CHAPTER 7

REFUND



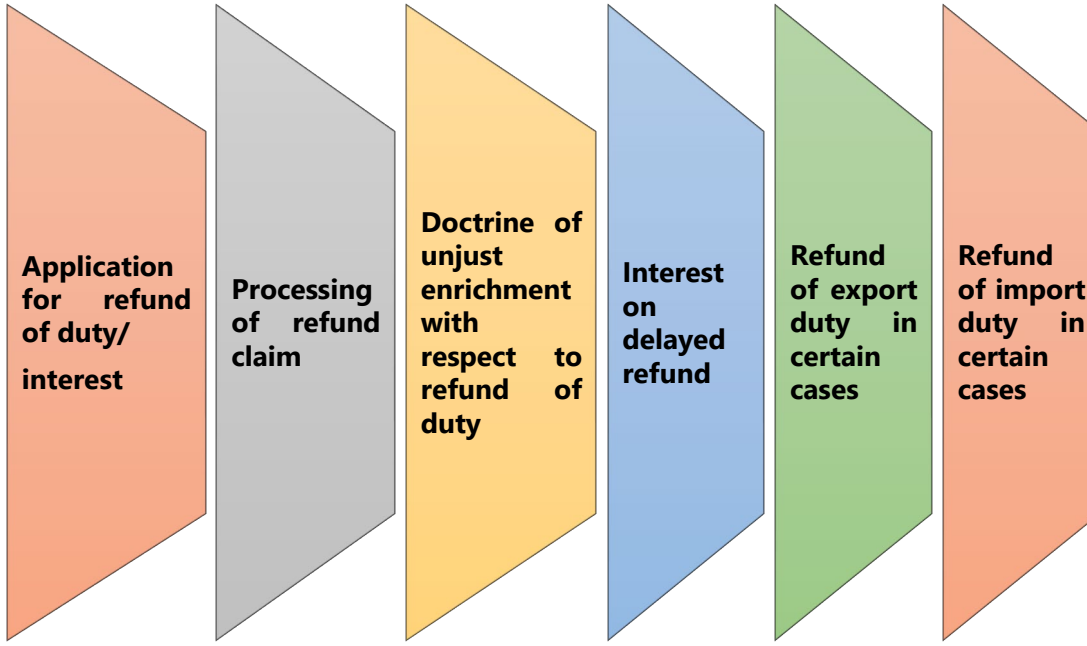
LEARNING OUTCOMES

After studying this chapter, you would be able to:

- understand and analyze the manner in which application for refund of import duty or interest is to be made.
- comprehend the manner of processing of refund claim.
- compute the amount of interest payable on delayed refund.
- identify the cases in which refund of import duty/ export duty is made.
- analyse and apply the principle of doctrine of unjust enrichment with respect to refund of duty.

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CHAPTER OVERVIEW



1. INTRODUCTION

Sometimes customs duty is found to have been paid in excess of what was actually leviable on the goods. This may happen for various reasons, like error, lack of information, etc. In such cases, refund of excess amount of duty paid can be claimed. Refund of any excess interest paid by the importer/exporter can also be claimed.

Refund of IGST paid on goods exported – If goods are exported on payment of IGST, refund of IGST paid on such goods exported is given by the Customs department. However, if goods are exported without payment of IGST, refund of corresponding input tax credit is granted by GST Officers.

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2. APPLICATION FOR REFUND OF DUTY OR INTEREST [SECTION 27]

Person who can claim refund of duty / interest: The claim for refund of duty or interest can be made by

(i) the person who **paid** the duty or interest in excess; or

(ii) the person who **borne** the incidence of such duty or interest.



Application for refund to be made in proper form and manner: The claim for refund of any duty or interest paid or borne by the claimant must be made in such form or manner as may be prescribed.

Application for refund to be filed within one year: A claim by the importer / exporter for refund of duty / interest, must be made before the expiry of one year from the date of payment of such duty or interest [Section 27(1)].

1 year

A claim by person, other than the importer, from whom duty was collected, must be made before expiry of one year from the date of purchase of goods [Explanation 1 to Section 27(1)].

For the removal of doubts, it is hereby clarified that the period of limitation of one year in case of claim of refund consequent to the revised entry under section 18A(3)(b) or amendment of documents under section 149[1], shall be computed from the date of payment of such duty or interest [Explanation 2 to section 27(1)].

