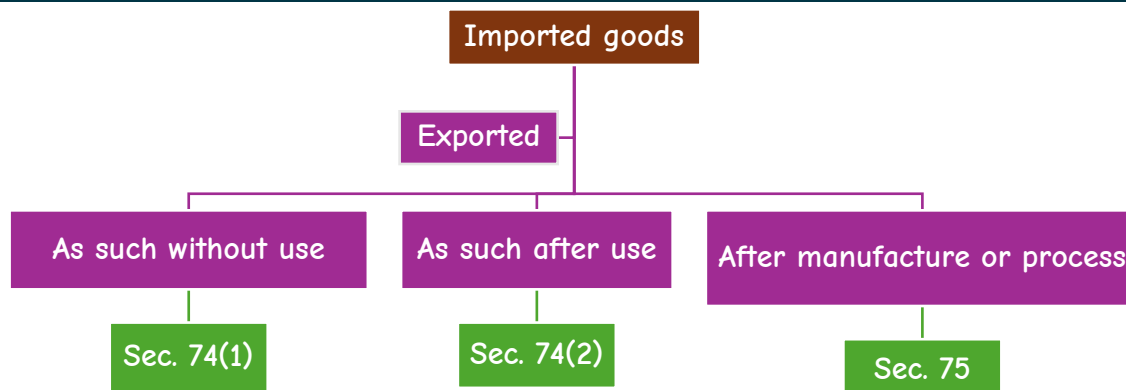


APPENDIX - CMA TOPICS

DUTY DRAWBACK



INPUT TAX CREDIT V. DUTY DRAWBACK:

In case of Sec. 74, DBK covers IGST & GST Comp. Cess paid on import. Therefore, ITC cannot be availed w.r.to the same. However, in case of Sec. 75, DBK covers only customs duty but not IGST & GST Comp. Cess. So, ITC can be availed w.r.to the same and we can claim refund of ITC upon export.

	Duty Drawback (Sec. 74)	Duty Drawback (Sec. 75)
When admissible?	Imported goods are re-exported as it is or after use, and article is easily identifiable to the satisfaction of AC/DC of Customs	Imported goods used in manufacture of goods which are then exported
Time limit	Goods must have been exported ¹ within 2 years from the <u>date of payment of import duty</u> ² (+) Further period, approved by CBIC.	No Time limit
Rates of DBK	Sec 74(1): 98% of the import duty paid at the time of importation Sec 74(2): DBK at reduced rate (Notified Rates – Check below this table)	i) Rule 3: AIR (All Industry Rate) --- generally ³ ; ii) Rule 6: BR (Brand Rate)—when no All-Industry rate is fixed in the DBK Schedule ⁴ ; iii) Rule 7: SBR (Special Brand Rate) -- - when DBK under fixed All Industry Rate < 80% of the actual duties incidence ⁵
Mandatory Prohibition [Sec. 76(1)]	<ul style="list-style-type: none"> ▶ DBK < ₹50 ▶ Market price of Export goods < DBK 	<ul style="list-style-type: none"> ▶ DBK < ₹50 ▶ Market price of Export goods < DBK

¹ Export goods shall be deemed to be entered for export on the date of issuance of let export order.

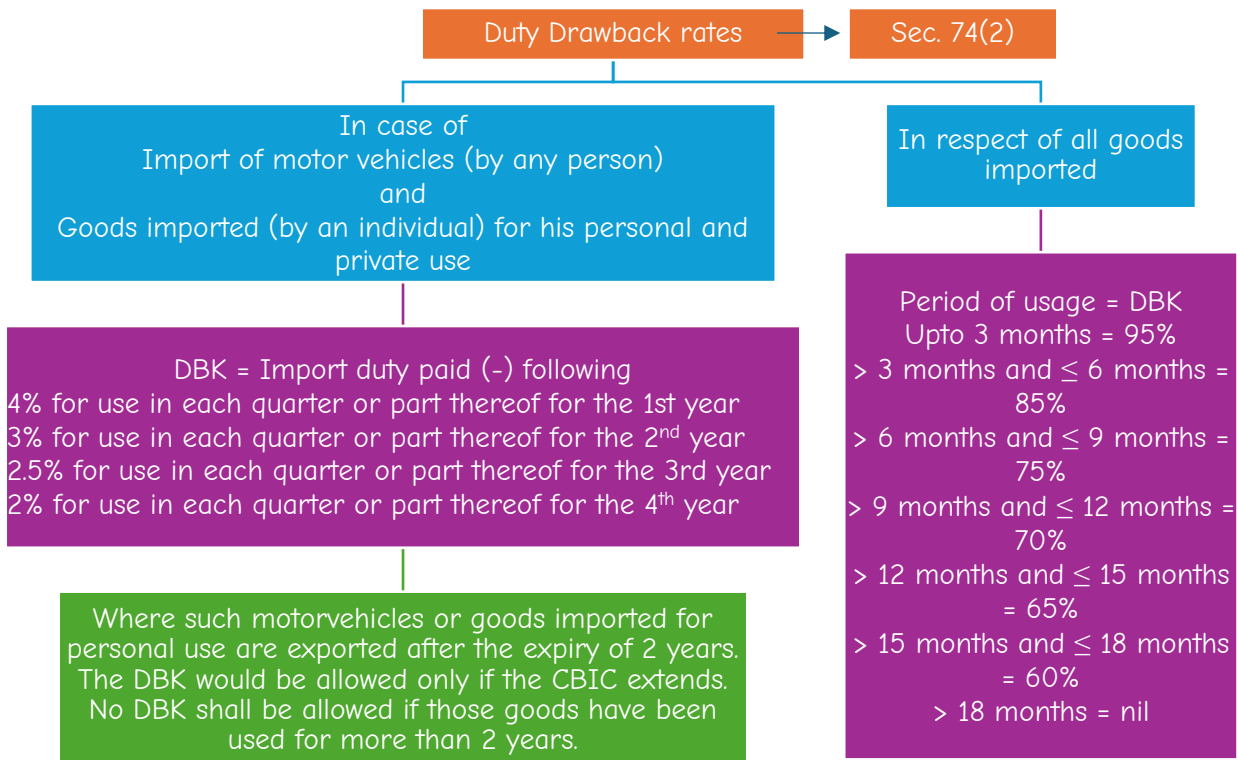
² Not the date of import. Also, if duty is paid on provisional basis, the date of payment of provisional duty is relevant.

