemed to be imported material.

**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.

(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.

6. CUSTOMS AND CENTRAL EXCISE DUTIES AND SERVICE TAX DRAWBACK RULES, 1995

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 vide Notification No.37/95 dated 26.05.1995.

**Definitions [Rule 2]**

(a) **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.

(b) **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 and

includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.

The export is complete when goods cross territorial waters of India and property passes to purchases. If export is not complete, duty drawback is not payable.

[UOI v. Rajindra Dyeing and Printing Mills 2005 (180) ELT 433 (SC)]

**Drawback [Rule 3]:** Drawback may be allowed at such amounts and such rates determined by Government and reduced by any amount of exemption availed on the export of goods (reduced rate of duty or tax paid/CENVAT Credit
All Industry Drawback Rates (AIDR) are fixed under rule 3 by considering average quantity and value of each class of inputs imported or manufactured in India. The AIDR are given in two ways:-

(a) when CENVAT credit on inputs and input services has been availed and
(b) when CENVAT credit is not availed

The difference between the two ways is only central excise portion of duty drawback. If rate indicated in both the ways is same, it implies that it pertains to only customs portion and is available irrespective of availment of CENVAT credit by exporter.

The Customs portion of AIDR is available even if inputs are obtained without payment of excise duty or if rebate is availed of excise duty paid on inputs, but excise portion of duty drawback will not be available in such a case.

Clarification on availing rebate of duties paid on inputs /procuring inputs without payment of duty for use in manufacture or processing of export goods and admissibility of duty drawback in such cases

(i) Where in respect of exports, CENVAT credit is not availed on inputs but input stage rebate on excisable goods except diesel is availed under rule 18 of the Central Excise Rules, 2002, drawback of customs portion, as per rates and caps specified in column (6) and (7) [drawback when CENVAT facility has been availed] of the drawback schedule shall be admissible;

(ii) Where in respect of exports, CENVAT credit is not availed on inputs but the inputs except diesel, are procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, drawback of Customs portion, as per rates and caps specified in column (6) and (7) [drawback when CENVAT facility has been availed] of the drawback schedule shall be admissible;

(iii) Where in respect of exports, input stage rebate on diesel under rule 18 of Central Excise Rules, 2002 is availed or diesel is procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, no drawback either under column (6) and (7) [drawback when CENVAT facility has been availed] or column (4) and (5) [drawback when CENVAT facility has not been availed] of the drawback schedule shall be admissible.

[Circular No. 1047/35/2016 CX dated 16.09.2016]
**DUTY DRAWBACK**

**No drawback in certain cases:** No drawback is allowed in the case of the following:

(i)  Packing materials for export of tea, except teachests.

(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.

**Factors considered while determining amount/rate of drawback:** 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:

   However, 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;

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

**Revision of rates/amount [Rule 4]:** The rates/amount of drawback may be revised by the Central Government.

**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 [Rule 5]**
(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).

Government annually notifies ALL INDUSTRY RATES in the form of a Drawback Schedule, after the announcement of the Union Budget.

**Cases where amount or rate of drawback has not been determined [Rule 6]:** Where no drawback is determined, the manufacturer/exporter has to apply for drawback within 3 months seeking a brand rate from the Government giving all date and information about use of inputs, manufacture etc.

**Cases where amount or rate of drawback determined is low [Rule 7]:** When the drawback rate is low, a SPECIAL BRAND RATE will be applicable.

Where the rate is lower than 4/5\(^{th}\) of the duty/taxes paid, revised rate may be applied for within 3 months. Proper rate will be fixed by the Government brand rate letter will be issued accordingly and provisional payment will be allowed subject to adjustment. Provisional drawback amount, as may be specified by the Central Government, will be paid by the proper officer of Customs pending processing of the application for brand rate of drawback. This amount would be equal to the customs component of all industry rate corresponding to the export goods, if applicable.

However, application for Special Brand Rate cannot be made where a claim for drawback under rule 3 or rule 4 has been made. In other words, where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate.

**Note:** CBEC vide Circular No. 23/2015 Cus dated 29.09.2015 has clarified that since safeguard duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of the same 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 implies 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.
Further, 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 fulfillment of other conditions.