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[1] *In case where an amendment has to be made in any of the documents submitted to customs authorities by the importer/exporter/person-in-charge, permission to amend these documents can be given by customs authorities in accordance with the provisions of section 149; however, the provisions of section 149 are outside the purview of syllabus of Paper 5 – Indirect Tax Laws.*

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Other situations require computation of one year as follows:

Event	Limitation of one year to be computed from the
Exemption of duty by a special order issued under section 25(2)	Date of issue of such order [Section 27(1B)(a)]
Refund of duty arising as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court	Date of such judgment, decree, order or direction [Section 27(1B)(b)]
Provisional payment of duty under section 18	Date of adjustment of duty after the final assessment, or in case of re-assessment, from the date of such re-assessment [Section 27(1B)(c)].

No limitation in case of duty paid under protest: The limitation of one year shall not apply where any duty or interest has been paid under protest. [Section 27(1) second proviso]



Hence, in case of duty/interest paid under protest, refund claim may be filed without any time-limit.

Minimum amount of refund: Where the amount claimed is less than ₹ 100, it will not be refunded. [Section 27(1) third proviso]



In other words, refund will be granted only when the duty amount involved is ₹ 100 or more.

Documentary evidence to be furnished to prove that incidence of the duty/interest for which refund claim has been filed is not passed on to any other person

Refund application must be accompanied by documentary or other evidence (including the documents, like invoice, referred to in section 28C) to establish that the amount of duty or interest, in relation to which such refund is claimed, was collected from or paid by him, and that the incidence of such duty or interest has not been passed on by him to any other person [Section 27(1A)].



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(It must be noted that Section 28D creates a statutory presumption that the incidence of duty has been passed on to the buyer, unless the contrary is proved. The documents enclosed to the refund claim must refute this presumption. Please see the section on unjust enrichment, later in this chapter.)

3. PROCESSING OF REFUND CLAIM [SECTION 27(2)]

The application of refund, if 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 (see below) enshrined in the Customs Act, the amount found refundable has to be transferred/credited to the Consumer Welfare Fund.

Only in following situations, the amount of duty and interest found refundable, instead of being credited to the Consumer Welfare Fund, is to be paid to the applicant:

Consumer Welfare Fund

(a) if the importer or the exporter, as the case may be, has not passed on the incidence of such duty and interest to any other person;

(b) if imports were 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 has returned to exporter as specified in section 26;

(e) if amount relates to drawback of duty payable under section 74 and 75;

(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.

(g) if the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—

  (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or

  (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

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4. DOCTRINE OF UNJUST ENRICHMENT WITH RESPECT TO REFUND OF DUTY

Meaning of unjust enrichment

When an importer imports goods, he has to pay the customs duty on such goods. Similarly, in case of export goods, if the same are leviable to export duty, the exporter pays the export duty. This duty is recovered from the purchasers when the goods are sold by the importer or exporter, as the case may be. In other words, the incidence or burden of duty is passed on to the purchaser, from whom the importer or exporter collects the customs duty. Subsequently, if the importer or exporter makes a claim for refund of duty (due to excess payment) and receives the refund from the government, he would be called to have enriched himself as he collected the duty from his customer also and also as refund from the government. Such enrichment is referred to as 'unjust enrichment'.

Unjust Enrichment

Accordingly, the doctrine of 'unjust enrichment' implies that no person should enrich himself at the cost of others.

Therefore, wherever there is excess collection of duty, the refund is to be given only to the person who has borne the burden of duty and interest, if any. When the person who applies for refund is not the person who has borne the burden of duty, the refund is paid into a fund called 'Consumer Welfare Fund'. Therefore, it is noteworthy that even the customs authorities are not entitled to retain the excess payments of duty merely because the refund cannot be given to the applicant as he has passed on the incidence.

Statutory presumption

In terms of Section 27, the importer or his agent, or the buyer who has been charged the duty by the importer, has to prove that he has not passed the burden of duty to another person, in order to be given refund of duty.

Section 28D creates a statutory presumption that he did pass on the burden of duty; this presumption has to be refuted by proving the contrary. If he succeeds in this, the claimant is given the refund in terms of Section 27(2), clause (a) for the importer and clause (c) for the buyer.

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(1) The importer has imported an article, which has been valued at ₹ 1,000. The customs duty on this article comes to ₹ 250. Now the importer adds his profit margin of say ₹ 250 and sells the article for ₹ 1,500. Now the price charged by the importer consists of the duty element which has been passed on to the buyer.

