

F.No. 603/01/2011-DBK

Government of India
Ministry of Finance, Department of Revenue
Central Board of Excise & Customs
Drawback Division

New Delhi, dated the 11th October, 2013

To

All Chief Commissioners of Customs / Customs (Prev),
All Chief Commissioners of Customs & Central Excise,
All Directors General of CBEC / Chief Commissioner (AR), CESTAT
All Commissioners of Customs/ Prev/ Customs & Central Excise/ Central Excise
All Commissioners of Customs (Appeals)/ Customs & Central Excise (Appeals)

Subject: Audit Report No. 15/2011-12, Section 2 – Duty Drawback Scheme: regarding

Ma'am/Sir,

Reference is drawn to Board's Circular No.46/2011-Cus dated 20.10.2011, Instruction dated 31.7.2013 and Circular No. 35/2013-Cus dated 5.9.2013 related to the above subject. The outcomes reported by field formation on the Audit observations were reviewed further.

2. The Audit Report highlighted aspects on the compliance side which Internal Audit did not notice. A better performance by Internal Audit would have enabled remedial actions to be taken earlier. Board directs that Commissioners should appropriately strengthen their Internal Audit wings to achieve desired diligence levels and a significantly improved performance in areas such as payment of re-export drawback, cases of manual processing of drawback and the determination/fixation of brand rates.
3. Special cells were created for reconciliation of sales proceeds of exports under duty drawback scheme vide the Circular No. 5/2009-Cus. Instruction No. 609/119/2010-DBK dated 18.1.2011 emphasized methodical and time bound feeding of details in the BRC module and Instruction No. 609/35/2013-DBK dated 4.4.2013 directed that exporters should not be asked to submit BRC/negative statement more than once. This direction has a systemic aspect that there will be management of BRC submissions through a proper receipt and acknowledgement procedure and subsequent monitoring that details were fed in the BRC module. Board directs all Commissioners to ensure this. A similar receipt and acknowledgment procedure should also be ensured for exporters who file brand rate letters issued by Central Excise formations.
4. From amongst the sample verifications of declarations (submitted and accepted with respect to settled AIR claims) requested by Audit, instances of recovery were reported by field formations. The field formations reported that they too are conducting random/sample post-facto checks as directed by Board and in certain instances these too led to recoveries/detection of cases. This suggests the importance of regular sample checking of the veracity of declarations accepted for disbursing AIR drawback claims. These are to be regarded as a form of audit checks. Accordingly, the Board directs that a proper record of such checks should be maintained. Detections that indicate lower FOB/realization should also be intimated to RA/DGFT for necessary action when any benefit under FTP is involved. Further, the Commissionerates may collate data on

the performance of these and similar checks w.r.t. AIR drawback payments in the enclosed format. This may be refined by field formations. The Chief Commissioners may monitor the sufficiency of such checks on monthly basis. The Board shall request this information at a future date.

5A. The time taken in fixation of brand rates by Central Excise field formations was examined by Audit. The Board has noted that after the decentralization of brand rate fixation work the normal procedure (in terms of Circular No. 14/2003-Cus dated 6.3.2003) of brand rate fixation was available in which verification is to be done in 15 days and brand rate is fixed in 10 days after receipt of verification report. Subsequently, the Member (Customs) D.O. letter No. 609/110/2005-DBK dated 26.8.2005 conveyed decision of the Board on two measures of trade facilitation. Briefly, the first measure was to make re-available the revised simplified procedure to five categories of exporters in which the Central Excise would, subject to certain conditions, grant provisional brand rate letters within maximum 15 days and do the post verification within 2 months. The details may be seen in the letter dated 26.8.2005. The second facilitation measure was that the other exporters (i.e. other than the said five categories) may be granted All Industry Rate (AIR) in respect of applications filed under **Rule 7** of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (Drawback Rules, 1995) pending verification and fixation of brand rates under the normal procedure. For granting this second facilitation a specific time line is not prescribed.

5B. In this regard the Board directs that once a complete application for fixation of brand rate under/in terms of Rule 7 of the Drawback Rules, 1995 has been filed with the jurisdictional Central Excise w.r.t. exports made under claim of brand rate of drawback in the shipping bills and request made, on or alongside the said application, for grant of drawback on relevant AIR provisionally, the Central Excise officer who is to fix the brand rate should, ensuring that the exporter is eligible for the relevant AIR, authorize provisional brand rate letter **within 7 days** to claim the drawback. Apart from other pertinent details, the said letter should show the shipping bill No. and date/item wise relevant drawback tariff item No.(including whether 'A' or 'B' column) of the AIR Schedule, rate and cap of drawback being granted, and the amount of drawback (equivalent to the relevant AIR with cap) bifurcated into Customs and/ or Central Excise/Service Tax components. The bifurcation should be based on claim in the application for fixation of brand rate filed in terms of said Rule 7. This is so that the components remain aligned with claimed 'actual' incidence. The final brand rate letter should adjust the provisionally granted amount. Even if brand rate request is denied, the rejection letter should be endorsed to the Customs formation with request to treat the provisional brand rate letter as final and update the record.

5C. Reports collated from the field formations on time taken to finalize brand rates show that there are reasons attributable to both exporters and the Department. Insofar as time attributable to the Central Excise formations is concerned, the Board is of the view that the respective Commissioners have a primary executive responsibility to ensure concerted and sustained action for disposing brand rate work in prescribed time frame. Daily monitoring by Commissioner, of the applications and of brand rate work by Divisions/Ranges and headquarter Unit, should be institutionalized and positive results achieved over next 3 months and maintained in future. The Chief Commissioners are requested to guide their Commissioners where the time attributable to the department exceeds prescribed time frame.

Yours faithfully,

(Rajiv Talwar)
Joint Secretary to the Government of India

FORMAT

(it can be refined or expanded by Commissioner)

Month ____ Year ____

Part A													PART B						
Summary of sample verifications conducted on post facto basis on specific declarations made in AIR drawback cases													Summary of PMV enquiries conducted in deserving cases, if any						
	Non-availing of CENVAT credit on inputs and input services			Goods declared by merchant exporters or manufacturer exporters as not having been manufactured or exported in terms of rule 19(2), CER or by availing rebate on material used in manufacture or processing in terms of rule 18, CER			Actual freight in cases where price declared on CIF or C&F basis (This is to cover cases of export incentives as well)			Others (specify nature of check such as for correctness of negative statement, genuineness of positive statement, debit notes raised by foreign buyers after initial realization by exporter, reduction in invoice value after proceeds are negotiated or realized, etc)			Total						
Jurisdiction	Total No. verified	No. in which recovery reqd.	Amt. (in Rs. lakh) to be recovered	Total No. verified	No. in which recovery reqd.	Amt. (in Rs. lakh) to be recovered	Total No. verified	No. in which recovery reqd.	Amt. (in Rs. lakh) to be recovered	Total No. verified	No. in which recovery reqd.	Amt. (in Rs. lakh) to be recovered	Total No. verified	No. in which recovery reqd.	Amt. (in Rs. lakh) to be recovered	No. of enquiries conducted	No. of enquiries in which wrong PMV detected	Amount of drawback to be recovered (in Rs. Lakh)	Nature of goods and exporters involved in mis-declaration