**Extension of the time-limits prescribed under rule 6 & 7:**

<table>
<thead>
<tr>
<th>Authority</th>
<th>Period of extension</th>
<th>Application fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Assistant / Deputy Commissioner of Central Excise or</td>
<td>three months</td>
<td>(i) 1% of the FOB value of exports or (ii) ₹1000/- whichever is less</td>
</tr>
<tr>
<td>(ii) Assistant / Deputy Commissioner of Customs and Central Excise,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>as the case may be</td>
<td></td>
<td>The concerned authority 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.</td>
</tr>
<tr>
<td>Principal Commissioner / Commissioner of Central Excise or</td>
<td>further extension</td>
<td>(i) 2% of the FOB value of exports or (ii) ₹2000/- whichever is less</td>
</tr>
<tr>
<td>Principal Commissioner / Commissioner of Customs and Central Excise,</td>
<td>of six months</td>
<td></td>
</tr>
<tr>
<td>as the case may be</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Cases where no amount or rate of drawback is to be determined [Rule 8]:**

No drawback will be determined if-

(i) it is less than 1% of FOB value, except where the amount of drawback per shipment exceeds ₹ 500/-; or

(ii) if the export value is less than the value of imported materials used in such export 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 notified by the Central Government in this behalf.
Illustration

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

(i) FOB value of goods exported is ₹ 50,000. Rate of duty drawback on such export of goods is 1%.

(ii) Hema Ltd. has exported goods worth ₹ 80,000 (FOB value). Rate of duty drawback on such exports of goods is 0.8%.

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) As per rule 8(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, no amount of drawback is 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, though the rate of duty drawback is less than 1%, duty drawback shall be allowed as the amount of drawback is ₹ 640 (0.8% of ₹ 80,000) which is more than ₹ 500 and also ₹ 50.

Upper Limit of Drawback money or rate [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.

Power to require submission of information and documents [Rule 9]: Any officer of Government authorized by Assistant Commissioner/Deputy Commissioner of Central Excise/Customs has power to require submission of information and documents to determine the rate of drawback.
Access to manufactory [Rule 10]: Access to manufactory has to be provided to Assistant/Deputy Commissioner Customs of Central Excise to verify the facts.

Procedure for claiming drawback for goods exported by post [Rule 11]: (a) Outer packing containing the address of the consignee shall carry the words “Drawback 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.

Procedure for export other than by post [Rule 12]

(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 sources there has been no change in manufacturing formula or quantum per unit of imported materials or components if any, utilised in the manufacture of export goods.

(4) In respect of duties of customs and central excise paid on the containers, packing materials and materials and service tax paid on 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.

The Principal Commissioner/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.

Manner and time of claiming [Rule 13]: Triplicate copy of the shipping bill is the document for the claim. Documents are to be enclosed to application Form Annexure II are the following:
(a) Copy of export contract or letter of credit
(b) Copy of packing list
(c) Copy of ARE-1
(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.

This is procedural in nature and claim cannot be rejected for procedural lapses.

Payment of drawback and interest [Rule 14]: One or more claims can be combined and adjustments of all dues can be made and cheque issued or amount credited to exporter or his Custom House account.

Supplementary claim [Rule 15]: 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.

Extension of the time-limit

<table>
<thead>
<tr>
<th>Authority</th>
<th>Period of extension</th>
<th>Application fee</th>
<th>Grant / refuse of extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistant/Deputy Commissioner of Customs</td>
<td>Nine months</td>
<td>(i) 1% of the FOB value of exports or (ii) ₹ 1000/- whichever is less</td>
<td>The concerned authority 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</td>
</tr>
<tr>
<td>Principal Commissioner/Commiss</td>
<td>further extension of</td>
<td>(i) 2% of the FOB value of</td>
<td></td>
</tr>
</tbody>
</table>

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Repayment of erroneous or excess payment of drawback and interest [Rule 16]

Erroneous payments are to be repaid on demand or otherwise recovered u/s 142 of Customs Act with interest.

**Adjudication of cases under rule 16 of the Customs, Central Excise and Service Tax Drawback Rules, 1995**

<table>
<thead>
<tr>
<th>Level of Adjudication Officer</th>
<th>Amount of Drawback</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Simple demand of erroneously paid drawback</td>
<td></td>
</tr>
<tr>
<td>Assistant/Deputy Commissioner of Customs</td>
<td>Without any limit</td>
</tr>
<tr>
<td>(ii) Cases involving collusion, wilful misstatement or suppression of facts etc.</td>
<td></td>
</tr>
<tr>
<td>Additional/Joint Commissioner of Customs</td>
<td>Without any limit</td>
</tr>
<tr>
<td>Deputy/Assistant Commissioner of Customs</td>
<td>Upto ₹ 5 lakhs</td>
</tr>
</tbody>
</table>

**Recovery of amount of drawback where export proceeds not realised [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. 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 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. Recovery of drawback will be effected in case of non-receipt of payment from the consignee, based on R.E.I. or bank certificate.