If later on it is found that there was an error resulting in excess payment of duty, such excess duty is liable to be refunded. But as may be seen above, the importer has already collected the duty from the purchaser and if any refund is granted to him, it would confer on him a double benefit to which he does not have a valid right. Therefore, in such cases the refund is credited to the "Consumer Welfare Fund".

The landmark judgment on refund is by a Nine Member Bench of the Supreme Court in ***Mafatlal Industries Ltd. v. U.O.I. 1997 (89) E.L.T. 247***. Though the judgment is from the erstwhile Central Excise laws, the principles laid down in this judgement are applicable to customs laws. The principles laid down in this judgment can be summarised as under:

a. The theory of unjust enrichment is valid and constitutional. However, the theory that, conversely, the manufacturer would be unjustly impoverished in case of demands has not been agreed to.

b. Section 27 (Customs Act) is self-contained code for refunds; resort to civil suits or writs is not permissible unless the taxing provision is struck down as unconstitutional. The general theory laid down in certain judgments of both the Supreme Court and High Courts that refund could be claimed within three years of discovery of mistake has been disapproved.

c. Unless the levy is struck down as unconstitutional, all Courts must exercise jurisdiction in terms of section 11B of the Central Excise Act, 1944 [Claim for refund of excise duty and interest, if any, paid on such duty] and refuse to grant relief if the incidence of tax has been passed on.

d. Whatever amount is collected as duty will have to be paid to the Government. If excess is collected than that payable, it would be credited to the Consumer Welfare Fund or given as refund to the person who has borne the incidence of duty.

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Further, the Supreme Court in the case of ***CCE v. Allied Photographics 2004 (166) ELT 3*** has held that doctrine of unjust enrichment applies even when duty is paid under protest. It has been held that even if there is no change in price before and after assessment (i.e. before and after imposition of duty), it does not lead to the inevitable conclusion that incidence of duty has been passed on to the buyer, as such uniformity may be due to various factors.

Exceptions to the doctrine of unjust enrichment

As seen above, clauses (a) and (c) of sub-section (2) of section 27 provide that a refund may be paid to the applicant if the said applicant proves that he did not pass on the incidence of duty to another person. Sub-section (2) also provides for certain exceptions to the doctrine of unjust enrichment. In these exceptions refund of duty and interest may be paid to the applicant if such amount is relatable to:

- drawback of duty payable under sections 74 and 75;
- export duty as specified in section 26;
- the duty and interest on imports made by an individual for his personal use;
- the duty and interest borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify. However, no notification shall be issued unless in the opinion of the Central Government the incidence of duty and interest has not been passed on by the persons concerned to any other person.
- the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where
  - (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
  - (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

Illustration 1

State briefly with reference to the provisions of section 27 of the Customs Act, 1962 whether the principle of "unjust enrichment" will apply in case of refund of excess duty paid on car imported for personal use?

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Answer

The principle of unjust enrichment will not apply to refund of duty on car imported for personal use, as clause (b) of the proviso to sub-section (2) of section 27 of the Customs Act, 1962 stipulates that in case of imports made by an individual for his personal use, the refund should not be credited to consumer welfare fund, but shall be paid to the applicant.

5. INTEREST ON DELAYED REFUND [SECTION 27A]

Rate – 6%

The Customs authority has to finalize refund claims without delay upon 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 is to be paid to the applicant. The government is permitted to fix such interest between 5% and 30%.

Currently, the rate of interest is 6% vide *Notification No. 75/2003-Cus (NT) dated 12.09.2003*.

The interest is to be paid **for the period beginning 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.

Interest on delayed refund arising from appellate or court orders

Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax 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. In other words, in cases where no refund claim has been made, if a refund results from an order passed by the appellate authorities mentioned above or by a court of law, **refund is to be paid within 3 months of the order** and **interest will be payable after that**.

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Interest on refund on final assessment [Section 18(4) of the Customs Act, 1962]

Where duty has been provisionally assessed and is subsequently finally assessed or re-assessed and the amount of duty paid on provisional assessment is more than the duty finally determined, the importer/exporter is entitled to a refund of the excess. However, if this refundable amount is **not refunded within 3 months from the date of the final assessment or re-assessment**, interest becomes payable on the unrefunded amount. The rate of interest rate is the rate fixed by the Central Government under section 27A, i.e. 6% p.a. till the date of refund of such amount.

