

## Drawback not to be allowed in certain cases [proviso to section 75(1)]

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

EXAMPLE 1		
Export value	Value of imported material	Eligibility of drawback
Rs 101	Rs. 100	
Rs 100	Rs. 100	
Rs. 99	Rs 100	

## Recovery of Drawback

- (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) or any extension of the said period by RBI.

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.

EXAMPLE 2 : NOTIFIED RATE 10%		
Export value	Value of imported material	Eligibility of drawback
Rs 111	Rs. 100	
Rs 110	Rs. 100	
Rs. 109	Rs 100	



## Tutorial Notes

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

## CUSTOMS AND CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017

### RULE 2. Definitions

### Discussion on some important Rules

(a) "Drawback"	in relation to any goods manufactured in India and exported, means the rebate of duty <b>excluding integrated tax leviable under sub-section (7) and compensation cess leviable under sub section (9) respectively of section 3 of the Customs Tariff Act, 1975.</b> , chargeable on <ul style="list-style-type: none"><li>any imported materials or</li><li>excisable materials used or</li></ul> Used in the manufacture of such goods
(b) Excisable material	means any material produced or manufactured in India subject to a duty of excise under the Central Excises Act, 1944
(c) Export	With its grammatical variations and cognate expressions, means <ul style="list-style-type: none"><li>taking out of India to a place outside India or</li><li>taking out from a place in Domestic Tariff Area (DTA) to a special economic zone and</li><li>includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.</li></ul>
(d) Imported material	means any material imported into India and on which duty is chargeable under the Customs Act, 1962
(e) "Manufacture"	Includes processing of or any other operation carried out on goods, and the term manufacturer shall be construed accordingly
(f) "Tax Invoice"	means the tax invoice referred to in section 31 of the Central Goods and Services Tax Act, 2017.

9.6

CH.9  
DRAWBACK





## Examination Question

**Briefly explain the term 'Export' for purpose of duty drawback u/s 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" means

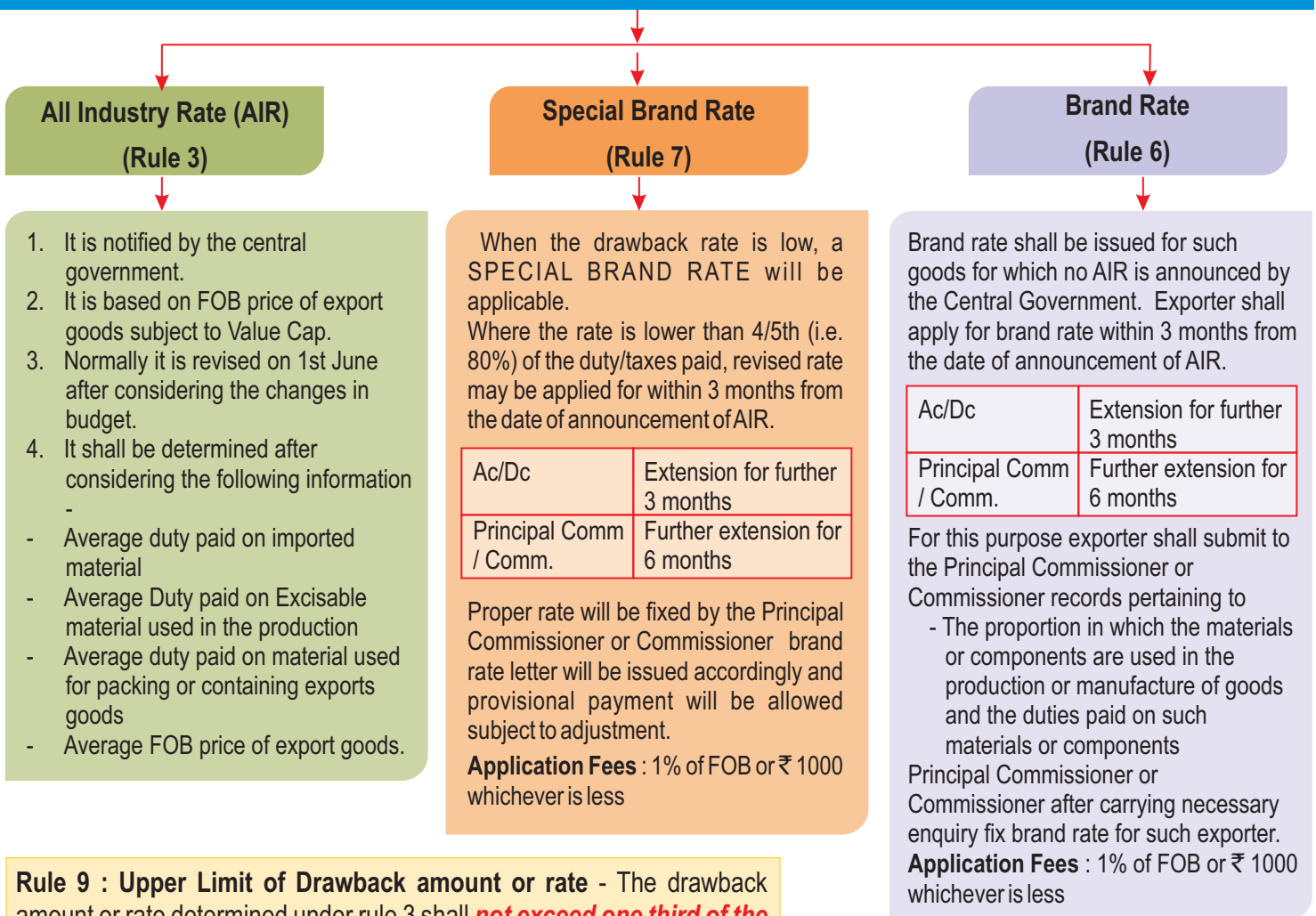
- a) Taking out of India to a place outside India, or
- b) Taking out from a place in Domestic Tariff Area to a Special Economic Zone, and
- c) Includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.

