

ScN No. 2037/2025-26/ADC/DRG/NS-II/CAC/JNCH
Adj. F. No. S/10-1853/2025-26/Adj/ADC/DRG/NS-II/CAC/JNCH
DIN/ISSUE No.:- I/3863860/2026



भारत सरकार/Government of India
वित्त मंत्रालय / Ministry of Finance
आयुक्त सीमाशुल्क एन.एस.-II का कार्यालय
Office of Commissioner of Customs NS-II
Jawaharlal Nehru Custom House, Nhava Sheva,
Dist.- Raigad, Maharashtra - 400 707



F No CUS/DBK/SCN/112/2026-DBK/NS-II/JNCH Date-17-02-2026

SHOW CAUSE NOTICE UNDER SECTION 124 OF THE CUSTOMS ACT, 1962

Subject: Show Cause Notice under Section 124 of the Customs Act, 1962 to the exporter M/s Elkay Chemicals Pvt Ltd. for recovery of erroneously sanctioned Special Brand Rate Duty Drawback of Rs. 9,98,055/- with applicable interest under Rule 17 of Customs and Central Excise Duty Drawback Rule, 2017 read with Section 75A (2) of the Customs Act, 1962- reg.

BRIEF FACT OF THE CASE

M/s Elkay Chemicals Pvt Ltd. (hereinafter referred to as "the Exporter"), having IEC- 0389040177, situated at Vinay Kunj, 4. Shivaji Park, Mumbai-400028, had filed application for fixation of Special Brand Rate of Duty Drawback of under rule 7(1) of the Customs and Central Excise Duty Drawback Rule, 2017, vide exporter's LK/DBK/2019-20/E50069 Dated 07.11.2019.

2. Accordingly, Special Brand Rate of Duty Drawback amounting to Rs. 9,98,055/- was fixed by the competent authority in respect of the aforesaid restricted quantity. The Special Brand Rate fixation letter was issued vide F. No. S/12-Elkay-BR-292/2019-20 DBK/JNCH dated 02.12.2019 (RUD-1).

3. **AUDIT OBSERVATION:**

During the audit conducted by the Audit Department, an audit objection was raised vide Audit Memo No. 13, Para No. 11(RUD-II), involving tax effect of Rs. 9,98,055/-, on the ground of incorrect payment of Special Brand Rate Duty Drawback. Vide the audit objection, the Audit Department expressed their audit as below-

"As per para 1 of Annexure-1 attached to Circular No. 29/2015-Customs dated 16/11/2015, the exporter opting for claim of brand rate under Rule 6 of Customs and Central excise Duties Drawback Rules, 2017 (erstwhile Drawback Rule 1995) shall declare the figure 9801 as identifier under the drawback details in the shipping bill filed.

SIIB(Export)/JNCH Unit / wing of the Department had issued Modus operandi Circular on 04.05.2018. Therein it was stated that, the application for fixation of brand rate under Rule 6 by declaring drawback identifier as 9801 cannot be filed for the export product for which drawback rates have already been determine. It was also advised in the same circular that if such discrepancies noticed then, it was required to be brought to the notice of SIIB (Export) unit.

During audit examination of fixation and payment of Special Brand Rate, it was

noticed that exporter had worked out and department had sanctioned drawback amount of Rs. 9,98,055/- vide F.No. S/12-Elkay-BR-292/2019-20 DBK/JNCH for quantity exported in respect of 9 shipping bills. Detailed audit examination revealed that in these 9 shipping bills exporter had declared drawback identifier as 9801 under Rule 6 for the quantity where drawback was claimed. However,

while claiming duty drawback for all these quantities in 9 shipping bills exporter has made manual application under rule 7 of Customs and Central Excise Duties Drawback Rules, 2017. Declaring drawback identifier as 9801 in shipping bill under rule 6 and thereafter, manual filing of application for drawback claim of Rs.9,98,055/- under Rule 7 is found to be contradictory and is not in order.