Note - 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.

6. REFUND OF EXPORT DUTY IN CERTAIN CASES [SECTION 26]

Where export duty has been paid on the exportation of any goods, such duty shall be refunded to the person by whom or on whose behalf it was paid, if -

(a) the goods are returned to such person otherwise than by way of re-sale;

(b) the goods are re-imported within one year from the date of exportation; and

(c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

This provision compensates the export duty in a situation where the goods which are exported are rejected and returned by the buyer.

7. REFUND OF IMPORT DUTY IN CERTAIN CASES [SECTION 26A]

Section 26A provides that the import duty paid on clearance of imported goods for home consumption capable of being easily identified shall be refunded to

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the person by whom or on whose behalf such duty was paid subject to the fulfillment of the following conditions:

(a) **Goods are defective/not as per specifications:** The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods.

However, the goods should not have been worked upon, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) **Goods identified as imported goods:** The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) **No drawback claimed:** The importer does not claim drawback under any other provisions of this Act; and

(d) **Importer exports the goods/relinquishes title to goods/destroys or renders them commercially valueless**

(i) the goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer

in the prescribed manner within 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

However, the period of 30 days may, on sufficient cause being shown, be extended by the Principal Commissioner/Commissioner of Customs for a period not exceeding 3 months.

Goods in respect of which offence has been committed: It may be noted that the provisions of this section do not apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Application for refund of import duty: An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such

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form and in such manner as may be prescribed [sub-section 2].

Meaning of relevant date: Explanation to sub-section (2) provides the relevant dates in various circumstances as under:-

S.No.	Case	Relevant date
1.	In case the goods are exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51
2.	In case of relinquishment of title to the goods	Date of such relinquishment
3.	In case of goods being destroyed or rendered commercially valueless	Date of such destruction or rendering of goods commercially valueless

No refund in case of perishable goods: In respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period, the refund shall not be allowed [Sub-section (3)].

The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund may be allowed [Sub-section (4)].

8. REFUND CLAIM CANNOT BE A SUBSTITUTE FOR APPEAL

The Customs Act, 1962 has separate provisions and timelines for filing appeal against an order passed by a customs officer. Appeal to the Commissioner (Appeals) is to be made within 60 days (extendible by another 30 days) of receipt of the order against which the person is aggrieved. On the other hand, a refund claim can be filed within one year from the date of payment of duty or clearance of goods or such other event as specified in section 27. However, a refund claim cannot be a substitute for an appeal.

In the case of *Priya Blue Industries Limited, 2004 (172) ELT 145 (SC)*, duty was assessed on the imported item and the importer paid the duty under protest.

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Thereafter, the importer filed a claim for refund of the duty. In this matter the Supreme Court ruled that, unless an assessment order has been reviewed and/or modified in an appeal, that assessment order stands.

Duty is payable only as per that assessment order. A refund claim is not an appeal proceeding. Further, the officer considering the refund claim, cannot review the assessment order. Thus, refund claims based on challenge to an order of assessment are liable to be rejected.

In view of the above ruling of the Supreme Court, refund claims based on challenge to an order of assessment are liable to be rejected.

Appeal should be filed and not a refund claim when adjudication order has been issued or even when self assessment made

An adjudication order should be appealed against, if assessee is aggrieved by adjudication order. The order cannot be challenged by filing refund application.

In *CCE v. Flock (India) Pvt. Ltd. 2000 (120) E.L.T. 285 (S.C.),* it was observed, "Refund is in nature of execution of a decree/order. Thus, issue of clarification (which has become final as no appeal was filed) cannot be agitated in refund proceedings. If the order is appealable, appeal should be filed. Otherwise, provisions of appeal will become redundant. Refund claim cannot be used as an appeal against an adjudication order.