### Drawback - When export goods get destroyed in 'transit'?

For the purposes of export, India includes territorial waters of India, Therefore, if export goods are destroyed while in transit, before they cross the territorial waters of India, then, there would be no 'export', as the goods didn't move out of India.

However, if the goods are destroyed in high seas (i.e. beyond territorial waters of India), then, for the purposes of drawback, the export shall be completed; and the same shall be eligible for drawback. - [Sun Industries v. CC. [1988] 35 ELT 241 (SC) and UOI v. Rajindra Dyeing & Printing Mills Ltd. [2005] 180 ELT 433 (SC)]

## DRAWBACK RATES NOTIFIED BY CENTRAL GOVERNMENT



**RULE 4. Revision of rates.** - The Central Government may revise amount or rates determined under rule 3.

### RULE 5. Relevant Date for Determination of AIR

In case of Goods exported by filing Shipping Bill /Bill of Export → Date of Let Export Order  
In case of Goods Exported by Post → Date of Delivery of Export Goods to the Postal Authority



## Examination Question

### Can drawback be provisionally paid to the Exporter? [Rule 6(2), 7(3)]

**1. Application :** Application for provisional drawback, should be made in writing to the Principal Commissioner or Commissioner, along with application for Brand Rate/ Special Brand Rate.

**2. Request :** The application shall be for grant of provisional amount towards drawback on the export of goods, where the determination of amount or rate of drawback is pending.

**3. Furnishing of Bond :** To ensure that any erroneous or ineligible drawback is repaid by the Manufacturer / Exporter (Assessee) at a later time, the commissioner may direct the assessee to furnish / executed a General Bond for an amount

(a) Brand Rate : Not exceeding the amount of drawback claimed.

(b) Special Brand Rate : Equivalent to the difference between the All Industry Drawback Rate and Drawback amount determined by the Principal Commissioner or Commissioner

Principal Commissioner or Commissioner may also impose such other condition, he deems fit.

**4. Order for Provisional Payment :** Principal Commissioner or Commissioner may allow and pass an order for provisional payment of drawback. Maximum amount of provisional payment is the amount of Drawback claimed by the Assessee.

**5. Adjustment :** When the amount of drawback payable on the goods is finally determined, the amount provisionally paid to the applicant shall be adjusted against the drawback finally payable.

(a) If Provisional amount > Final Drawback : Excess paid shall be repaid by the Applicant.

(b) If Provisional amount < Final Drawback : Applicant is entitled to the balance amount.

### EXAMPLE-1

'A' has exported under-mentioned goods under drawback claim			
S. No.of DBK Table	Description of goods & quantity exported	Value F.O.B Rs.	Rate of Drawback
64.01	Leather footwear Boots 200 nos.@ Rs. 1,000 per pair	2,00,000	1 1% of F.O.B subject to maximum of Rs.85 per pair
64.11	Leather chappals 2000 nos. @ Rs.50 per pair	1,00,000	3% of F.O.B subject to maximum of Rs.5 per pair.
71.01	Brass Jewellery 200 kgs. @ Rs.200 per kg	40000	Rs.22.50 per kg of Brass content
71.05	Plastic bangles with embellishment 200 kgs @ Rs. 100 per kg	20000	Rs.5.00 per kg of plastic content

On examination it is found that brass content in brass jewellery is 50% of weight and in plastic bangles the plastic content is 50% but the total weight comes to 190 kgs only. Compute drawback on each item and total drawback. (CWA Inter Dec 02)

**Ans, :** Duty drawback available in each case is as follows -

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64.11	Leather chappals 2000 nos. @ Rs.50 per pair	1,00,000	3% of F.O.B subject to maximum of Rs.5 per pair.	
71.01	Brass Jewellery 200 kgs. @ Rs.200 per kg	40000	Rs.22.50 per kg of Brass content	
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### EXAMPLE 2 - SPECIAL BRAND RATE

Goods 'A' Drawback at AIR Rs. 150

Actual duty paid by Exporter	80 % actual duty paid	Application Special Brand rate
Rs. 175	Rs. 140	
Rs. 250	Rs. 200	

9.8

CH.9  
DRAWBACK



**AN Exporter obtained inputs on payment of Customs duty and his availed CENVAT credit. Advise whether he could avail Duty Drawback also u/s 75, if imported inputs are used in the manufacture of goods, which are then exported. (M 04, RTP)**

As per proviso to Rule 3 that where any goods are produced or manufactured from imported materials or excisable materials,

- ➔ on some of which only the duty chargeable thereon has been paid and not on the rest, or only a part of the duty chargeable has been paid; or
- ➔ the duty paid has been rebated or refunded in whole or in part or given as credit,

under any of the provisions of the Customs Act, 1962 and the rule made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained.

## SECTION 75A: INTEREST ON DRAWBACK

- 1) Where any drawback payable to a claimant under section 74 or section 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 that claimant in addition to the amount of drawback, interest at the rate 6% p.a. from the date after the expiry of the said period of one month till the date of payment of such drawback.
- 2) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made there under, 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 18% 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 76: PROHIBITION AND REGULATION OF DRAWBACK IN CERTAIN CASES

- 1) **Notwithstanding anything hereinbefore contained, no drawback shall be allowed -**
  - ◆ In respect of any goods the market-price of which is less than the amount of drawback due thereon;
  - ◆ Where the drawback due in respect of any goods is less than fifty rupees.
- 2) **If the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that**
  - ◆ Drawback shall not be allowed in respect of such goods or
  - ◆ May be allowed subject to such restrictions and conditions as may be specified in the notification.