³ As per Rule 4, CG may revise amount or rates determined under Rule 3

⁴ Exporter shall apply for fixation of Brand Rate and until fixation of brand rate, exporter may request for grant of DBK on provisional basis.

⁵ Exporter shall apply for fixation of SBR. He is not entitled to claim AIR and then apply for SBR. Till fixation of SBR, exporter may request for grant of DBK on provisional basis.

	<p>Value of imported goods = ₹1,00,000 Customs duty paid on import @ 30% = ₹30,000 Exported as such without use after 18 months. Market value of such goods came down to ₹20,000. Whether DBK available? DBK u/s 74(1) = 30,000 X 98% = ₹29,400 MV upon export = 20,000 No DBK as MV of exported goods < DBK</p>	<p>Value of exported goods in Indian Market = ₹30,000 FOB value declared = ₹4,00,000 DBK = 10% of FOB i.e., ₹40,000 DBK not allowed</p> <p>▶ Rule 9: Maximum DBK = 1/3rd of Market Price (i.e., Indian Wholesale Market Price) of export goods</p> <p>Export Price = ₹1,00,000 Indian market price = ₹50,000 AIR = 30% of FOB i.e., ₹30,000 DBK = ₹50,000 X 1/3 = ₹16,667</p> <p>▶ Rule 8: No DBK allowed if, Value of export goods is less than value of imported materials used therein. ▶ Rule 8: No DBK allowed if value of export goods not more than notified % of value of the imported materials used.</p>
Discretionary Prohibition [Sec. 76(2)]	CG may notify that no DBK shall be admissible, if any goods which post-export are likely to be smuggled back into India.	CG may notify that no DBK shall be admissible, if any goods which post-export are likely to be smuggled back into India.
Identity satisfaction	Exporter shall establish before PO that export are the one which were imported earlier	Exporter shall establish before PO that export goods have been manufactured using imported duty paid goods.



- ☞ Int. if DBK not paid to claimant within 1 months from claim date, shall be 6% p.a. From the date after expiry of 1 month till the date of payment of DBK (payable by Govt. to exporter)
- ☞ Int if DBK erroneously claimed, shall be 15% p.a. from the date of payment of DBK till the date of recovery of DBK. (Payable by exporter to Govt).

- No separate application for duty drawback shall be made. Shipping bill itself is treated as claim for duty drawback – Sec. 75

NON-AVAILABILITY OF DUTY DRAWBACK:

On the following goods Drawback under sec. 74(2) is not available

1. Wearing apparel
2. Tea chests
3. Exposed Cinematograph film passed by Board of Film Censors in India
4. Unexposed photographic films, papers and plates and X ray films.

Illustration on Rule 7 i.e., Special Brand rate

Import of goods = ₹ 10,00,000

- BCD = 1,00,000
- SWS = 10,000
- IGST = 1,33,200

FOB value of export of goods = ₹ 28,00,000 → DBK is 3.5% of FOB value of export

DBK as per AIR = ₹ 28,00,000 × 3.5% = ₹ 98,000

% of DBK over actual tax/duty incidence = ₹ 98,000 / ₹ 1,10,000 = 89% ≥ 80%

What if DBK is 1.5% of FOB value of export.

DBK as per AIR = ₹ 28,00,000 × 1.5% = ₹ 42,000

% of DBK over actual tax/duty incidence = 42,000/1,10,000 × 100 = 38.18% < 80%

∴ application can be made for special brand rate

Note: However, application for SBR cannot be made, if DBK already claimed as per AIR under rule 3.

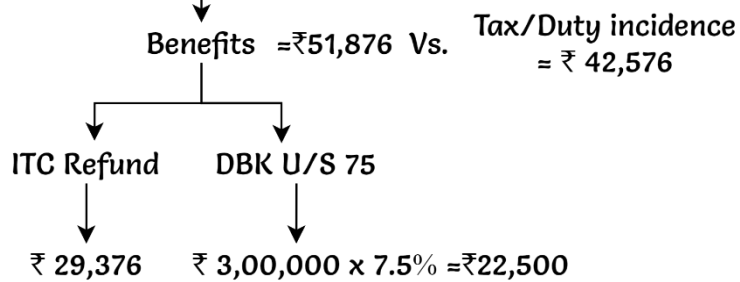
REFUND OF CUSTOMS DUTY PAID ON IMPORT [SEC. 26A]

		Sec. 74(1)	Sec. 26A
1.	Refund	98% of total customs duty paid on import	100% of total customs duty paid on import
2.	Situation	Any case, when imported goods are exported	Imported goods are defective (or) not confirming to specifications, and are exported
3.	Alternative to export	<ul style="list-style-type: none"> • Sale to SEZ • Sale to foreign going vessel (or) aircraft 	<ul style="list-style-type: none"> • Relinquishment of title • Destruction of goods
4.	Time limit for export (or) alternative to export	2 years from the date of payment of CD on import (+) Extended time by CBIC	30 days (+) 3 months extension by commission from the date of order for Home Consumption
5.	Time limit for application for refund	3 months (+) 3 months by AC/DC (+) 6 months by commission from Let Export Order	6 months from let export order (or) relinquishment (or) destruction.
6.	Applicability to perishable goods	Yes	No
7.	Time limit to grant refund	1 month from the date of application (Else, int. @ 6% p.a.)	3 months from the date of application (Else, int. @ 6% p.a.)