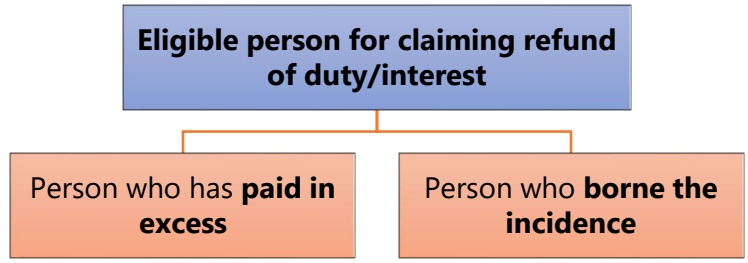
Important Judgments on Refund

Refund claim cannot be a substitute for appeal	*Priya Blue Industries Limited v CCus, 2004 (172) ELT 145(SC)*
Burden of proof that incidence of duty has not been passed on to consumers is on assessee.	*Banmore Foam v. CCE 2006 (193) ELT 112 (Tribunal-Delhi)*
It has been held that appeal is required to be filed and not refund claim, even in respect of self assessment.	*ITC Limited v CCE, 2019 (368) ELT 216 (SC)*

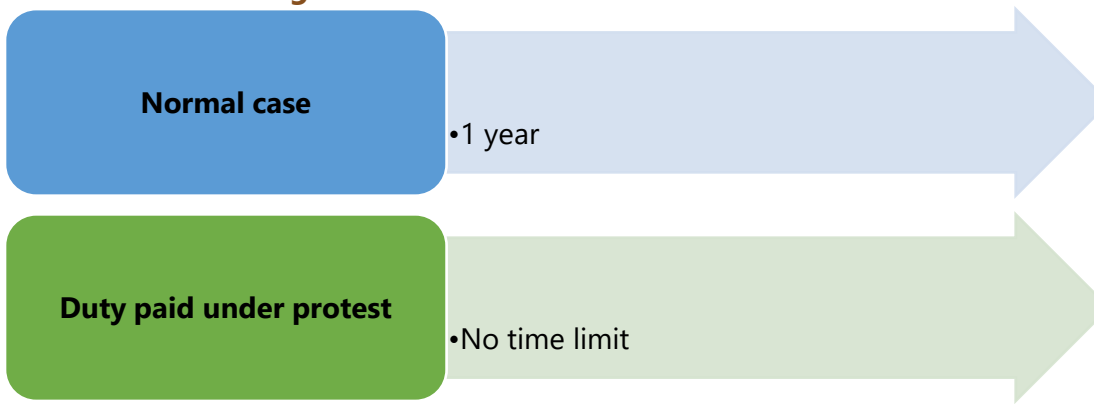
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LET US RECAPITULATE

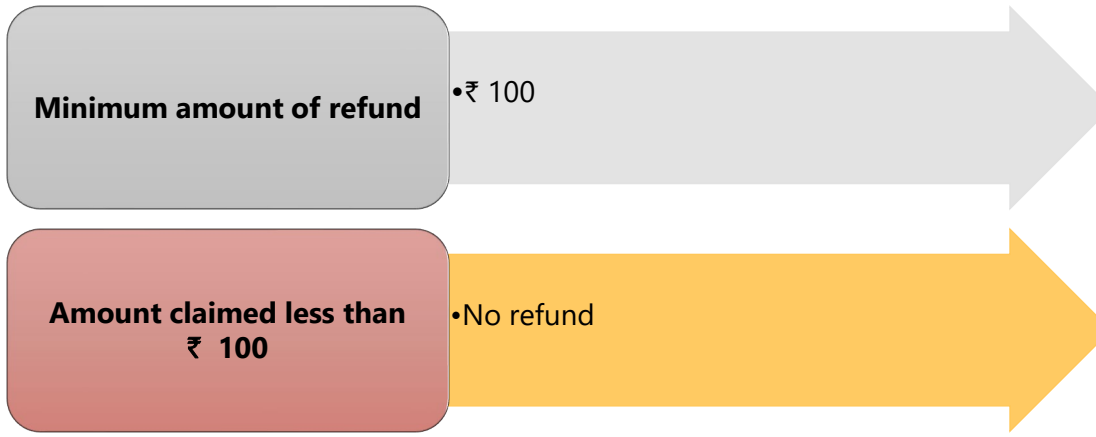
Eligible person to claim refund of duty/interest



