

Merchant Exporters Brand Rate Fixation

Presented by: BT Associates



Advisory



Litigation



Compliance

Brand Rate Admissibility for Merchant Exporters

Brief Backdrop:

Mortex India located in Kolkata (hereinafter referred to as Mortex or the company), is a Merchant Exporter making bulk exports of ferro alloys. It procures finished goods from various manufacturers who may have used imported ores and paid Basic Customs duties and IGST at the time of importation of ores. While IGST paid at the time of import is allowed as credits, but, basic customs duty becomes cost and loaded in the price of the final products supplied to Mortex. Although, while exporting final product out of India, Mortex obtain All Industrial Drawback rate of 1.1% on FOB value, however, the question remains to analyse whether actual value of basic customs duty embedded in the cost of final product is higher than 1.1% of FOB value of the final products exported.

The answer would depend on source of ores, which plays major cost of the final product. If such ores are locally procured, there is no Customs duty and hence 1.1% of FOB value of the final product would be better option. However, in a situation, where ores are imported on payment of Customs duty, in all likely hood, the value of basic customs duty embedded in the cost of the final product of a manufacturer may be higher than 1.1% of FOB value of said products when exported.

In order to understand this implication and to optimise its costs, Mortex has approached BT Associates, indirect tax consultants, for understanding if the AIR rate of duty drawback is not sufficient to meet its cost can it apply for brand rate fixation of duty drawback.

As per provisions of Customs Act:

Section 75 of the Customs Act, 1962 allows duty drawback on imported materials used in the manufacture of goods which are exported. It allows duty drawback to the tune of duty paid on imported materials used in manufacturing or processing of goods. There is nothing specified in the customs provisions that such drawback is only admissible to a manufacturer or a person engaged in any processing activity. It only stated that premises of manufacturer/person carrying out any process can be inspected if required for ascertainment of proper and correct amount of duty drawback. The drawback shall be allowed as per rules framed under the act which is stated herein below.

As per the Customs and Central Excise Duties Drawback Rules, 2017:

Drawback is admissible on any goods, which is manufactured in India. Moreover, the aforesaid rules also prescribe the procedure in cases wherein the rate or amount of duty drawback is low popularly known as the **brand rate of duty drawback**.¹ Such brand rate of duty drawback is only admissible if the **All Industrial rate of duty drawback is less than 80% of the duties paid** on the materials/ components used in production/ manufacture of the exported goods. Moreover, the term exporter has been used which also covers merchant exporters in general parlance. Therefore, it is imperative to understand that there is no restriction on fixation of brand rate for merchant exporters.

As per various circulars issued from the Board:

In one of the boards circular² wherein the claim has been filed by the Merchant Exporter it was stated that

“where the name and address, including the factory address of the supporting manufacturer (s) from whom the export goods have been procured, have been declared in the Shipping Bills, duly accompanied by a certificate issued in favour of the declared supporting manufacturer by Central Excise Supdt in charge of the factory of production to the effect that such manufacturer has not availed the Modvat on any of the inputs used in the manufacture of the export goods, in such cases the merchant exporters should not be asked to produce a separate certificate regarding non-availment of Modvat credit in his own favour”

In 2003, another circular³ was issued for decentralisation of work for brand rate of duty drawback wherein it was stated that:

*The data regarding consumption of inputs in manufacture of export goods furnished in DBK-I Statement, payment of Customs and Central Excise duty furnished in DBK-II and DBK-III Statements, stocks of the duty paid inputs indicated in DBK-IIA and DBK-IIIA Statements, wastage (recoverable/irrecoverable), non-availment of CENVAT benefit and availability of disclaimer certificate from the manufacturer in case of Brand Rate application is filed by a **merchant-exporter**, proof and scheme of exports, comparison of the weight of the inputs mentioned in DBK-I Statement with the net weight of the export goods mentioned in the Shipping Bill or corresponding Invoices, etc., are required to be*

got verified by the Deputy Commissioner of Central Excise having jurisdiction over the manufacturing unit in which export goods are declared to have been manufactured.

As per the extracts quoted above from the various circulars, one may conclude that they are talking about the procedural obligations of merchant exporters while making the brand rate application, so it can be concluded that merchant exporter can also avail higher amount of duty drawback if the AIR rate is not enough to recover the import duty costs paid to manufacturers.

Viability of obtaining Brand Rate of Duty Drawback for Ferro Alloy Industries:

The viability of considering the fixation of brand rate of duty drawback would be for industries importing chrome ore or other ores for the manufacturing of their final product viz. Ferro Alloys. The impact would not be significant if an industry has its own mines as in that case the AIR rate approximately covers its manufacturing cost and would have negligible impact. So, it is viable for Mortex to apply for brand rate fixation of duty drawback if the ferro alloys have been procured from such manufacturers who do not have their own mines and are importing ores for their production process.

Challenges regarding application of Brand Rate of Duty Drawback by Merchant Exporters:

- As per Rule 11 of the Central Excise Duties Drawback Rules, 2017 the officer authorised by the AC/DC should have access to the manufacturing premises so that such officer can verify the process involved for entitlement of duty drawback. Can a Merchant arrange that the premises of the manufacturer can be verified by such officer as and when required?
- At the time of Brand Rate of Duty Drawback endorsement has to be made on duty paying documents regarding the quantity used in manufacture of the export product, can the supporting manufacturer allow the merchant exporters to make such endorsement?
- A disclaimer is required to be obtained from the manufacturer that they are not availing duty drawback/ Input Tax Credit on such product.

Conclusion:

Going through the legal provisions and findings as discussed above it can be interpreted that there is no restriction in obtaining of brand rate for Merchant exporters. However, one has to meet the challenges as described above which could be a practical hindrance in obtaining of such brand rate of duty drawback.

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1. Rule 7 of the Central Customs and Central Excise Duties Drawback Rules, 2017
 2. Circular no. 64/98-cus dated 01.09.1998.
 3. Circular No. 14/2003-Cus. dated 0

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- SEZ Related advisory.
- Fixation of Brand Rate for duty drawback.

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- Legal research.
- Documents drafting

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- Ensuring proper reconciliation between books of accounts and GST Returns.
- Analysis of credit mismatch.
- Handling of Export Refunds and other applicable refunds.
- Maintenance of the CENVAT credit registers.
- End to end solutions for refunds

Founder Member



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Career History:

Twenty years of experience in Indirect Tax practice. Before moving to BT was heading eastern India Indirect Tax Practice of Ernst & Young from Kolkata office.

Education: Chartered Accountant

Specialty Areas:

Structuring & Planning under Indirect Tax including foreign trade Policy; Litigation at various levels till Tribunal & Planning under SEZ & EOU Schemes.

- Advisory services with regards to applicability of the taxes & duties as well as procedural compliance such as registration, assessments, to name a few.
- Review of contract and agreement to help mitigate the overall incidence of taxes & duties.
- Contributed thought leadership on technical papers as member of Indirect Tax committee at various chambers of commerce.
- Prolific speaker at various institutes, chambers, public gatherings.
- Conducting health checks in order to determine tax implications on client operations, gauge compliance with legal provisions and suggest tax planning opportunities.
- Advisory services relating to various aspects of GST, Customs, Central Excise & Service Tax Law and applicable regulations - covering rates of duties, exemptions, valuation planning, classification assistance and assessments.
- Assisting clients on the policies and procedures set down under the Foreign Trade Policy.
- Providing the right guidance to enable clients to make the most of duties & taxes by setting up of EOU/SEZ.

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