⁶ However, duty drawback under Sec. 74(1) is available.

Import	= ₹ 1,00,000 (BCD = 12%, SWS = 10%, IGST = 10%)
(+)	[BCD = 1,00,000 × 12% = ₹ 12,000 & SWS = ₹ 12,000 × 10% = ₹ 1,200] [IGST = 1,13,200 × 18% = ₹ 20,376]
Domestic procurement	= ₹ 50,000 (GST @ 18%)

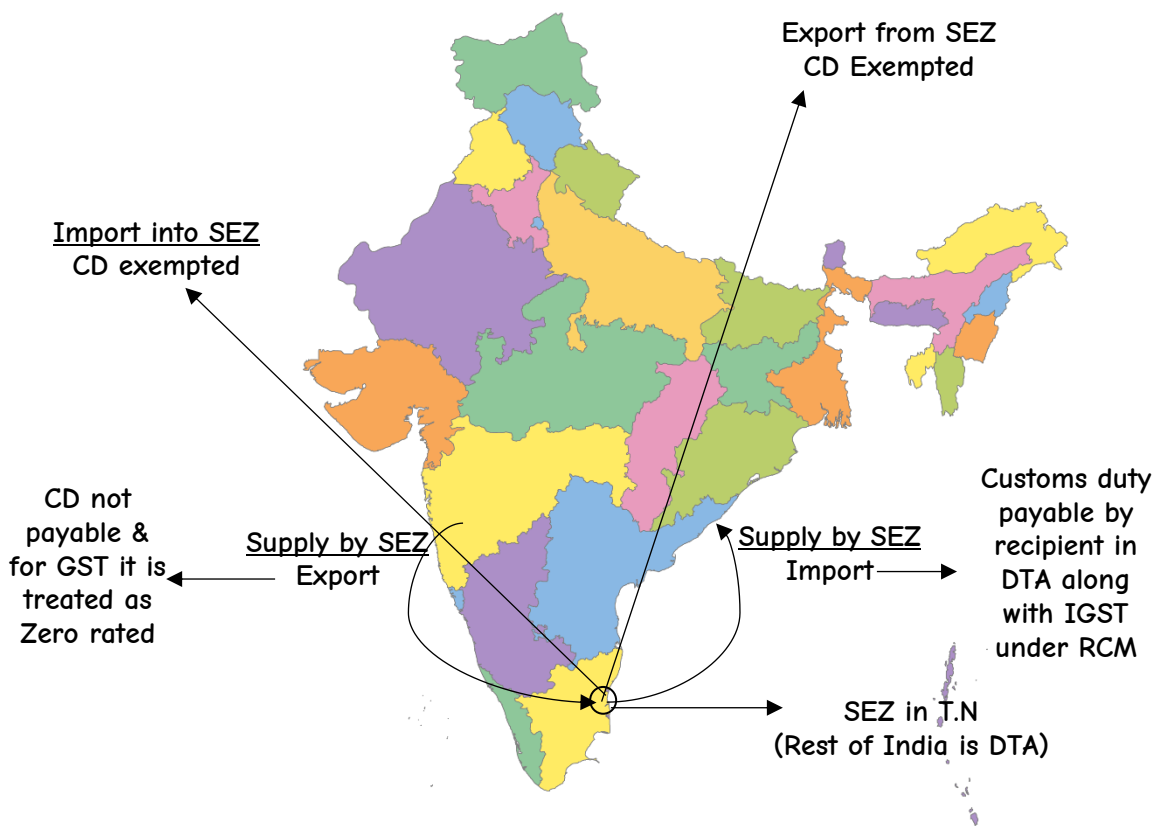
Finished goods exported = ₹ 3,00,000 DBR = 7.5% of FOB value



Note: DBK rate of 7.5% may be reduced.

SPECIAL ECONOMIC ZONE SCHEME [WITH AMENDED SEZ RULES]

- SEZ = Special Economic Zone = A separate island within territory of India, developed by government of India to promote economic growth.
- The provisions relating to SEZ are contained in Special Economic Zone Act, 2005 and SEZ Rules, 2006.
- The Kandla SEZ was the first SEZ that was setup in India in 1965 near Kandla port, Gujarat. Out of 265 operational SEZ's in India, highest number are in Tamil Nadu.
- Tax Implication on SEZ:



EXEMPTION UNDER INCOME TAX W.R.TO EXPORT INCOME:

- 100% of profits for 1st 5 years,
- 50% of profits for next 5 years &
- 50% of ploughed back export profit for next 5 years
- Exemption from minimum alternate tax (MAT)

OTHER INCENTIVES TO SEZ:

