

F. No. 609/38/2019-DBK
Government of India
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs

New Delhi, dated 11th October, 2019

To,
Principal Chief Commissioners / Principal Directors General,
Chief Commissioners / Directors General,
all under CBIC

Madam/Sir,

Subject: Clarification regarding inclusion of cesses, surcharge, duties, etc. levied and collected under legislations other than Customs Act, 1962, Customs Tariff Act, 1975 or Central Excise Act, 1944 in Brand Rate of duty drawback.

Some field formations have reported that apart from the incidence of Customs and Central Excise duties, Brand Rate of duty drawback of various other levies is also being claimed by the exporters under the Customs and Central Excise Duties Drawback Rules, 2017 (erstwhile Rules, 1995). They have sought clarification whether incidence of such levies viz. Education cess, Secondary and Higher Education (SHE) cess, Social Welfare Surcharge (SWS), Clean Environment cess (erstwhile Clean energy cess) and Stowage Excise duty suffered on the inputs utilized in the exports products are required to be taken into consideration for the calculation of Brand Rate of duty drawback.

2. The matter has been examined keeping in view the provisions of Drawback Rules, 2017 that allow rebate of duties suffered on the inputs used in the manufacture of export goods.

2.1 On the issue of factoring of Education cess in Brand Rate (Rule 6) and Special Brand Rate (Rule 7), it has been clarified vide Circular No. 11/2005-Customs dated 03.03.2005 that Education cess is required to be factored in Brand Rate of duty drawback and the same continues.

2.2 As regards Secondary and Higher Education cess (SHE) and Social Welfare Surcharge (SWS), the SHE cess is levied under section 126 of Finance Act, 2007 as duties of Customs/ Excise and SWS is levied under Section 110 of Finance Act, 2018 as a duty of Customs. These provide that provisions of Customs Act, 1962 and Central Excise Act, 1944 and rules and regulations made thereunder including those relating to refunds, exemptions etc. shall apply to these levies. Further, these cesses are factored in the calculation of AIRs of duty drawback by the Drawback Committee. Therefore, the elements of these cesses are required to be factored in Brand Rate of duty drawback.

2.3 Regarding Clean Environment cess (erstwhile Clean Energy cess), Finance Act, 2010 vide Section 83(3) provided for levy and collection of Clean Energy cess as a duty of Excise and vide Section 83(7) empowered the Central Government to declare any of the provisions of Central Excise Act, 1944 applicable to the cess. Government vide notification No. 2/2010- Clean Energy Cess dated 22.06.2010 made, among others, the provisions related to refund under Section 11B of Central Excise Act, 1944 applicable to the cess. Vide instruction F. No. 354/72/2010-TRU dated

24.06.2010, the Board clarified that Clean Energy cess would also be levied on import in the form of additional duty of Customs. Since the cess is collected as additional duty under Section 3 of Customs Tariff Act, the provisions of Customs Act, 1962 related to drawback, refund, etc. are applicable to it in terms of Section 3(12) of the Customs Tariff Act, 1975. Therefore, the incidence of Clean Environment cess (erstwhile Clean Energy cess) is required to be included in the calculation of Brand Rate. It may be mentioned that Clean Energy cess was renamed as Clean Environment cess in Finance Bill 2016 and the latter has been subsumed under GST w.e.f 01.07.2017.

2.4 Stowage Excise duty: Stowage Excise duty is levied under Section 6 of The Coal Mines (Conservation and Development) Act, 1974 as a duty of Excise and an equivalent duty of Customs is levied on imported coal under Section 7 of the said Act. However, the Act does not make applicable any of the provisions like refund, drawback, etc. of Central Excise Act or Customs Act to the aforesaid levies. Therefore, these levies cannot be considered for inclusion in the calculation of duty drawback on any export goods.

3. Field formations are requested to deal with the pending applications for fixation of Brand Rate of duty drawback accordingly.

4. A suitable Trade Notice and Standing Order may be issued for the guidance of the trade and staff. Difficulties faced, if any, in implementation of the Circular may be immediately brought to the notice of the Board. Hindi version shall follow.

Yours faithfully,

(Anand Kumar Jha)
Under Secretary (Drawback)
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