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LIVE COACHING CLASSES BOARD OF STUDIES(A), ICAI

CA FINAL TOPIC: DRAWBACK AND REFUND UNDER CUSTOMS PAPER 8: INDIRECT TAX LAWS

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Coverage:

- Overview of Duty Drawback
- Understanding the nuances & circumstances of each mode for DBK
- Rates prescribed for Minimum & Maximum amount of DBK
- Restrictions imposed on DBK
- Refund of Duty or Interest
- Procedural aspects connected with Refund



Background for Drawback

- Duty is payable on Goods imported
- Consumption of such goods may or may not happen in India
- Re-export of goods imported due to various reasons concerned
- Goods imported for use in Manufacture/Production and later such goods are exported out of India
- Baggage provisions for tourists for goods temporarily imported to use in India



Overview of DBK under CA, 1962

- Rebate of Customs Duty paid on imported goods, which in turn get exported out of India.
- Duty drawback is of two types –
 - (a) Duty drawback under Section 74 of Customs Act, 1962 is re-paid back to exporter when imported goods are re-exported as it is, and article is easily identifiable
 - (b) Duty drawback under Section 75 of Customs Act, 1962 is granted when imported materials are used in the manufacture or processing of goods in India and such goods are then exported



DBK on Re-export of Duty paid goods – S.74

- 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 **PO** makes an order permitting clearance and loading;
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 **PO** u/s 77 and such officer makes an order permitting clearance of the goods for exportation, or
 - (iii) are entered for export by post under and the **PO** makes an order permitting clearance of the goods for exportation,
- **98% of such duty**, shall except as otherwise provided hereafter, be paid back.



DBK on Re-export of Duty paid goods – S.74

- Conditions to be satisfied:
 - (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.



DBK on Re-export of Duty paid goods – S.74

- Practical issues:
- Establishing the identity through proper documentation
- Availability of inspection report with remarks for such identification
- Relevance of Date of arrival vis-à-vis payment of Duty
- Goods partly re-exported
- Goods forming part of the main article i.e. sub-part, consumables, components



DBK on Goods Used before Re-export– S.74

- Under Section 74(2), 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

Notification No.19/65 Cus dated 6-2-1965



DBK on Goods Used before Re-export– S.74

Goods not entitled for DBK under this route:

- (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.
- If the above 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



DBK on Goods Used before Re-export– S.74

Reduced DBK Rate having regard to [duration of use](#):

S. No.	Length of period	% of import duty to be paid as Drawback
1.	Not more than three months	95%
2.	More than three months but not more than six months	85%
3.	More than six months but not more than nine months	75%
4.	More than nine months but not more than twelve months	70%

Period: date of clearance for home consumption and the date when the goods are placed under Customs control for export



DBK on Goods Used before Re-export– S.74

Reduced DBK Rate having regard to [duration of use](#):

Mere test of Goods,
though not used

S. No.	Length of period	% of import duty to be paid as Drawback
5.	More than twelve months but not more than fifteen months	65%
6.	More than fifteen months but not more than eighteen months	60%
7.	More than eighteen months	Nil

Period: date of clearance for home consumption and the date when the goods are placed under Customs control for export



DBK on Goods Used before Re-export– S.74

Special rate of DBK in respect of **Motor Vehicle**:

- 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.



DBK on Goods Used before Re-export– S.74

- (ii) If the car or specified goods are re-exported after being used:

S. No.	Year	Drawback of duty shall be calculated by reducing the import duty by
1.	1 st	4% per quarter or part thereof
2.	2 nd	3% per quarter or part thereof
3.	3 rd	2 1/2 % per quarter or part thereof
4.	4 th	2% per quarter or part thereof



DBK on Goods Used before Re-export– S.74

Special rate of DBK in respect of [Motor Vehicle](#):

- Where such cars are exported after the expiry of the period of two years,
- the drawback would be allowed only if sufficient cause being shown,
- CBIC may, extend the period for expiry beyond two years
- No drawback shall be allowed if such motor car or goods have been used for more than four years



DBK on Goods Used before Re-export– S.74

Manner and TL for claiming DBK:

- 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
- TL to re-export as per S.74(1) – 2 years from the date of payment of Duty



DBK on Goods Used before Re-export– S.74

Manner and TL for claiming DBK:

- Above TL of 3 months may be extended further by:
 - AC/DC of Customs – further 3 Months with a late fees
 - Commissioner/ Principal Commissioner – further 6 months



DBK on Imported goods used in Mfr– S.75

Imported Goods used in Manufacture of Export Goods:

- (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.



DBK on Imported goods used in Mfr– S.75

Imported Goods used in Manufacture of Export Goods:

- Considering the above mode of usage for the goods imported and consumed for re-export
- A drawback shall 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 at a Rate to be fixed or notified



DBK on Imported goods used in Mfr– S.75

DBK not to be allowed in certain cases – S.75(1):

- Condition and situation prevailing u/s 74 and u/s 75 are different
- Identity of the goods is not possible for establishing u/s 75
- Need arise for comparison of inputs used in Manufacture of Process vis-à-vis value of goods exported



DBK on Imported goods used in Mfr– S.75

DBK not to be allowed in certain cases – S.75(1):

- (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 FEMA



DBK on Imported goods used in Mfr– S.75

Power of CG to frame Rules - S.75(2):

- (a) payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods as the average amount of duty paid on the materials of that class or description used
- (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



DBK on Imported goods used in Mfr– S.75

Power of CG to frame Rules – S.75(2):

- (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



DBK on Imported goods used in Mfr– S.75

Types of Drawback:

- Duty drawback rates are of following types –
 - (a) All Industry Rate under rule 3 (and revised under rule 4) of Customs and Central Excise Duties Drawback Rules, 2017
 - (b) Brand Rate under rule 6 of Customs and Central Excise Duties Drawback Rules, 2017 and
 - (c) Special Brand Rate under rule 7 of Customs and Central Excise Duties Drawback Rules, 2017.
- Duty drawback rates can be fixed with retrospective effect – Rule 5(2)



Cu and CE Duties Drawback Rules, 2017

Definitions:

- (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;
- 'Export' is defined as taking out of India to a place out of India. Hence, export is complete when goods leave territorial waters of India. It does not matter whether goods reach the destination or even not. Duty Drawback will be available once 'export' is complete.