Exporter has to decide at the time of the export of the goods whether he wants to claim drawback at the notified rate under Rule 3, or at the Brand Rate under Rule 6 or 7 by using correct prescribed tariff identifier. Once he chooses to claim drawback under Rule 6, he thereafter cannot make a claim for the determination of the Brand Rate of drawback under Rule 7."

4. RELEVANT LEGAL PROVISIONS:

The legal provisions relevant to the present case are as under:

(A) Circular No. 38/2017-Customs dated 22.09.2017

"c) For claiming drawback under the All Industry Rates, the exporter shall declare the drawback serial number corresponding to the tariff item of the exported goods as given in the Drawback Schedule. The drawback serial number shall be suffixed with the character 'B'."

(B) Circular No. 29/2015-Customs dated 16.11.2015

"2. For shipping bills filed on or after 23.11.2015, the exporters opting for claim of brand rate under rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 shall declare the figure 9807 (instead of 9801) as an identifier in the shipping bill under the drawback details. Immediately after the said identifier, the tariff item number of goods as shown in column (1) of the Schedule shall be declared followed by the character 'B'."

(C) Rule 7(1) of the Customs and Central Excise Duties Drawback Rules, 2017

"7. Brand rate of drawback. – (1) Where in respect of any goods, the exporter finds that the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, for the class of goods is less than eighty per cent. of the duties paid on the materials or components used in the production or manufacture of the said goods, he may, except where a claim for drawback under rule 3 or rule 4 has been made, within three months from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule 5, make an application to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all relevant facts including the proportion in which the materials or components or input services are used in the production or manufacture of goods and the duties or taxes paid on such materials

or components or input services.”

(D) Rule 17 of the Customs and Central Excise Duties Drawback Rules, 2017

“17. Repayment of erroneous or excess payment of drawback and interest. – Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs, repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 (52 of 1962).”

(E) Section 75A(2) of the Customs Act, 1962

“(2) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay, in addition to the said amount of drawback, interest at the rate fixed under section 28AA and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.”

5. FINDINGS ARISING FROM THE AUDIT:

a) From the aforesaid facts, audit observations, and legal provisions, it is evident that the exporter has incorrectly filed a Special Brand Rate claim despite having claimed AIR in the shipping bill and without mentioning the mandatory identifier “9807” in the drawback declaration, as required under Circular No. 29/2015-Customs dated 16.11.2015 for filing Special Brand Rate claims under Rule 7(1) *ibid.* Accordingly, the drawback amount of Rs. 9,98,055/- (excluding eligible AIR Drawback) sanctioned to the exporter is recoverable under Rule 17 of the Duty Drawback Rules, 2017, along with applicable interest under Section 75A(2) of the Customs Act, 1962.

6. Now, therefore, the exporter M/s Elkay Chemicals Pvt Ltd., having IEC-0389040177, is hereby called upon to show cause to the Additional Commissioner of Customs, Adjudication Section (CAC), NS-II, JNCH, within 30 days of receipt of this notice, as to why:

i) the erroneously paid Special Brand Rate Duty Drawback of Rs. 9,98,055/- (excluding eligible AIR Drawback) should not be recovered under Rule 17 of the Drawback Rules, 2017;

ii) interest payable thereon should not be recovered under Section 75A(2) of the Customs Act, 1962; and

7. The noticee is required to specifically mention in their written reply as to whether they wish to be heard in person before the case is decided. In case the noticee does not submit a written reply within the aforesaid period or if they fail to attend the personal hearing, whenever it is fixed by the adjudicating authority, the case will be decided on the basis of material evidence available on record, *ex-parte*, without any further reference to them.

8. This Show Cause Notice is issued without prejudice to department's right to amend, modify, supplement and revise the Show Cause Notice with additional facts in support of allegation contained in the Show Cause Notice. This Notice is issued without prejudice to any other action that may be initiated against the noticee or any other person under the Customs Act, 1962 or any other Act or law for the time being in force in India in relation to the goods covered in this Show Cause Notice also.