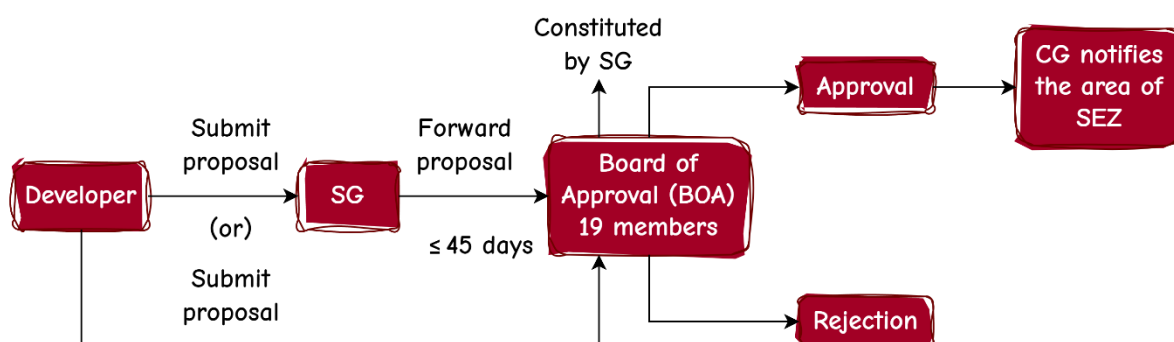
- Single window clearance for state and central level approvals
- License to import not required
- In manufacturing Sector, 100% FDI allowed, except for few sectors.
- They are eligible for MEIS, SEIS and RODTEP duty credit scrips.

- v) Profits earned are permitted to be repatriated freely without any dividend balancing.
- vi) Domestic sales of waste, scrap and rejected goods are permitted with payment of any applicable duties.

DIFFERENCE BETWEEN SEZ AND EOU:

	SPECIAL ECONOMIC ZONE	EXPORT ORIENTED UNITS
(i) Supply to them	Treated as export	Treated as deemed export
(ii) Supply by them	Zero rated under GST <u>Option (i):</u> Pay IGST & get refund of IGST. <u>Option (ii):</u> Don't pay IGST & get refund of IGST	Normal supply and attract GST
(iii) Where it can be established?	Only at the designed sites	Anywhere across India
(iv) Minimum Investment criteria	Not applicable	₹ 1 crore in P & M. BOA may allow with a lower investment criteria
(v) Import & export clearance	Achieved within the zone itself	Fast track clearance Scheme for scheme

SEZ APPROVAL MECHANISM:



KEY AMENDMENTS TO SEZ RULES, 2006.

- (1) No minimum area requirement for setting up SEZ's in biotechnology & health sector.
- (2) Merger of two (or) more units in the same SEZ of the same legal entity has been permitted.
- (3) SEZ units can allow a max. 50% of their employees to WFH and along with prior permission to temporarily remove goods such as laptops, computers, electronic equipment etc., from SEZ to DTA without payment of customs duty.
- (4) Gems and jewellery units, can take raw material (or) WIP outside the zone without payment of CD and should be brought back with 45 days.

DUTY DRAWBACK (DBK)

Question No 1:

[ICAI NOV 13 - 3 Marks]

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?
- 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 CBIC if the importer shows the 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 Customs 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.

Question No 2:

If Drawback of ₹ 1 lakh is paid by Department to Assessee erroneously on 01-05-2021 and it is demanded by Department on 15-06-2021 and paid by the Assessee on 11-08-2021 (within 2 months from Date of Demand), Calculate interest on Drawback.



Amount of erroneous Drawback	₹1,00,000.00
Date of payment of erroneous Drawback	1 st May 2021
Date of repayment by Assessee	11 th August 2021
No. of days for which interest is payable (From 2 nd May 2021 to 11 th August, 2021)	102 Days
Interest [₹ 1 lakh x 15% p.a. x 102 days / 365 days]	₹4,192

As per **Sec. 75A of customs Act, 1962**, Interest payable on erroneous Duty Drawback is @ **15% p.a.** from the date of payment of Duty Drawback amount till the date of recovery of Duty Drawback.

Question No 3:

M D Jefferson Exporters have exported raw iron outside India. FOB value of 1,000 tonne of goods exported is ₹ 3,00,000. Rate of Duty Drawback on such exports is ₹ 200 per tonne. Market price of goods is ₹ 1,75,000 (in wholesale market). You are required to ascertain whether, M D Jefferson Exporters is entitled to Duty Drawback and if yes, what is the quantum of such Duty Drawback.



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 ₹ 1,75,000 which is less than the amount of duty drawback i.e., 1,000 tonne x ₹ 200 = ₹ 2,00,000.

Hence, no duty drawback shall be allowed.

Question No 4:

'A' exported a consignment under Drawback claim consisting of the following items—

Particulars	Chapter Heading	FOB value (₹)	Drawback Rate
200 pieces of pressure stoves mainly made of brass @ ₹ 80/piece	74.04	16,000	4% of FOB
200 Kgs. Brass utensils @ ₹ 200 per Kg. 200 Kg.	74.13	40,000	₹24 per kg
200 kgs of Artware of brass @ ₹ 300 per Kg.	74.22	60,000	17.50% of FOB subject to a maximum of ₹ 38 per Kg.



On examination in docks, weight of brass Artware was found to be 190 Kgs. and was recorded on Shipping Bill. Compute the Drawback on each item and total Drawback admissible to the party.

