

DTA duty calculation – Dare to Attempt

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The duty payable by an EOU, if the goods are sold in DTA are governed by Notification 23/2003 CE Dated 31.03.2003. S.No. 2 of the said notification is used more often, according to which the duty payable by the EOU for retail clearances would be subjected to prescribed exemption. The duty payable by an EOU for its DTA clearances is Excise duty by nature, but its measure is the total customs duties payable if like goods are imported, as per Section 3 (1) (ii) of the Central Excise Act.

Prior to the budget 2012, the normal customs duties payable when goods are imported would be as below:

S.No	Details	Amounts
1	Let the value of imported goods be	Rs.1000
2	Let the Basic Customs duty rate be 7.5 % on (1) above	Rs.75
3	Value for CVD (1) + (2)	Rs.1075
4	CVD let the ED rate be 10 % plus 2 % Education CESS and 1 % Secondary and Higher Education CESS thereon, i.e 10.3 % on (3) above	Rs.110.73
5	Customs duties for calculation of Education CESS and Secondary and Higher Education CESS (2) + (4)	Rs.185.73
6	Customs Education Cess 2 % on (5) above	Rs.3.71
7	Customs Secondary and Higher Education CESS 1 % on (5) above	Rs.1.86
8	Value for Special Additional duty (SAD) (1) + (2) + (4) + (6) + (7)	Rs.1,191.30
9	SAD 4 % on (8) above	Rs.47.65

As per S.No. 2 of Notification 23/2003, the duty payable by an EOU for its DTA clearances has to be calculated as below:

S.No	Details	Amounts
1	Let the value of goods be	Rs.1000
2	Let the Basic Customs duty rate be 7.5 %. Then 3.75 % on (1) above	Rs.37.5
3	Value for CVD computation (1) + (2)	Rs.1037.50
4	CVD - let the ED rate be 10 % plus 2 % Education CESS and 1 % Secondary and Higher Education CESS thereon, 10.3 % on (3) above	106.86
5	Customs duties for calculation of Education CESS and Secondary and Higher Education CESS (2) + (4)	Rs.144.36
6	Customs Education Cess 2 % on (5) above	Rs.2.89
7	Customs Secondary and Higher Education CESS 1 % on (5) above	Rs.1.44
8	Value for Special Additional duty (SAD) (1) + (2) + (4) + (6) + (7)	Rs.1,148.69
9	SAD 4 % on (8) above	Rs.45.95
10	Total duty payable by EOU as Excise duty (2) + (4) + (6) + (7) + (9)	Rs.194.64
11	Since the above duty is paid as ED, Education CESS and Secondary Education CESS payable on the above @ 2% and 1 % respectively on (10) above	Rs.5.84
12	Total duty payable by EOU for DTA clearances (2) + (4) + (6) + (7) + (9) + (11)	200.48

The above has led to a situation where Education CESS / Secondary and Higher Education CESS is being paid thrice by an EOU for DTA clearances, at S.Nos. 4, 6 & 7 and 11 above. It is relevant to note here that the above issue of triple payment of Education CESS / Secondary and Higher Education CESS has been dealt with by the Hon'ble Tribunal, based on the directions of the High Court and it has been held in the case of Sarla Performance Fibers Limited Vs CCE – 2010 (256) ELT 779, that since the purpose of Section 3 (1) (ii) of the CE Act is to create parity between imported goods and goods manufactured in EOU and

cleared in DTA, the third computation of Education CESS / Secondary and Higher Education CESS is not correct (S.No. 11 of the above table).

Now, vide notification 13 & 14/2012 Cus Dated 17.03.2012 the Education CESS and Secondary and Higher Education CESS payable on the CVD component has been exempted. A combined reading of the Tribunal decision cited supra and the present amendments would reveal that now the duty payable as per S.No. 2 of Notification 23/2003, for DTA clearances by EOUs would be as below, and Education CESS / Secondary and Higher Education CESS would be computed only once!

S.No	Details	Amounts
1	Let the value of goods be	Rs.1000
2	Let the Basic Customs duty rate be 7.5 %. Then 3.75 % on (1) above	Rs.37.50
3	Value for CVD computation (1) + (2)	Rs.1037.50
4	CVD let the ED rate be 12 %	Rs.124.50
5	Customs duties for calculation of Education CESS and Secondary and Higher Education CESS (2) + (4)	Rs.162.00
6	Customs Education Cess 2 % on (5) above	Rs.3.24
7	Customs Secondary and Higher Education CESS 1 % on (5) above	Rs.1.62
8	Value for Special Additional duty (SAD) (1) + (2) + (4) + (6) + (7)	Rs.1,166.86
9	SAD 4 % on (5) above	Rs.46.67
10	Total duty payable by EOU as Excise duty (2) + (4) + (6) + (7) + (9)	Rs.213.53

Out of the above, the recipient unit can take cenvat credit of the duties mentioned at S.Nos. 4 and 9 above, subject to other conditions.

(It is presumed that the goods sold in DTA are exempted from VAT and hence SAD is taken into account in the above computations. If VAT is payable on DTA sale, the SAD component is exempted)