However, such recovery shall not be made in case the 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.

If export proceeds are not realized, duty drawback allowed can be recovered even if proceedings under FEMA are dropped.

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

### Significant points to be noted with regard to aforesaid rules:

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.
Section 75A 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 28AA 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.

**Illustration**

Answer the following with reference to the provisions of the Customs Act, 1962 and rules made thereunder:

(1) Mr. A filed a claim for payment of duty drawback amounting to ₹ 50,000 on 30.07.20XX. However, the amount was received on 28.10.20XX. You are required to calculate the amount of interest payable to Mr. A on the amount of duty drawback claimed.

(2) Mr. X was erroneously refunded a sum of ₹ 20,000 in excess of actual drawback on 20.06.20XX. A demand for recovery of the same was issued by the Department on 28.08.20XX. Mr. X returned the erroneous refund to the Department on 20.10.20XX. You are required to calculate the amount of interest chargeable from Mr. X.

Provide brief reasons for your answer.

**Answer**

(1) **Computation of interest payable to Mr. A on duty drawback claimed**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty drawback claimed</td>
<td>50,000</td>
</tr>
</tbody>
</table>

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| Particulars                                    |  
|------------------------------------------------|-------------------------------------------------|
| No. of days of delay [31.08.20XX to 28.10.20XX] | 59 days                                         |
| Rate of interest                               | 6%                                              |
| Quantum of interest (rounded off) [₹ 50,000 x 59/365 x 6/100] | 485                                              |

**Note:** Since the claim of duty drawback is not paid to claimant within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback [Section 75A(1) of the Customs Act, 1962].

(2) **Computation of interest chargeable from Mr. X on excess duty drawback paid**

| Particulars                                    |  
|------------------------------------------------|-------------------------------------------------|
| Duty drawback erroneously refunded             | ₹ 20,000                                         |
| No. of days of delay [21.06.20XX to 20.10.20XX] | 122 days                                         |
| Rate of interest                               | 15%                                              |
| Quantum of interest (rounded off) [₹ 20,000 x 122/365 x 15/100] | 1,003                                            |

**Note:** Interest is payable by the claimant on erroneous refund of duty drawback @ 15% per annum for the period beginning from the date of payment of such drawback to the claimant, till the date of recovery of such drawback [Section 75A(2) of the Customs Act, 1962].

8. **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 (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 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.

The market price is as prevailing in India and not the price which exporter expects to receive from the foreign customer [Om prakash Bhatia v. CC 2003 ELT 423 (SC)].

Illustration

Ascertain whether the exporter is entitled to duty drawback in the following case and if yes, what is the quantum of such duty drawback?

FOB value of 2,000 kg of 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

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.

RELEVANT CASE LAWS

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 v. Union of India 1992 (61) E.L.T. 205 (Del.) [maintained by Supreme Court]

   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 therupon 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.

2. Commissioner of Customs v. India Steel Industries 1993 (67) E.L.T. 760 (G.O.I.)

   Rule of interpretation in tariff need not be extended to interpretation of classification under the Drawback Rules.
9. TEST YOUR KNOWLEDGE

1. Write a short note on “prohibition and regulation of drawback” with reference to the provisions of section 76 of the Customs Act, 1962.

2. Explain briefly the provisions relating to drawback allowable on re-export of duty paid imported goods when:
   (i) Duty paid imported goods are re-exported as such
   (ii) Duty paid imported goods are used before being re-exported

3. Can the rate of drawback be granted provisionally to the exporter where amount or rate of drawback has not been determined? Briefly explain.

4. Write a short note on “interest on drawback” with reference to section 75A of the Customs Act, 1962.

5. 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? Explain with a brief note.

6. 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.

7. 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, Central Excise and Service Tax Duties Drawback Rules, 1995 were fixed taking into account the incidence of customs duty on imported inputs.

Explain briefly with reference to clause (ii) of second proviso to rule 3 of the said rules whether the claim of M/s. RIL will merit consideration by the authorities.