The Drawback on each item and total Drawback admissible to the party shall be-

Particulars	FOB value (₹)	Drawback rate	Drawback Amount (₹)
200 pcs, pressure stoves made of brass	16,000	4% of FOB	640
200 Kgs. Brass utensils	40,000	₹24 per kg	4,800
200 kgs. of Brass artware, whose actual weight was 190 Kgs. only. (₹60,000 × 190/200) × 17.5% = ₹9975 (or) 190 kgs × ₹ 38 = ₹ 7,220	57,000	17.50% of FOB subject to maximum of ₹ 38 per Kg. (₹ 9,975 or ₹7,220 (190 × 38) whichever is less)	7,220
Total Drawback Admissible (in ₹)			12,660

Question No 5:

[ICSI Dec 18 – 5 Marks]

An exporter exported 2,000 pairs of leather shoes @ ₹ 750 per pair. All Industry rate of drawback in fixed on average basis i.e., @ 11% of FOB subject to maximum of ₹ 80 per pair. The exporter found that the actual duty paid on inputs was ₹ 1,95,000. He has approached you, as a consultant, to apply Rule 7 of the Drawback rules for fixation of 'Special Brand Rate'. Advise him suitably.

- Drawback Amount is ₹ 1,65,000 (i.e., ₹2,000 × 750 × 11%) or ₹ 1,60,000 (i.e. ₹ 80 × 2,000) whichever is lower.
- Therefore, Duty Drawback allowed is ₹ 1,60,000.
- All Industry Duty Drawback rate = **82.05%** [i.e., (₹1,60,000/₹1,95,000) × 100%]
- **Exporter is not eligible to apply for Special Brand Rate.**
- Therefore, exporter is eligible for claiming All Industry Duty Drawback.



Note: special Brand rate of Duty is applicable only when All Industry Rates do not cover 80% of the duties paid by the Exporter.

Question No 6:

Mr. Ram wants to take back with him (i.e., re-export) a car that he was imported on Duty payment, when came to India. Can he get any Duty Drawback from the government? He has imported Motor Car for his personal use and paid ₹ 2,50,000 as Import Duty. Car used in India for 3 months and 2 days.



As per section 74(2), if imported goods are exported after use in India, then Duty Drawback is admissible as per the Notified rates. As the Car is imported and exported after use, DBK= Customs Duties paid on import (-) 4% for every quarter or part thereof in the 1st year, from the date of payment of Import Duty till the Date of Export. In the present case, he can claim the Duty Drawback 100% (-) 8% = 92% on the value of Import Duty i.e., ₹ 2,30,000.

Question No 7:

X Ltd. has imported 10 mainframe computer systems from USA in December 2020 paying Customs Duty of ₹ 60 lakhs. Due to some technical snags that developed in the system in March 2021 the supplier sent his technicians to India to resolve the same. No Answer was found. In July 2021 X Ltd. decided to re-ship/return the goods to the foreign supplier.



You are the Finance Manager of X Ltd. and have been approached for advice whether Import Duty already paid can be got back from the Central Government, when the goods are reshipped/returned.

Briefly examine with reference to the provisions of Customs Act, 1962.

The amount of Duty Drawback depends upon whether the imported goods are used before re-export or not:

- If computer systems are exported without use, then the amount of Duty Drawback will be @98% of duty paid on imported goods provided these goods are re-exported within 2 years from the date of payment of Duty.
- If computer systems are re-exported after being used, then the amount of Duty Drawback is allowed based on the period of usage under **Section 74(2) of the Customs Act, 1962**, provided that the company must re-export the same within 18 months from the date of payment of Duty on imported goods.

Question No 8:

X Ltd has exported following goods: Product P, FOB value worth ₹ 1,00,000 and the rate of Duty Drawback on such export of goods is 0.75%.

Product Q, FOB value worth ₹ 10,000 and the rate of Duty Drawback on such export of goods is 1%.

Will X Ltd be entitled to any Duty Drawback?

Duty drawback on product P allowed is ₹ 750 (i.e., ₹1,00,000 × 0.75%)

Duty drawback on product Q is allowed, because the amount of duty drawback is (₹10,000 × 1%) = ₹ 100 (which is more than ₹ 50).

Note: Duty drawback less than 50 is not allowed.

Question No 9:

Sun industries sent certain goods by a ship from Kolkata to Colombo in Sri Lanka under claim for Drawback on the said goods under Section 75 of the Customs Act, 1962 against Shipping Bill. The ship had passed beyond the territorial waters of India and the engine developed trouble while the ship was on high seas falling within the ambit of the expression 'taking out a place outside India'. The ship returned back and ran aground in Indian Territorial Waters at the port of Paradeep. The fittings, stores and cargo were salvaged. Discuss the admissibility of claim for Drawback by the company.



In the given case, it is apparent that the goods are exported. The fact that, the ship was brought back to India because of the damages in the ship does not affect the position. The Assessee was entitled to the benefit of **section 75 of the Customs Act, 1962**. **Once the ship carrying goods crosses the Territorial Waters, export is complete and Duty drawback is allowable and its running aground in India due to engine trouble makes no difference.**

Question No 10:

XYZ Company Limited exported a consignment of manufactured goods. The company has paid Import Duty and Central Excise Duty on the components used in the manufacture. A Duty Drawback Rate has been fixed for these goods. The ship carrying the consignment runs into trouble and sinks in the Indian Territorial Waters. The Customs Department refused to grant Drawback for the reason that the goods did not reach their destination. As a consultant for M/s XYZ Limited you are required to prepare a brief note with the reason whether the stand taken by the Customs Department is correct in Law.