Cu and CE Duties Drawback Rules, 2017

Rule 3 – No DBK in certain cases:

- (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 in respect of which duties have not been paid;
- (iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Bimlipatam jute or mesta fibre) yarn, twist etc.
- (iv) if the said goods, being packing materials have been used in or in relation to the export of jute yarn, jute fabrics etc.



Cu and CE Duties Drawback Rules, 2017

Rule 3 – Factors considered for determining amount/rate of DBK:

- (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.



Cu and CE Duties Drawback Rules, 2017

Rule 3 – Factors considered for determining amount/rate of DBK:

- (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



Cu and CE Duties Drawback Rules, 2017

Rule 6 – Cases where amount or rate of DBK been determined:

- Any exporter of such goods may, within 3 months from the date relevant
- for the applicability of the amount/rate of drawback,
- apply to the Principal Commissioner/ Commissioner of Customs, as the case may be, having jurisdiction over the place of export,
- for determination of the amount or rate of DBK thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components



Cu and CE Duties Drawback Rules, 2017

Rule 7 – Cases where amount or rate of DBK determined is low:

- In respect of any goods, the 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 80% of the duties paid on the materials or components used in the production or manufacture of the said goods
- he may, **except where a claim for drawback under rule 3 or rule 4 has been made**
- within 3 months from the date relevant for the applicability of the amount or rate of drawback



Cu and CE Duties Drawback Rules, 2017

Rule 7 – Cases where amount or rate of DBK determined is low:

- make an application to the Principal Commissioner/ Commissioner of Customs, as the case may be, having jurisdiction over the place of export,
- for determination of the amount or rate of drawback thereof
- stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.



Cu and CE Duties Drawback Rules, 2017

Rule 8 – Cases where no amount or rate of drawback is to be determined:

- 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
 - (i) **less than the value of the imported materials** used in the manufacture of such goods or class of goods, or
 - (ii) **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



Cu and CE Duties Drawback Rules, 2017

Rule 9 – Upper limit of drawback amount or rate :

- The drawback amount or rate determined under rule 3 shall not exceed one third of the market price of the export product



Interest on DBK – S.75A

- (a) 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 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 as per 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.



PROHIBITION AND REGULATION OF DBK – S.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



PROHIBITION AND REGULATION OF DBK – S.76

- (b) 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



Refund under Customs Law



Application for Refund of Duty or Interest – S.27

- The claim for refund of duty or interest can be made by
 - (i) the person who paid the duty or interest in excess; or
 - (ii) the person who bore the incidence of such duty or interest.
- A claim by the importer / exporter for refund of duty / interest, must be made before the expiry of one year from the date of payment of such duty or interest
- A claim by another person, from whom duty was collected, must be made before expiry of one year from the date of purchase of the goods
- No limit for payment of Duty under Protest
- Where the amount of Refund claimed is less than Rs.100, it will not be refunded



Application for Refund of Duty or Interest – S.27

Concept of un-just enrichment:

- Refund application must be accompanied by documentary or other evidence
- to establish that the amount of duty or interest,
- in relation to which such refund is claimed,
- was collected from or paid by him, and
- that the incidence of such duty or interest
- has not been passed on by him to any other person



Application for Refund of Duty or Interest – S.27

Processing of Refund claim – S.27(2):

- The application of refund, if found to be complete in all respects by Customs, is processed to see if the whole or any part of the duty and interest paid by the applicant is refundable.
- In case the whole or any part of the duty and interest is found to be refundable, an order for refund is passed.
- However, in view of the provisions of unjust enrichment stipulated as per Customs Act, the amount found refundable has to be transferred/credited to the Consumer Welfare Fund



Application for Refund of Duty or Interest – S.27

Processing of Refund claim – S.27(2) – conditions stipulated for Refund to the applicant:

- (a) if the importer or the exporter, as the case may be, has not passed on the incidence of such duty and interest to any other person;
- (b) if imports were made by an individual for his personal use;
- (c) if the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;
- (d) if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26;



Application for Refund of Duty or Interest – S.27

Processing of Refund claim – S.27(2) – conditions stipulated for Refund to the applicant:

- (e) if amount relates to drawback of duty payable under section 74 and 75;
- (f) if the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.
- (g) if the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where –
 - (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
 - (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment



Refund of Export Duty in Certain cases – S.26

Export duty paid on the exportation of any goods shall be refunded to the person, if:

- (a) the goods are returned to such person otherwise than by way of re-sale;
- (b) the goods are re-imported within one year from the date of exportation; and
- (c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods
- This provision compensates the export duty in a situation where the goods which are exported are rejected and returned by the buyer



Refund of Import Duty in Certain cases – S.26A

Import duty paid on goods shall be refunded to the person, if:

- (a) Goods are defective/not as per specifications
- (b) Goods identified as imported goods to the satisfaction of AC/DC as the goods which were imported
- (c) No drawback claimed
- (d) Importer exports the goods/relinquishes title to goods/destroys or renders them commercially valueless



THANK YOU