8. With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:
   (i) What is the time limit for re-exportation of goods as such?
   (ii) What is the rate of duty drawback if the goods are exported without use?
   (iii) Is duty drawback allowed on re-export of wearing apparel without use?
9. With reference to the Customs, Central Excise Duties and Service Tax Duty Drawback Rules, 1995, briefly state whether an exporter who has already filed a duty draw back claim under All Industry Rates, can file an application for fixation on special brand rate.

10. Answers/ Hints

1. The provisions in respect of prohibition and regulation of drawback as contained in section 76 of the Customs Act, 1962 are explained hereunder:

(1) No drawback is allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. This provision has been made to prohibit export of cheap goods at inflated price to get benefit of higher duty drawback. Further, drawback is also not allowed where the amount of drawback in respect of any goods is less than ₹ 50.

(2) If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed are likely to be smuggled back into India, it may, not allow drawback in respect of such goods or alternatively allow the drawback subject to certain restrictions and conditions.

2. (i) Duty paid imported goods re-exported as such

When duty paid goods are re-exported as such, drawback is allowed under the provisions of section 74(1) of the Customs Act, 1962. Sub-section (1) of section 74 of the Customs Act, 1962 provides that following conditions need to be satisfied before claiming drawback:

(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;

(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 - which can be extended further by Board on sufficient cause being shown - from the date of payment of duty on the importation thereof.

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.

(ii) Duty paid imported goods re-exported after being used

When duty paid imported goods are used before re-export, drawback is allowed under the provisions of section 74(2) of the Customs Act, 1962. If the imported goods are used after importation, the drawback is allowed at reduced rates as fixed by the Central Government having regard to the duration of use, depreciation in value and other relevant circumstances prescribed by a Notification. If the goods were in possession of the importer, they are treated as used by the importer. Following percentages have been fixed vide Notification No. 19/65-Cus dated 6-2-1965 as amended as the rates at which drawback of import duty shall be allowed in respect of goods which were used after their importation and which have been out of Customs control:

<table>
<thead>
<tr>
<th>Length of period between the date of clearance for home consumption and the date when the goods are placed under customs control for export</th>
<th>% of import duty to be paid as duty drawback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than three months 3 months</td>
<td>95%</td>
</tr>
<tr>
<td>More than three months but not more than six months</td>
<td>85%</td>
</tr>
<tr>
<td>More than six months but not more than nine months</td>
<td>75%</td>
</tr>
<tr>
<td>More than nine months but not more than twelve months</td>
<td>70%</td>
</tr>
<tr>
<td>More than twelve months but not more than fifteen months</td>
<td>65%</td>
</tr>
</tbody>
</table>
3. 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 Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be or the Principal Commissioner 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 of drawback. The exporter may be allowed provisional duty drawback of an amount not exceeding the amount claimed by him in respect of such export.

However, it is to be noted that rate of drawback is determined provisionally only when exporter intends to get Brand Rate of duty drawback for his exports. The provision has no applicability when exporter intends to get duty drawback on the basis of All Industry Drawback Rates.

4. 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)].

Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under the Customs Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA [presently such interest has been fixed @ 15% p.a.] 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. [Section 75A(2)].

5. 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

<table>
<thead>
<tr>
<th>Duration</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than fifteen months but not more than eighteen months</td>
<td>60%</td>
</tr>
<tr>
<td>More than eighteen months</td>
<td>Nil</td>
</tr>
</tbody>
</table>
drawback shall be determined in respect of any goods, the amount or rate of drawback of which would be less than 1% 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. This provision has been made to avoid over invoicing of export goods.

6. Rule 2(c) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 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 of India 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 of India 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).

In other words, if the goods cross the territorial waters, drawback will be available even if they do not reach the destination or are destroyed provided the payment for the goods is received in convertible foreign exchange. Para 2.85.2 of HBP Vol. 1 2015-20 states that payment through insurance cover from General Insurance and approved Insurance Companies would be treated as payment realised for exports under various export promotion schemes.

7. Clause (ii) of second proviso to rule 3 of the Customs, Central Excise and Service Tax 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 or taxable service in respect of which duties or taxes 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.) [maintained in Rubfila International Ltd. v. Commissioner - 2008 (224) E.L.T. A133 (S.C.)].

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.

8. (i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation. This period can be extended by CBEC if the importer shows sufficient reason for not exporting the goods within two years.

(ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.

(iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used. However, Notification No. 19/65 Cus dated 06.02.1965 as amended provides that if wearing apparels have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India.

9. Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 provides that application for Special Brand Rate cannot be made where a claim for drawback under rule 3 or rule 4 has been made.

In other words, where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate.