

All Industry Rate available to Deemed Export Supplies

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abhishekj12

DGFT has recently made amendments in chapter 7 of the FTP 2015-2020, wherein they have allowed the industry to take benefit at All Industry Rate of Duty Drawback schedule notified by the department of revenue in the case of deemed export supply. The said amendment was made vide DGFT **Notification No. 28/2015-2020 dated 31.10.2019** amending chapter 7 of the **Foreign Trade Policy, 2015-20**. Simultaneously, DGFT has issued a **Public Notice No. 40/2015-2020 dated 31.10.2019** prescribing the procedure to claim the All industry rate of duty drawback against the deemed export supplies.

1. For ease of reference, the comparison between existing and new provisions are given below:

Para No.	Existing Provisions	Amended Provisions
7.03(b)	Deemed Export Drawback for BCD	Deemed Export Drawback
7.06	<p>Conditions for refund of deemed export drawback Supplies will be eligible for deemed export drawback as per para 7.03(b) of FTP as under:</p> <p>The refund of drawback in the form of Basic Customs Duty of the inputs used in manufacture and supply under the said category shall be given on brand rate basis upon submission of documents evidencing actual payment of Basic Customs Duties</p>	<p>Conditions for refund of deemed export drawback Supplies will be eligible for deemed export drawback as per para 7.03(b) of FTP as under:</p> <p>Refund of drawback on the inputs used in manufacture and supply under the said category can be claimed on 'All Industry Rate' of duty drawback schedule notified by Department of Revenue from time to time provided no CENVAT Credit has been availed by supplier of goods on excisable inputs or on 'Brand Rate Basis' upon submission of documents evidencing actual payment of basic customs duties.</p>

2. The aforesaid amendment has been made effective retrospectively by the Central Government i.e. 5.12.2017. The word 'Basic custom' wherever used in para 7.02 of HBP also stands deleted.

3. From the above comparison, it is clear that where the supplier has not availed any CENVAT credit on excisable inputs on such situation, the supplier or the recipient may avail the benefit of '**All Industry Rate**' of duty drawback. In the present scenario, except in a few situations such as alcohol, petroleum products etc. in all the cases GST is levied. The aforesaid notification does not bar the supplier to obtain credit of GST. It deals with CENVAT credit only. The products on which GST is not levied as mentioned above is rather cost to the buyer in most of the cases since there is no mechanism to avail and utilize such CENVAT credit unless he is supplying the same product to his customer.

4. Prior to the amendments only the brand rate of duty drawback was allowed in the case of deemed export supplies. The supplier was required to prove on the basis of the documentary evidence like bills of entries etc. that he has in fact suffered a certain amount of basic customs duty on the inputs imported by him which is very tedious task. However, for claiming the All Industry rate of deemed export drawback, the rate specified in the all industry rate of duty drawback by the Department of Revenue would be sufficient and there is no need to prove the actual duty suffered on the inputs used in the manufacture of deemed export supplies.

5. This is a welcome step from the Government of India and will be beneficial to advance license holder, EPCG license holder, EOUs etc. This step will certainly give some relief to some of the manufacturer supplying goods under the category of 'Deemed Export' and especially when there is hue and cry of slow down of the economy.

(The author is a partner of RSA Legal Solutions)