Time limit for filing refund

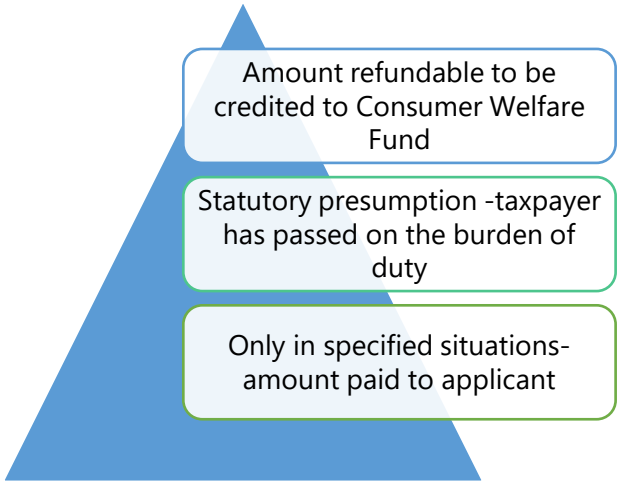


Minimum amount of Refund



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Doctrine of unjust enrichment



Situations where refundable amount is paid to the applicant instead of being credited to Consumer Welfare Fund

1. If importer/exporter has not passed on incidence of duty/interest to other person
2. Buyer who has borne the duty has not passed on incidence of duty/interest to other person
3. Imports by individual for personal use
4. Export duty paid as specified in section 26
5. Drawback of duty
6. Duty/interest borne by notified applicant
7. Duty paid in excess by importer before order for clearance of home consumption evident from bill of entry/reassessed bill of entry.

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Interest on delayed refund

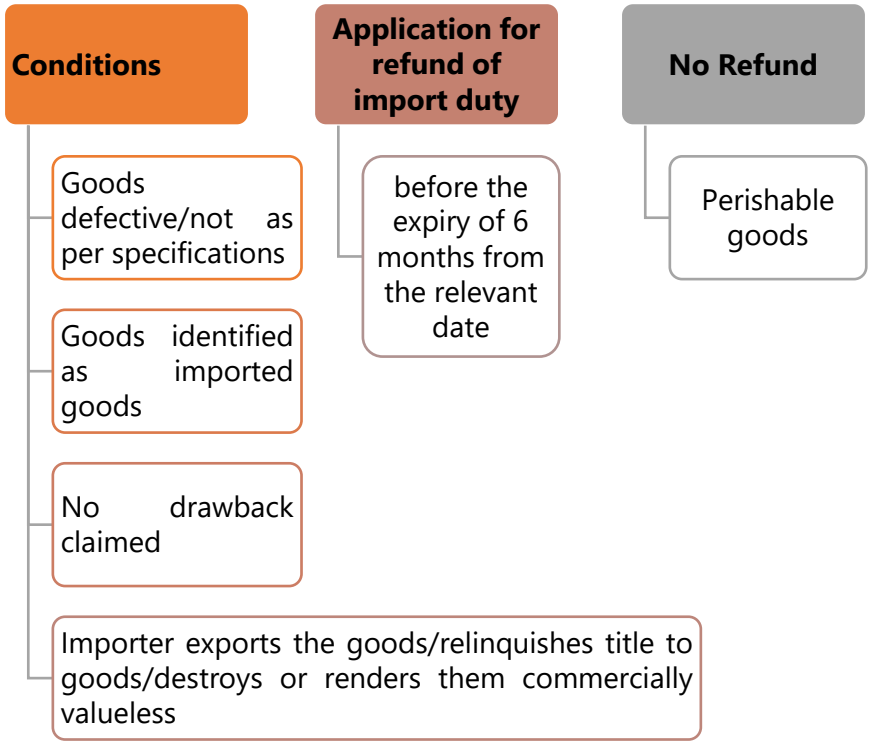
Rate of interest	•6%
Time Period	•Beginning from the date immediately after the expiry of 3 months from the date of receipt of refund application till the date of refund

Refund of export duty in certain cases [Section 26]

- Goods returned otherwise by re sale
- Goods re-imported within 1 year from date of export
- Application made before expiry of 6 months from date on which proper officer makes an order for clearance of goods

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Refund of import duty in certain cases [Section 26A]



Meaning of relevant date

S.No.	Case	Relevant date
1.	Goods exported out of India	Date on which proper officer makes an order for exportation under section 51
2.	Relinquishment of title to goods	Date of such relinquishment
3.	Goods being destroyed or rendered commercially valueless	Date of such destruction/rendering of goods commercially valueless

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TEST YOUR KNOWLEDGE

1. *Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.*

2. *M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962, based on the invoice. When the final invoice is raised based on the price prevalent in the London Metal Exchange on a predetermined date as agreed in the contract between the buyer and seller, the assessments are finalized on the basis of the price in such invoices.*

   M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities. The Department, however, has passed an order of refund to be credited to the fund in absence of any evidence from M/s HIL that the burden of duty has not been passed on to the buyer. Discuss whether the action of the department is correct in law?

