

Duty drawback benefit available on exports regardless of payment of Basic Customs Duty, if additional duty is paid during imports – Delhi HC

28 September 2023



Summary

The Delhi High Court (HC) has held that as long as the goods had suffered a 'tax' or 'duty' at the time of import, the drawback claim at the time of export would be available irrespective of whether Basic Customs Duty (BCD) has been paid or not. The HC examined the relevant drawback rules and stated that drawback, being a rebate of duty or tax chargeable on import of goods, the same cannot be denied merely because BCD was not paid. The HC expounded that the usage of the words 'duty' and 'tax' without confining the same to the customs duty or excise denotes the intention that drawback of the duty or tax suffered at the import can be claimed in drawback. Accordingly, the HC allowed the petitioner to obtain the drawback benefit along with interest on the delayed payment.

Facts of the case

- AJ Gold and Silver Refinery (the petitioner) is a metal refining firm that imported a substantial quantity of gold dore bars, which are unrefined gold bars, for further manufacturing and sale.
- In accordance with relevant government regulations and circulars, the petitioner exported a portion (20%) of the imported gold dore bars in the form of gold jewellery.
- During the export process, the petitioner inadvertently submitted free shipping bills instead of the required duty drawback shipping bills, which were necessary to claim drawback benefits in May 2015. However, to rectify this, the petitioner requested the authorities to amend the free shipping bills to duty drawback shipping bills and the same was granted.
- Post the amendment of the shipping bills, the petitioner submitted the relevant documents to claim drawback benefits; however, despite multiple representations and a personal hearing, the authorities did not process the petitioner's drawback claim.
- On 04 November 2019, the authorities issued a memorandum asserting that the petitioner was not entitled to drawback

benefits because they had imported the gold dore bars without paying Basic Customs Duty (BCD) and had allegedly violated certain conditions of the Drawback Notification.

- Hence, the petitioner filed a writ to compel the respondents to process their pending drawback claim along with applicable interest.

Issue before the Delhi HC:

- Whether the petitioner, despite not paying BCD at the time of import but paying additional duty under Section 3 of the Customs Tariff Act, 1975 (CTA), eligible for drawback benefits?

Delhi HC's observations and ruling (W.P.(C) 5986/2023 vide order dated 15 September 2023):

- **Interpretation of the term 'duty' mentioned in Section 3 of the CTA:** The HC observed that the duty levied u/s 3 of the CTA, even though distinct from customs duty u/s 12 of the Customs Act, 1962 (Customs Act) is akin to a customs duty and falls within the category of 'duty'.
- **Definition of drawback and its conditions:** The HC stated that Rule 2(a) of the Drawback Rules, 1995 (Drawback Rules) defines 'drawback' as

the rebate of 'duty' or 'tax' chargeable on imported or excisable materials used in manufacturing goods. The HC noted that the use of the terms 'duty' and 'tax' in the Drawback Rules is not confined to specific acts like the Customs Act or the Central Excise Act.

- **Drawback cannot be denied if BCD is not paid:** The HC expounded that the usage of the words 'duty' and 'tax' without confining the same to the customs duty or excise denotes the intention that drawback of the duty or tax suffered at the import can be claimed in drawback. The HC examined the relevant Drawback Rules and stated that the drawback is a rebate of duty or tax chargeable on the import of goods, and the same cannot be denied merely because BCD was not paid.
- **Imports were not 'duty-free':** The HC pointed out that condition no. 6 of the Drawback Notification does not require the petitioner to prove payment of specific customs or central excise duty when an All-India Rate (AI Rate) is applicable as it implies that the petitioner need not establish actual duty payments to claim drawback benefits. Further, condition no. 23 of the Notification relates to goods exported under specific schemes that provide for 'duty-free import'. The HC emphasised that since the petitioner paid the duties under Section 3 of the CTA, their imports were not 'duty-free', and Condition No. 23 did not apply.
- **Interest on drawback claims:** The HC noted that as per Section 75A of the Customs Act, interest becomes payable after one month from the date of applying for drawback until the actual payment is made. Therefore, the respondents were held liable to pay

interest to the petitioner for the delayed disbursement of drawback benefits.

Our comments

The Supreme Court in the case of Hyderabad Industries Ltd. had observed that while Section 3 of the Customs Tariff Act may constitute a charging section distinct and separate from Section 12 of the Customs Act, it continues to remain in the genre of a customs duty. The SC further observed that while the two statutes are independent, merely because the tax under Section 3 of the Tariff Act is imposed on the import of articles into India, it would not mean that the Tariff Act could not provide for a levy of duty independent of customs duty.

Referring to above, the HC in the present case has observed that the mere fact that the said additional duty is equated to a duty of excise, which is leviable, does not essentially change the character of that duty as being one other than that which is imposed on import of articles into India. Accordingly, the additional customs duty is also a duty or tax eligible for drawback benefits.

The present ruling by the Delhi HC is in line with the above and is a welcome ruling which should set precedence in similar matters.

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