Digitally signed by
Wagh Chittaranjan Prakash
Date: 17-02-2026 13:26:33

CHITTARANJAN PRAKASH WAGH
Additional Commissioner of Customs
Drawback Section, NS-II, JNCH

To,
Noticee:

M/s Elkay Chemicals Pvt Ltd. (IEC- 0389040177),
Vinay Kunj, 4. Shivaji Park, Mumbai-400028.

Copy to:

1. - The Commissioner of Customs, NS-II, JNCH;
2. - Asstt. Deputy Commissioner of Customs, CAC Section, JNCH;
3. - Asstt./Deputy Commissioner of Customs, IAD Section, JNCH;
4. - CHS Section (to display on notice board);
5. - EDI Section (to upload on website);
6. - Office Copy.

Annexure - I
(Relied Upon Documents)

Sr. No.	List of Relied Upon Documents
RUD-I	Brand Rate Fixation Order/letter
RUD-II	Audit Objection Memo

OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-II)
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
DRAWBACK SECTION, 4H FLOOR,
TAL. URAN, DIST-RAIGAD, MAHARASHTRA - 400 707.

Date: 2-12.2019

F. No. S/12-Elkay-BR- 292/2019-20 DBK/JNCH

To

M/s. Elkay Chemicals Pvt. Ltd.
J-152 & 153 MIDC, Bhosari,
Pune - 411 026, India.

Gentlemen,

Sub.: The Customs and Central Excise Duties Drawback Rules, 2017 - Fixation of Brand rate of drawback.

Please refer to your application with reference No. LK/DBK/2019-20/E-50059 to E-50069 dated 07.11.2019 for fixation of Brand Rate of Duty Drawback filed with Commissioner of Customs, JNCH on 01.11.2019.

2. As per your request the verification of claim is undertaken by this office. On the basis of records /documents/data furnished by you and verified by this office, it has been decided to allow drawback amount at the rate (s) indicated below on the goods exported by you.

3. The conditions of Rule 7(1) and provisions of Rule 8 of the Customs and Central Excise Duties Drawback Rules, 2017 have been fulfilled in respect of the following shipping Bills and the drawback claim for fixation of Brand Rate is sanctioned and restricted as shown below:

Sr. No.	Shipping Bill No.	Shipping Bill Date.	Description of goods exported	Quantity Exported (in Kgs)	Drawback Rate per Kg. (in Rs.)	Total Amount of Drawback (in Rs.)
1	6217185	13.08.19	LK-SIL 100ST(10000)	18000	11.75	211500
2	6303299	17.08.19	LK-SIL 100T(12500)	6000	6.99	41940
3	6303299	17.08.19	LK-SIL 100ST(1000)	6000	11.23	67380
4	6306328	17.08.19	LK-EM 6001	13300	4.31	57323
5	6366741	20.08.19	LK-SD 329	16000	3.03	48480
6	6396794	21.08.19	LK-SIL 100ST(350)	20000	6.14	122800
7	6480429	26.08.19	LK-SIL 100ST(1000)	15000	6.55	98250
8	6524903	27.08.19	LK-SIL 100T(60000)	17100	5.64	96444
9	6559169	28.08.19	LK-SIL 100ST(1000)	12800	11.83	151424
10	6583172	29.08.19	Silicone Additives CONC48	45360	2,26	102514
			Total			9,98,055

The brand rate drawback amount sanctioned is Rs. 9,98,055/- (Rupees Nine Lakh Ninety Eight Thousand and Fifty Five only).

4. The above rate(s)/ amounts of drawback is restricted to exports made under above shown Shipping Bill for the exports until withdrawn or modified by this Commissionerate and will apply to



the exports made from JNPT Nhava Sheva Port(s) in India subject to the conditions of the aforesaid Rules.

5. The difference of the amount already paid, if any at the rates indicated as per Public Notice No. Drawback /PN-5, dtd. 15.06.1995, as amended from time to time and the amount now authorised shall be payable. You are advised to file supplementary claims in respect of claims already settled under the above mentioned Public Notice with the Commissioner of Customs of the port through which you have exported the goods, under Rule 15 of the aforementioned Rules.