The term "Export" means "taking out of India to a place outside India". The term "taking out of a place outside India" would also mean a place in **high seas**, if that place is beyond territorial waters of India. **If the goods cross the Territorial waters of India then, it is an Export and Duty drawback cannot be denied.**

In the given case, the Vessel sunk within the territorial waters of India and therefore there is no export.

Accordingly, No Duty Drawback shall be available in this case [Union of India v Rajendra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC)].

Question No 11: [ICAI MTP MAY 23 – 5 Marks]

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

Mr. X filed a claim for payment of duty drawback amounting to ₹ 1,50,000 on 30-07-2021. But the amount was received on 28-10-2021. You are required to calculate the amount of Interest payable to Mr. X on the amount of Duty Drawback claimed.



Computation of Interest payable to Mr. X on Duty Drawback claimed :

(Amount in ₹)

Duty drawback claimed	1,50,000
Date of filing Drawback claim	30-07-2021
Starting date of interest [30-07-2021 + 1 month]	30-08-2021
Date of payment of Drawback	28-10-2021
No. of days of delay [30-08-2021 to 28-10-2021]	59 days
Rate of Interest	6%
Quantum of Interest (Rounded off) [₹ 1,50,000 x 6% X 60/365]	₹1,455

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.

Question No 12:

[ICAI MAY 15 - 2 MARKS] | [ICAI MTP MAY 23 – 5 Marks] | [ICAI NOV 18(OLD) - 4 MARKS]

Mr. X was erroneously refunded a sum of ₹ 20,000 in excess of actual drawback on 20-06-2021. The same was demanded by the department on 14-08-2021 and the same was returned to the department on 20-10-2021. You are required to calculate the amount of interest chargeable from Mr. X.

Provide brief reasons for your answer.

Computation of interest chargeable from Mr. X on excess duty drawback paid:

(Amount in ₹)

Duty Drawback erroneously refunded	20,000
Due date of repayment of erroneous Drawback	20-06-2021
Date of repayment by the Assessee	20-10-2021
No. of days of delay [21-06-2021 to 20-10-2021]	122 days
Rate of Interest	15%
Quantum of Interest (Rounded off) [₹20,000 x 122/365 x 15%]	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.

Question No 13:

[ICAI RTP Nov 19]

With reference to the Customs & Central Excise Duties Drawback Rules, 2017, 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

Rule 7 of the Customs and Central Excise Duties Drawback Rules, 2017 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 (SBR) of Drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate.

Question No 14:

[ICAI Nov 19 - 5 Marks]

M/s PQR has imported used wearing apparel from USA in April 2021. After receipt, PQR is doubtful that the apparel may not be saleable in India and want to re-export back to USA, without use, which the supplier has accepted. Will PQR be eligible to take Drawback of Duty paid on Imports? Also, list out the conditions for Duty Drawback.



Duty Drawback is allowed on re-export of imported wearing apparels only when the same has not been used after import.

Since, M/s. PQR has re-exported the imported apparels without using the same, it is eligible to take Drawback of Duty paid on import of apparels provided the following conditions are satisfied:

- a. Goods (apparels) are identified to the satisfaction of the proper officer as the goods which were imported and
- b. The goods are entered for export within 2 years [period extendible on sufficient cause being shown] from the date of payment of duty on Import.

Question No 15:

Infinity Corporation has imported goods and the following particulars are available for claiming Duty Drawback under Sections 74 & 75 of Customs Act, 1962:

(a)	Custom Duty has been paid on goods imported for use and have been out of Customs control for 14 months	₹ 14,00,000
(b)	Raghuveer exports manufactured goods having FOB value of ₹ 86,000. Rate of Duty Drawback on FOB value of exports Market value of the product exported	40% ₹ 96,000



Determine the Duty Drawback with explanations in the above case.

- a) As per section 74(2) of Customs Act, 1962 read with Notification No.19/65 Customs dated 06.02.1995 as amended, 65% of Import Duty is to be paid as Duty Drawback if, goods are used after importation and have been out of customs control for export for a period of more than 12 months but not more than 15 months.

Therefore, amount of Duty Drawback = ₹ 14,00,000 × 65% = ₹ 9,10,000

- b) Amount of Duty Drawback = ₹ 86,000 × 40% = ₹ 34,400

However, the Drawback amount should not exceed one third of the market price of the export product as per Rule 9 of Customs & Central Excise Duties Drawback Rules, 2017.

Thus, upper limit of Drawback amount = ₹ 96,000/3 = ₹ 32,000

Thus, the amount of Duty Drawback in the present case will be restricted to ₹ 32,000

Question No 16:

M/s Deepak Business Ltd., had imported goods during 2021. Custom Duty has been paid for ₹ 20,00,000 at the time of Import. These goods were used and later re-exported after 23 months of Import. Is M/s Deepak Business Ltd., eligible for refund of Customs Duty paid at the time of Import. If so how much?

Reference to **Section 74(2) of Customs Act, 1962** has to be made for examining the eligibility of Drawback if any on goods exported after usage. In the given instance, **goods were exported after a period of 18 months**, where in the percentage of to be paid as Drawback allowed is **"NIL"**. Accordingly, M/s Deepak Business Ltd., **shall not be eligible to claim any amount of Drawback** on such re-export made.

Question No 17:

[ICSI Dec 18]

M/s Dynamic Exporters exported goods having FOB value of ₹ 10 lakhs. The All-Industry duty drawback on exports of these goods is 5%. Market price of the goods in India is ₹ 40,000. Calculate the duty draw back receivable by M/s Dynamic Exporters.

