

F. No. 268/01/2016-CX.8
Government of India
Ministry of Finance
Department of Revenue)
(Central Board of Excise & Customs)

New Delhi, the 16th September, 2016

To

The Principal Chief Commissioners/Chief Commissioners of Customs Central Excise & Service Tax (All);
The Principal Chief Commissioners/Chief Commissioners of Customs (All);
The Director Generals/Directors of Customs, Central Excise & Service Tax (All);
Webmaster, CBEC

Subject: Rebate of duties paid on raw materials used in manufacture or processing of export goods and admissibility of duty drawback in such cases – reg.

Madam/Sir,

Representations have been received from trade regarding difficulty in simultaneously availing drawback of Customs portion and rebate of duties of excise on raw material used in the manufacture or processing of goods exported. Declaration (d) of the Form A.R.E.2 viz. "we further declare that we shall not claim any drawback on export of the consignment under this application." leads to cases of denial of Customs portion of drawback even when input stage rebate of only excise portion is claimed. The issue was discussed in last Tariff Conference where it was recommended that to put an end to the litigation on the subject, declaration (d) in Form ARE 2, relating to avilment of drawback, needs to be reviewed.

2.1. The issue has been examined. Board has already vide circular no. 35/2010-Cus dated 17.09.2010 clarified that as per notification no 84/2010-Customs (N.T.) dated 17.09.2010, Customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. The circular no. 35/2010-Cus dated 17.09.2010 continues to be in operation and Customs portion of drawback so available are specified as per rates and caps under column (6) & (7) of the drawback schedule.

2.2. Further, s.no. (11) of notes and conditions of the drawback schedule notified vide notification no. 110/2015-Customs (N.T.) dated 16.11.2015 states that the rates and caps of drawback specified in columns (4) and (5) of the said schedule shall not be applicable to

export of a commodity or products if rebate of duty on materials used in the manufacture or processing of such commodity or products is availed under rule 18 of Central Excise Rules, 2002 or if commodity or product is manufactured or exported in terms of sub-rule (2) of rule 19 *ibid*. However, drawback in such cases, as per rates and caps specified under columns (6) and (7) of AIR of the drawback schedule is admissible.

2.3. The declaration (d) of Form ARE-2 and para 1.5 of part-V of Chapter of the CBEC's Excise Manual of Supplementary Instructions, 2005 are at variance with legal position as explained in para 2.1 and 2.2 above. Accordingly, the said declaration (d) has been amended vide notification no. 44/2016-C.E. (N.T.) dated 16.09.2016. Further, other consequential amendments in Form ARE-2 have also been made for the purpose of harmonising the provisions as per above legal position.

3. In terms of legal position explained in para 2.1 and 2.2 above, rates and caps as per column (4) and (5) of the drawback schedule are applicable only in cases where none of the following benefits namely CENVAT credit or facility of input stage rebate under rule 18 of the Central Excise Rules, 2002 or facility of procurement of inputs under bond under sub-rule (2) of rule 19 *ibid* has been availed.

4. A further exception to above clarification is that in cases where input stage rebate on diesel is availed or diesel is procured without payment of Central Excise duty under sub-rule (2) of rule 19 of the Central Excise Rules, 2002, no drawback shall be available either with reference to column (6) and (7) or column (4) and (5). The declaration (d) of Form ARE-2 has been amended to incorporate the same. This is because a part of Excise duty on diesel, which is non-cenvatable, is factored under Customs component of the drawback rates as per rates and caps specified under column (6) and (7) of the schedule.

5. Accordingly, it is clarified that:-

- (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) 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) 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) or column (4) and (5) of the drawback schedule shall be admissible.

(a) Divisional Assistant/Deputy Commissioner, Central Excise, while sanctioning the rebate claim should verify this aspect and in case of availment of any drawback, where input stage rebate on diesel under rule 18 of Central Excise Rules, 2002 is also availed shall deny the claim of rebate involved on diesel out of the rebate claimed, for violation of the declaration (d) of the ARE 2.

(b) In cases where diesel is procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, and the goods are exported under claim of drawback the Central Excise duty involved on diesel shall be recovered for violation of the declaration (d) of the ARE 2, while examining the proof of export.

6. Hindi version of the circular would follow. Difficulty, if any, in implementation of the circular may be brought to the notice of the Board.



16.9.16

(Rohan)
Under Secretary to the Govt. of India