3. *Section 26A of the Customs Act, 1962 provides for refund of import duty paid if goods are found defective or are not as per specifications. Discuss the conditions governing such refund in brief.*

4. *What is the minimum monetary limit prescribed in the Customs law below which no refund shall be granted?*

5. *Explain the doctrine of unjust enrichment with respect to refund of duty.*

6. *Acme Sales' imports were being provisionally assessed pending a verification that the department was carrying out. Upon completion of the verification, the assessments were finalized, and Acme Sales was asked to pay ₹12 lakh, which it paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it, Acme Sales filed a claim for refund of ₹8 lakh on the ground that the differential amount should be ₹4 lakh only and that there were factual errors in the verification report. Was this the correct mode of redressal by Acme Sales? What will be likely outcome of the claim? Discuss on the basis of case law on the subject.*

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7. *Mr. N has, over three consignments of 200, 400 and 400 units, imported a total of 1000 units of an article "ZEP", which has been valued at ₹ 1,150 per unit. The customs duty on this article has been assessed ₹ 250 per unit. He adds his profit margin ₹ 350 per unit and sells the article for ₹ 1,750 per unit.*

   After one month of selling the entire consignment of article "ZEP", Mr. N found that there had been an error in payment of amount of duty, in which duty for the consignment of 200 units was paid as if it was 400 units, resulting in excess payment of duty. Mr. N files an application for refund for ₹ 50,000 (200 X 250). Is the bar of unjust enrichment attracted?

8. *Explain the relevant dates as provided in section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances, namely:*

   (i) goods exported out of India

   (ii) relinquishment of title to goods

   (iii) goods destroyed or rendered valueless.

9. *Explain whether refund of import duty is allowed in case of perishable goods?*

10. *Briefly explain whether interest is paid to the applicant in case of delayed refund by customs authorities? If yes, also explain the period for computation of interest?*



ANSWERS/HINTS

1. According to section 27(1) of the Customs Act, 1962, a refund claim should be lodged before the expiry of one year from the date of payment of such duty or interest. The period of limitation of one year should be computed in the following manner:

   (a) If the refund claim is lodged by the importer, the time limit should be calculated from the date of payment of duty.

   (b) If the refund claim is lodged by the buyer of imported goods, the time limit should be calculated from the date of purchase of goods.

   (c) In case of goods which are exempt from payment of duty by an ad-hoc exemption, the limitation of one year should be computed from the date of issue of such exemption order.

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(d) Where any duty is paid provisionally, the time limit should be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.

(e) Where the refund arises as a result of any judgement/ decree/order/ direction of the Appellate Authority/Appellate Tribunal/Court, the time limit should be calculated from the date of such judgement/ decree/ order/direction.

The time limit of one year is not applicable if duty is paid under protest. Finally, it is worth mentioning that above provisions regarding time limit are mandatory and customs authorities cannot grant a refund which is filed beyond the maximum permissible period.

2. Section 18 (dealing with provisional assessment) incorporates the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment. Sub-section (5) of section 18 of the Customs Act, 1962 provides that if any amount is found to be refundable after finalisation of provisional assessment, such refund will be subject to doctrine of unjust enrichment.

Further, section 28D places the onus on the person who has paid duty to prove that he has not passed on the incidence of such duty. In the absence of any proof from such person, section 28D deems that the burden of duty has been passed on to the buyer.

Therefore, in the given case, the Department's action will be correct if M/s HIL does not produce any evidence of bearing the burden of duty.

3. Often, goods imported are found to be defective or are not according to specifications. In such cases, earlier, the refund of customs duty paid at the time of import could be obtained only if the imported goods were physically returned to foreign supplier. Generally, cost of return of the rejected goods is heavy and it is economical to dispose of the goods in India itself. Realising this practical difficulty, section 26A of Customs Act makes provision for refund of import duty paid if goods are found defective or not as per specifications. The refund is admissible if goods are re-exported or relinquished and abandoned to the customs authorities or destroyed. Thus, refund is possible even if goods are destroyed or relinquishedin India without re-exporting the same.