Duty Drawback eligible under **Section 75 of Customs Act, 1962** is **₹ 50,000** [₹ 10,00,000 × 5% = ₹ 50,000]. Market price of such goods is ₹ 40,000/-.

As per **Section 76(1)(b) of Customs Act, 1962** Duty Drawback shall not be allowed in respect of any goods, if the market price of such goods is less than the amount of Drawback due thereon.

Hence, **M/s Dynamic Exporters is not entitled to get any Duty Drawback.**

Question No 18:

[ICSI Dec 17 – 5 Marks]

Calculate the amount of Duty Drawback allowable under the Customs Act, 1962 in the following independent cases:

- Jaggi Mehta imported a car from U.K. for his personal use and paid ₹4,50,000 as Import Duty on the car. However, the car was being re-exported immediately without bringing it into use by Mr. Mehta.
- Meenakshi imported a music player from Dubai and paid ₹12,000 as Import Duty. She used it for four months and there after re-exported the same after four months.
- XYZ Ltd. exported 1000 kgs of a metal of FOB value of ₹ 1,00,000. Rate of Duty Drawback on such export is ₹ 60 per kg. Market price of goods is ₹ 40,000 (in wholesale market).



Computation of Duty Drawback is as follows:-

a) Drawback at 98% [₹4,41,000 (₹4,50,000*98%)]

As per **Section 74 of the customs Act, 1962**, when, any identifiable imported goods are re-exported, **98% of the Import Duty is re- paid as drawback** provided –

- the goods are identified to the satisfaction of the Assistant / Deputy Commissioner of Customs as the goods which were imported and
- the same are entered for export within two years from the date of payment of the Import Duty.

Thus, **Jaggi Mehta can claim duty drawback of ₹ 4,41,000/-** (98% of ₹ 4,50,000) on the presumption that aforesaid conditions are fulfilled.

- b)** As per **section 74(2) of the Customs Act, 1962**, in respect of a Motor Car or goods imported by a person for his personal and private use, Drawback of Duty = Import Duty paid in respect of such Motor Car or goods as reduced by 4%, 3%, 2.5% and 2% for use for each quarter or part there of duty the period of first year, second year, third year and fourth year respectively.

Since, goods have been used for 4 months i.e., 2 quarters, hence, Meenakshi can claim Duty Drawback = $[(100\% - (4\% \times 2 \text{ quarters}))] = 92\%$ of 12,000 = **₹ 11,040**. It is assumed that all other conditions are fulfilled.

- c) XYZ Ltd. is **not entitled to claim duty drawback in this case**. Since, market value of exported goods is less than the value of Duty Drawback.

Question No 19:[ICAI May 17 – 4 Marks] | [ICMAI Dec 19 – 8 Marks] | [ICSI Aug 21 – 5 Marks]

X Ltd. exported following goods to USA. Discuss whether any Duty Drawback is admissible under Section 75 of the Customs Act, 1962.

Product	FOB Value of Exported goods	Market price of goods	Duty drawback rate
A	2,50,000	1,80,000	30% of FOB
B	1,00,000	50,000	0.75% of FOB
C	8,00,000	8,50,000	3.50% of FOB
D	2,000	2,100	1.50% of FOB



Note: Imported value of product C is Rs. 9,50,000.

Duty Drawback amount for all the products are as follows:

Product A:

Drawback amount = ₹2,50,000 × 30% = ₹ 75,000 or ₹1,80,000 × 1/3 = ₹ 60,000

Allowable Duty Drawback does not exceed 1/3rd of the market value. Hence, the amount of Duty Drawback allowed is **₹ 60,000**.

Product B:

Drawback amount allowed is **₹ 750** (i.e., ₹ 1,00,000 × 0.75%).

Since, the amount is more than ₹ 50 even though the rate is less than 1% it is allowed.

Product C:

No Duty Drawback is allowed.

Since, the value of export is less than the value of import (i.e., negative sale)

Product D:

No Duty Drawback is allowed.

Since, the Duty Drawback amount is ₹ 30 (which is less than ₹50)

Though rate of Duty Drawback is more than 1%, no Duty Drawback is allowed.

Question No 20:

[ICMAI June 19 – 6 Marks]

Calculate the amount of Duty Drawback allowable under Section 74 of the Customs Act, 1962 in following cases:

- I. Suresh imported a Motor Car for his personal use and paid ₹ 5,00,000 as Import Duty. The Car is re-exported after 6 months and 20 days.
- II. Nikita imported wearing apparel and paid ₹ 50,000 as Import Duty. As she did not like the apparel, these are re-exported after 20 days.
- III. High Tech Ltd. imported 10 computer system paying Customs Duty of ₹ 50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.
 - I. The amount of Duty Drawback is ₹ 4,40,000 (i.e., ₹ 5,00,000 @ 88%), since, these goods are used in India.
 - II. Duty Drawback is ₹ Nil, assumed that wearing apparels are re-exported after being used.
 - III. Duty Drawback is ₹ 49,00,000 (i.e., 50,00,000 X 98%). Since, these goods are re- exported without being used.

Question No 21: [ICAI June 21 – 5 Marks]

- I. Compute the Interest payable to an exporter in the following case of delayed payment of Drawback as per the Customs Act, 1962. The claim was made on 30th June, 2020 for ₹ 80,000 and was settled on 15th September 2020.
- II. Compute the Interest payable by the exporter under the Customs Act, 1962 in the case of recovery of ₹ 10,000 paid erroneously on 3rd July, 2020. Demand for recovery was issued on 5th September, 2020 and the exporter paid back the amount on 3rd November, 2020.

