

Customs Refunds – A Brief Overview

1. Introduction:

1.1 On import or export of goods, at times duty may be paid in excess of what was actually leviable. Such excess payment may be due to lack of information on the part of importer/exporter or non-submission of documents required for claim of lower value or rate of duty. Sometimes, such excess payment of duty may be due to shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, refund of excess amount of duty paid can be claimed by the importer or exporter. If any excess interest has been paid by the importer/exporter on the amount of duty paid in excess, its refund can also be claimed.

2. Legal provisions:

2.1 Section 27 of the Customs Act, 1962 deals with the refund of duty and interest. As provided therein, refund of duty and interest can be claimed either by a person who has paid the duty in pursuance to an order of assessment or a person who has borne the duty.

2.2 Any person claiming refund of any duty or interest has to make an application in duplicate in the form as prescribed in the Customs Refund Application (Form) Regulations, 1995, to the jurisdictional Deputy/Assistant Commissioner of Customs.

3. Relevant dates for submission of a refund application:

3.1 in terms of Section 27 of the Customs Act, 1962 an application for refund is required to be filed within six months from the date of payment of duty and interest and in case of any import made by an individual for his personal use or by Government or by an educational, research or charitable institution or hospital, application for refund is to be filed within one year from the date of payment of duty and interest. Normally, the time limit of six months or one year is computed from the date of payment of duty; however, in following situations, such time limit is computed differently:

(a) In case of goods which are exempt from payment of duty by an ad-hoc exemption order issued under Section 25(2) of the Customs Act, 1962 the limitation of one year

or six months, as the case may be, is to be computed from the date of issue of such order;

(b) Where duty becomes refundable as a consequence of judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year or six months, as the case may be, is to be computed from the date of such judgment, decree, order or direction.

(c) Where any duty is paid provisionally under Section 18 of the Customs Act, 1962 the limitation of one year or six months, as the case may be, is to be computed from the date of adjustment of duty after the final assessment there of; and

(d) The date of payment of any duty and interest in relation to a person, other than the importer shall be 'the date of purchase of goods' by such person.

3.2 The limitation of one year or six months, as the case may be, for claiming refund does not apply where any duty and interest has been paid under protest.

4. Processing of refund claim:

4.1 The application for refund is required to be filed with documentary or other evidence including documents relating to assessment, sales invoice and other like documents to support the claim that the duty and interest was paid in excess, incidence of duty or interest has not been passed on by him to any other person, and the refund has not been obtained already.

4.2 Where on scrutiny, the application is found to be complete in all respects the Customs issues an acknowledgement in the prescribed Form. However, in case the application is found to be incomplete, the Customs will return the same to the applicant, pointing out the deficiency. The applicant has to then re-submit the application after making good the deficiency.

4.3 The application of refund found to be complete in all respects by Customs, is processed to see if the whole or any part of the duty and interest paid by the applicant is refundable. In case, the whole or any part of the duty and interest is found to be refundable, an order for refund is passed. However, in view of the provisions of unjust enrichment enshrined in the Customs Act, the amount found

refundable has to be transferred to the Consumer Welfare Fund except in the following situations when it is to be paid to the applicant:

- (a) If the importer has not passed on the incidence of such duty and interest to any other person;
- (b) If such duty and interest was paid in respect of imports made by an individual for his personal use;
- (c) If the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;
- (d) If amount found refundable relates to export duty paid on goods which were returned to exporter as specified in Section 26 of the Customs Act, 1962;
- (e) If amount relates to Drawback of duty payable under Sections 74 and 75 of the Customs Act, 1962; and
- (f) 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.

5. Unjust enrichment:

5.1 In terms of Section 27(2) of the Customs Act, 1962 the concerned Assistant/Deputy Commissioner of Customs has to examine the facts of the case and the material placed before him in order to determine whether the amount claimed by an applicant is refundable to him or not. Further, the Assistant/Deputy Commissioner of Customs should go through the details of audited balance sheet and other related financial records, certificate of the Chartered Accountant etc., submitted by the applicant in order to decide whether the applicant had not passed on the incidence of the duty and interest thereon, if any, to any other person. The Order-in-Original passed by the Assistant/Deputy Commissioner of Customs on the refund application should be a speaking order providing specific details including the relevant financial records that are relied upon to arrive at a conclusion whether the burden of duty or interest, as the case may be, has been passed on or not. Refund orders issued in a routine and casual manner thereby sanctioning the amount but crediting the same to the Consumer Welfare Fund without going through the factual

details of the case and the due process as provided in the first proviso cannot be considered as a complete and speaking order.

6. Interest on delayed refund:

6.1 The Customs has to finalize refund claims immediately after receipt of the refund application in proper form along with all the documents. In case, any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund, interest that is currently fixed @ 6% is to be paid to the applicant. The interest is to be paid for the period from the date immediately after the expiry of 3 months from the date of receipt of such application till the date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.

6.2 Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal or by the Court, as the case may be is deemed to be an order for the purpose of payment of interest on delayed refund.