6. The Rate/Amount of drawback mentioned in the letter shall not be applicable to the export of any of the commodities covered by this letter, if the same has been manufactured under the provisions of Rule 18 or Rule 19 of the Central Excise Rules, 2002 or section 65 of the Customs Act, 1962 or in respect of which the facility of duty free imports of materials in terms of Duty Exemption Scheme as contained in Export & Import policy notified under foreign Trade (Development and Regulation) Act, 1962 read with relevant Customs Notification has been availed of.

7. You will register yourself with the Commissioner/Deputy Commissioner of Customs, JNCH who will maintain a record of exports which may be made by you in various ports and on his certification alone drawback at the rate/s specified above will be payable to you by the Customs authorities of the port from which exports have been effected.



(SANJAY KUMAR)
Addl. Commissioner of Customs
Drawback Section, NS-II, JNCH.

Copy to:

1. The Commissioner of Customs (NS-II), JNCH, Nhava Sheva.
2. The Deputy/Assistant Commissioner of Customs, Audit Section, JNCH.

PART II-B : OTHER IRREGULARITIES

Para No. 11

(AM No.13)

Name of the Exporter	M/s Elkay Chemicals Pvt Ltd
Assessing Group	Drawback
Brand Rate File No.	F.No. S/12-Elkay-BR-292/2019-20 DBK/JNCH
Tax effect	Rs. 9,98,055/-.

Sub: Grant of approval for Incorrect Application of Special Brand Rate Duty Drawback

Rule 6 of the Drawback Rule of Customs and Central excise Duties Drawback Rules, 2017 covers those cases where amount or rate of drawback has not been determined.

As per para 1 of Annexure-1 attached to Circular No. 29/2015-Customs dated 16/11/2015, the exporter opting for claim of brand rate under Rule 6 of Customs and Central excise Duties Drawback Rules, 2017 (erstwhile Drawback Rule 1995) shall declare the figure 9801 as identifier under the drawback details in the shipping bill filed.

SIIB(Export)/JNCH Unit / wing of the Department had issued Modus operandi Circular on 04.05.2018. Therein it was stated that, the application for fixation of brand rate under Rule 6 by declaring drawback identifier as 9801 cannot be filed for the export product for which drawback rates have already been determine. It was also advised in the same circular that if such discrepancies noticed then, it was required to be brought to the notice of SIIB (Export) unit.

During audit examination of fixation and payment of Special Brand Rate, it was noticed that exporter had worked out and department had sanctioned drawback amount of Rs. 9,98,055/- vide F.No. S/12-Elkay-BR-292/2019-20 DBK/JNCH for quantity exported in respect of 9 shipping bills. Detailed audit examination revealed that in these 9 shipping bills exporter had declared drawback identifier as 9801 under Rule 6 for the quantity where drawback was claimed. However,

while claiming duty drawback for all these quantities in 9 shipping bills exporter has made manual application under rule 7 of Customs and Central Excise Duties Drawback Rules, 2017. Declaring drawback identifier as 9801 in shipping bill under rule 6 and thereafter, manual filing of application for drawback claim of Rs.9,98,055/- under Rule 7 is found to be contradictory and is not in order.

Exporter has to decide at the time of the export of the goods whether he wants to claim drawback at the notified rate under Rule 3, or at the Brand Rate under Rule 6 or 7 by using correct prescribed tariff identifier. Once he chooses to claim drawback under Rule 6, he thereafter cannot make a claim for the determination of the Brand Rate of drawback under Rule 7.

Exporter had filed 9 Nos of shipping bills for fixation of brand rate under Rule 6 by declaring drawback identifier as 9801. Upon clearance of goods for export, exporter had made manual application for the same goods fixation of brand rate under Rule 7. Department approved the application and allowed drawback. This discrepancy was not brought to the notice of SIIB (Export) unit.

Thus, non-observance of the Drawback Rule 6 & 7 resulted into grant of approval for incorrect application of special brand rate duty drawback of Rs 9,98,055/-.

Department's reply is awaited.