(i)

Particulars	Information
Duty Drawback claimed	₹ 80,000
No. of days of delay [31.07.2020 to 15.09.2020] [Refer Note]	47 days
Rate of Interest [Refer Note]	6%
Interest [₹ 80,000 × 47/365 × 6/100] (Rounded off)	₹ 618

Note: Since, the claim of Duty Drawback is not paid to exporter 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.

(ii)

Particulars	Information
Duty Drawback paid erroneously	₹10,000
No. of days of delay [04.07.20 to 03.11.2020] [Refer Note]	123 days
Rate of Interest [Refer Note]	15%
Interest [₹10,000 × 123/365 × 15/100] (Rounded off)	₹ 505

Note: Interest is payable by the exporter on Duty Drawback paid erroneously @ 15% per annum for the period beginning from the date of payment of such Drawback to the exporter, till the date of recovery of such Drawback

Question No 22: [ICAI JAN 21 – 5 Marks]

Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of Refund Application.

Would the period of limitation for claiming Refund applicable to Refund of amount paid on account of Duty paid twice under mistake? Briefly discuss with reference to legal provisions and Case Law.

(i) The period of limitation for submission of Refund Application is one year and it is computed in the following manner:

In case where	The time limit of One Year should be calculated from
Refund claim is filed by the importer/exporter	Date of payment of Duty/Interest
Refund claim is filed by another person, from whom Duty was collected	The date of purchase of goods
Goods are exempt from Duty by a Special Order	Date of issue of such Exemption Order
Duty is paid provisionally	The date of adjustment of Duty after the final Assessment thereof or in case of Re-assessment, from the date of such Re- assessment.
Refund arises as a result of any Judgement/Decree/Order/Direction of the Appellate Authority/ Appellate Tribunal/Court	Date of such Judgement/ Decree/ Order/ Direction.

The limitation of one year is not applicable if duty is paid under Protest.

Question No 23:

[ICAI July 21 – 5 Marks]

List the important aspects to be borne in mind in claiming Drawback under Section 75 of the Customs Act, 1962 on imported materials used in the manufacture of export goods.

The important aspects to be borne in mind in claiming Drawback under Section 75 of Customs Act, 1962 on imported materials used in the manufacture of export goods are as under: -

- (i) The goods exported are entirely different from the inputs.
- (ii) The inputs are imported goods on which Duty of Customs has been paid.
- (iii) The existence of the imported 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.
- (vi) Duty Drawback is not allowed if the export value of the finished goods is less than the value of the imported material used in their manufacture/processing/carrying any other operations.
- (vii) Duty Drawback is not allowed if the export value is not more than notified percentage of the value of the imported materials used in the manufacture/processing/carrying any other operations.
- (viii) In case where, sale proceeds in respect of any goods on which Drawback has been allowed are not received in India within the prescribed time, Drawback shall be deemed never to have been allowed and it shall be recovered from the exporter.

Note: Any five points may be mentioned.

Question No 24:

[Dec 21 - 5 Marks]

List the goods (with specific conditions) which are not entitled to Drawback under Section 74 of the Customs Act, 1962.

As per Notification No. 19/65 – Customs, no Duty Drawback of Import Duty will be allowed under Section 74(2), if they have been used after their importation into India,

- (i) Wearing Apparel
- (ii) Tea Chests
- (iii) Exposed Cinematograph films passed by Board of Film Censors in India
- (iv) Unexposed Photographic films, plates and X- ray films.

If the above goods are exported as such without being put to use, then Duty Drawback available @ 98% of Customs Duty paid on Import in terms of Section 74(1).

Question No 25:

[ICAI Nov 20 – 5 Marks]

Times Graphics Ltd. has imported a machine from its holding company in Japan on 12.01.2021 after paying Customs Duty of ₹ 15,00,000 for use in its factory and is re-exported on 10.10.2021. You are required to advise Times Graphics Limited regarding Duty Drawback that will be available to the Company, when it sends back the machinery to its holding company after completion of the project.

Since, in the given case, the imported goods have been used for more than 6 months but not more than 9 months before re-exportation, 75% of the import duty paid shall be allowed as Duty Drawback to Times Graphics Ltd.

Thus, amount of Duty Drawback available to Times Graphics Ltd. is = ₹ 15,00,000 × 75% = ₹ 11,25,000

Question No 26:

[ICAI Nov 22 – 5 Marks]

What are the exceptions provided under sub-section 2 of section 27 of Customs Act, 1962 in which refund of duty and interest may be paid to the applicant?

As per section 27 of Customs Act, 1962 in following situations, the amount of duty and interest found refundable, instead of being credited to the Consumer Welfare Fund, is to be paid to the applicant:

- a) if imports were made by an individual for his personal use;
- b) if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26;
- c) if amount relates to drawback of duty payable under section 74 and 75;
- d) 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.
- e) 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.

Question No 27:

[ICAI MTP May 23 – 5 Marks]

Explain the relevant dates as provided in section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances, namely:

- I. goods exported out of India
- II. relinquishment of title to goods
- III. goods destroyed or rendered valueless.

The relevant dates provided under explanation to section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances are as follows:-

	Case	Relevant date
(i)	Goods exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation
(ii)	Relinquishment of title to the goods	Date of such relinquishment
(iii)	Goods being destroyed or rendered valueless	Date of such destruction or rendering of goods commercially valueless