6.3 The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.

7. Expeditious disposal of refund applications:

7.1 The procedure to ensure expeditious disposal of Customs duty refund applications and to enhance transparency in refund disbursement is as follows:

(a) **Receipt and acknowledgement of all refund applications:** All refund applications made under Section 27 of the Customs Act, 1962 whether by post or courier or personal delivery, shall be received by the department and a simple receipt of having received the 'refund application' shall be issued immediately. The receipt should make it clear that the application has not been scrutinized for its completeness. These applications are required to be scrutinized for their completeness within 10 working days of their receipt, for giving acknowledgement by

the Proper Officer as per the Customs Refund Application (Form) Regulations, 1995. Hence, if any deficiency is found in the application or any document is required by the department, the same shall be informed at this stage of initial scrutiny itself within 10 working days of the initial receipt. This will avoid any chance for raising repeated queries to the applicant, in a piece-meal manner and bring certainty in dealing with refund applications.

(b) Processing of refund applications and their disposal: Application found complete in all respects after scrutiny, shall be processed on 'first-come-first-served' basis. If refund is due, an order for refund is required to be passed in terms of Section 27(2) of the Customs Act, 1962 or where the claim for refund is found liable to be rejected, as the case may be, a speaking order shall be passed giving complete reasons for the order. Further, the order should indicate that the aspect of unjust enrichment has been examined based on the applicable guidelines. The order should also contain the findings of adjudicating authority on the documents produced in support of the claim and the basis for determining the amount as either refundable to the claimant or payable to the Consumer Welfare Fund or the claim not being admissible.

(c) Issue of cheque: Where the refund application is admitted, whether in part or in full, and claimant is eligible for refund, the Assistant/Deputy Commissioner of Customs may ensure that payment is made to the party within 3 days of the order passed after due audit, if any. In all such cases refund amount shall be paid to the applicant by a cheque drawn on the authorised bank with which the sanctioning authority maintains account. After the cheque is signed, it shall either be delivered to the claimant or his authorised representative personally or sent to him by Registered Post 'Acknowledgement Due' at Government cost, on the basis of pre-receipt already obtained from the claimant.

(d) Audit: Pre-audit of refund claims (other than those to be post-audited) will be conducted by the Assistant/Deputy Commissioner (Audit), in the Commissionerate Headquarters Office. Thereafter, the Assistant/Deputy Commissioner of Group/Division will pass an order-in-original in respect of the claim. Thereafter, the orders-in-original passed in this regard shall be subjected to review by the

Commissioner concerned. The applications of refund of amount below Rs.50,000/- may be post-audited on the basis of the random selection by Assistant/Deputy Commissioner (Audit). The selection can be made in such a way that 25% of the refund applications are post-audited. The applications of refund for amount between Rs.50,000/- and Rs. 5 lakhs should be compulsorily post-audited. This audit system is aimed at checking improper sanction and payment of refunds. However, this does not dispense with the verification of the refund vouchers and the re-conciliation of refunds, which shall be done by the Chief Account Officers. It may be ensured that where pre-audit is involved, the same is completed at the earliest so that the disposal of refund applications is not unduly delayed.

(e) **CVC's instructions:** Under authority of Section 8(1)(h) of the CVC Act, 2003 Central Vigilance Commission (CVC) has issued instructions to bring about greater transparency and accountability in the discharge of regulatory, enforcement and other public dealings of the Government organisations. These instructions require that status of individual applications/matters should be made available on the organisation's website and updated from time to time so that the applicants are duly informed about the status of their applications. It is further stated that the manual records maintained for various purposes may continue. In pursuance of CVC's instructions, all Commissioners of Customs shall establish a mechanism for maintenance of a comprehensive database in their respective website, indicating the receipt, acknowledgement, action taken for disposal (either payment or rejection) of refund applications and those pending at the end of the month. The details of refund application such as name of the claimant, file number, date of application, amount of refund claimed, date of its acknowledgement shall be indicated in chronological order by the date of its receipt. The applications may be serially numbered for each year and shall be shown in a single list indicating their respective status distinctly. The illustrative status that could be mentioned for easy understanding of any applicant may include the following: (i) refund application received but pending for scrutiny and acknowledgement (ii) refund application acknowledged for its completeness (iii) refund application found incomplete and returned for rectification of deficiency (iv) refund application rejected by passing a speaking order (iv) refund application sanctioned, pending verification by audit (v) cheques issued for refunds

sanctioned and paid to applicant/ credited to consumer welfare fund. This is not exhaustive and any other stage of processing of refund application may also be indicated. An abstract at the end of the month about the total number of refund applications received, acknowledged, disposed and pending may also be indicated. This online data base would be accessible to the trade and public as well as by all Customs officers to enhance transparency. Further, the status of individual applications for refund of Customs duty shall be updated from time to time, at least daily, so that the applicants remain duly informed about the status of their applications. The data may be allowed for display in the website for three months period from the date of its final disposal and thereafter it can be moved to the history database.

(f) **Monitoring Mechanism:** Chief Commissioners/ Directorate General of Inspection (DGI) are to review the position of refunds in their respective zones/select zones, to check on the timely sanction of refund applications. If any refund application is pending for long period, the reasons for the same may be identified by the concerned Chief Commissioner and action initiated for disposal by reference to the concerned Commissionerate. DGI may also access the database of refund applications and maintain the data in respect of those refund applications pending for long period and action taken thereon, for reporting to the Board.

[Refer Notifications No.32/95-Cus (N.T.), dated 26-5-1995; and No.75/2003 Cus(N.T), dated 12-9-2003 and Circulars No.59/95-Cus., dated 5-6-1995; No.24/2007-Cus., dated 2-7-2007; No.7/2008-Cus., dated 28-5-2008; No.22/2008-Cus., dated 19-12-2008 and CVC Circular No.40/11/06, dated 22-11-2006 (<http://www.cvc.nic.in>)]