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The section stipulates the following cases in which the refund shall be paid to the person by whom or on whose behalf such duty was paid:

(i) the goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods;

However, the goods should have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(ii) the goods are identified to the satisfaction of Assistant/Deputy Commissioner of Customs as the goods which were imported;

(iii) the importer does not claim drawback under any other provision of this Act; and

(iv) the goods are exported or

the importer relinquishes his title to the goods and abandons them to customs or

such goods are destroyed/rendered commercially valueless in the presence of proper officer in prescribed manner within 30 days from the date on which the order of clearance of imported goods for home consumption is made by the proper officer. This period of 30 days may, on sufficient cause being shown, be extended by a further period not exceeding 3 months.

(v) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner.

(vi) Imported goods should not be such regarding which an offence appears to have been committed under this Act or any other law.

(vii) Imported goods should not be perishable goods and goods which have exceeded their shelf life or their recommended storage before use period.

4. As per third proviso to section 27(1) of the Customs Act, 1962, the minimum monetary limit below which refund cannot be granted is ₹ 100.

5. Customs duty is a levy under Indirect taxation, which implies that the incidence of the customs duty paid is generally passed on to the buyer of the goods.

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When an importer imports goods, he has to pay the customs duty on such goods. Similarly, an exporter in case of export goods, if the same are subject to export duty, the exporter pays the export duty. This duty is recovered from the buyer when the goods are sold by the importer or exporter, as the case may be. In other words, the incidence or burden of duty is passed on to the buyer, from whom the importer or exporter collects the customs duty paid. Subsequently, if the importer or exporter makes a claim for refund of duty paid (due to excess payment) and receives the refund from the Government, he would be called to have enriched himself as he collected the duty from his customer also and also as refund from the Government. Such enrichment is referred to as 'unjust enrichment'.

Accordingly, the doctrine of 'unjust enrichment' implies that no person should enrich himself at the cost of others.

Therefore, wherever there is excess payment of duty, the refund is to be given only to the person who has borne the burden of such duty along with interest, if any. When the person who applies for refund is not the person who has borne the burden of duty, the refund is paid into a fund called 'Consumer Welfare Fund'.

Section 28D provides that every person who has paid duty under the Customs Act, unless the contrary is proved by him, shall be deemed to have passed the full incidence of such duty to the buyer; hence the applicant for refund has to refute the presumption of passing on the incidence of duty.

6. Acme Sales received an order finalizing provisional assessment on the basis of a verification report and requiring payment of ₹ 12 lakh. They did not contest this order, but made the payment, and allowed the appeal period of sixty days to lapse. After appeal became time-barred they filed a claim for refund in which they challenged the order. This was a backdoor method of seeking relief against the order; it also asked an officer of the same rank to review the order passed; and it sought to bypass the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme Court has held, in the case of *Priya Blue Industries Limited, 2004 (172) ELT 145 (SC),* that such a refund claim is not permissible for all these reasons. A person who is aggrieved with an assessment order cannot seek refund without filing an appeal against the assessment order.

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7. Mr. N's invoices show that he collected duty of ₹ 250 per unit on 1,000 items. However, he paid duty on 200 items more. This payment, in the normal course, was made before the order permitting the clearance of the goods. It would be evident from the bill of entry that the amount paid was more than the amount of duty assessed. Thus Mr. N's case falls within the exception to unjust enrichment listed at clause (g) of the first proviso to section 27(2). He will be able to refute the charge of unjust enrichment. Furthermore, clause (a) of the same sub-section provides that the doctrine of unjust enrichment will not apply to the refund of duty and interest, if any, paid on such duty if such amount is relatable to the duty and interest paid by the importer/exporter, if he had not passed on the incidence of such duty and interest to any other person. Mr. N's invoices and other documentary evidences will show how much duty he collected from his customers, hence he may be covered by this clause also to escape the bar of unjust enrichment.

8. The relevant dates provided under Explanation to section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances are as follows:-

	Case	**Relevant date**
(i)	Goods exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation
(ii)	Relinquishment of title to the goods	Date of such relinquishment
(iii)	Goods being destroyed or rendered valueless	Date of such destruction or rendering of goods commercially valueless

9. Refund is not allowed in case of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period in terms of section 26A(3) of the Customs Act, 1962.

10. Yes, interest is to be paid to the applicant 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. The government is permitted to fix such interest between 5% and 30%.

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Currently, the rate of interest is 6% vide *Notification No. 75/2003-Cus (NT) dated 12.09.2003*.

The interest is to be paid for the period beginning 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.

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