

फोन / Ph : 0866-2551261
फैक्स / Fax : 0866-2551156
www.apcustoms.gov.in
commr.cpc-ap@gov.in



सीमा शुल्क (निवारक) के आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
55-17-3, सी-14, 2 तल, औद्योगिक एस्टेट, ऑटो नगर
55-17-3, C-14, 2nd Floor, Road No.2, Industrial Estate, Autonagar
विजयवाड़ा - 520 007 Vijayawada - 520 007

C. No. VIII/09/02/2019-Cus.TFC

Date: 30.10.2019

PUBLIC NOTICE NO.33/2019-Cus

Sub / विषय: *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-Reg.*

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Attention of all the Importers, Exporters, Customs Brokers, Steamer Agents, Custodians/ Customs Cargo Service Providers, Trade Associations / Chamber of Commerce, Members of the RAC/ PGC and the Public is invited on the above subject.

2. 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.

3. 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.

a. 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.

- b. 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.
- c. 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.
- d. 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.

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

5. All the members of the Regional Advisory Committee, Trade and Industry Associations are requested to circulate the Public Notice among their constituent members for implementation and guidance.

6. Action to be taken in terms of decisions taken in this Public Notice should be considered as Standing Order for the purpose of officers and staff.

7. Any difficulty, experienced in the implementation, may be brought to the notice of the undersigned.


(एस. फ़हीम अहमद) / (S.FAHEEM AHMED)
प्रधान आयुक्त / Principal Commissioner

To
All the Importers / Exporters / Customs Brokers Agencies / Customs Brokers Licensees / Customs Brokers Associations under the jurisdiction of Customs Commissionerate (Preventive), Vijayawada through the Additional / Joint Commissioner of Customs, Krishnapatnam Custom House / Kakinada Custom House and the Deputy / Assistant Commissioner of Customs, ICD, Marripalem.

1. Copy submitted to the Chief Commissioner of Customs and Central Tax, Visakhapatnam zone, GST Bhavan, Port Area, Visakhapatnam – 530035 for information.

Copy to :

1. The Additional Commissioner of Customs, Krishnapatnam Custom House, KAPS Building, CVR Complex, Krishnapatnam Port Area, Gopalapuram, MUTHUKURU-524344 S.P.S.R Nellore District for information with a direction to give wide publicity among the exporters under the jurisdiction of KPCH.

2. The Additional Commissioner of Customs, Kakinada Custom House, Port Road, Kakinada – 533007, East Godavari District for information with a

direction to give wide publicity among the exporters under the jurisdiction of KKDCH.

3. The Deputy / Assistant Commissioner of Customs, ICD MARRIPALEM – 522233, Guntur District for information with a direction to give wide publicity among the exporters under their jurisdiction.
4. The Deputy / Assistant Commissioner of Customs, Customs Division, VISAKHAPATNAM / KAKINADA / VIJAYAWADA / TIRUPATI for information.
5. Copy to Superintendent (Computers), CPC, Hqrs.office, Vijayawada for display on CPC, Vijayawada website www.apcustoms.gov.in
6. Copy to M/s Krishnapatnam Port Company Ltd., (KPCL) the custodian / Custom Cargo Service Provider of Krishnapatnam Port, Muthukur, SPSR Nellore District (Through the Additional Commissioner of Customs, Custom House, Krishnapatnam) for information.
7. Copy to M/s Kakinada Seaports Ltd.,(KSPL) the custodian / Custom Cargo Service Provider of Kakinada Port, Kakinada (Through the Joint Commissioner of Customs, Custom House, Kakinada) for information.
8. Copy to M/s Leap International Private Ltd, the custodian / Custom Cargo Service Provider of ICD MARRIPALEM, Guntur (Through the Deputy / Assistant Commissioner of Customs, ICD, MARRIPALEM, Guntur) for information.
10. Copy to the Notice Board.