

ASSISTED BY:

K.NANCY B.COM, B.L. (HONS.),

R.MANSOOR ILAHI, B.COM, B.L.

VINUPRIYA MUTHURAMALINGAM, B.A., L.L.B. (HONS.)

CONSULTANTS:

GST, CUSTOMS,

FOREIGN TRADE LAWS,

FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

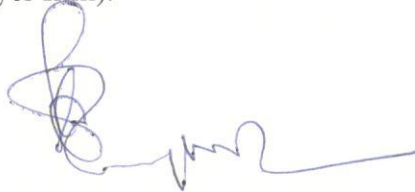
1. **Queriest :**

M/s. ITC Limited - SBU Packaging & Printing,
P.O. Box No.2277,
Thiruvottiyur,
Chennai – 600 019.

2. **Facts :**

- 2.1 ITC Limited - SBU Packaging & Printing business, the queriest, are manufacturers exporters of packaging material, namely, printed cartons made out of paper and paperboard and printed flexibles made out of film. Queriest has been importing inputs under Advance Licence for manufacture of export products. One of their flexible export products is printed multi-layer film (4 layer film). Printed multi-layer film export is covered under SION H 404. The quantification of each input (films) mentioned in the SION is to be arrived with the formula given in the SION H 404 which is based on specific gravity and thickness of the film.
- 2.2 Queriest has been availing the advance licence facility for importing one of the inputs, "aluminum foil", without payment of import duties for manufacture of multi-layer film. Queriest has been submitting the workings of input usage as specified in the formula of the SION to the Regional Authority (RA).
- 2.3 All other inputs for manufacture of multi-layer film i.e. various films for balance 3 layers, inks and adhesive etc. are procured by the queriest indigenously.
- 2.4 However, recently queriest has changed the product mix (inputs) in their manufacturing process as per customer's requirement.
- 2.5 Queriest has started using 'Nylon film' in the place of 'polyester film' as one of the layers in the multi-layer film to enhance the elastic strength property of the end product (multi-layer film).

...2



- 2.6 Nylon film is proposed to be imported. Hence in the changed scenario, in the manufacture of multi-layer film, queriest imports two layers namely aluminum foil and nylon film under advance licence.
- 2.7 Although the aluminum foil is covered under **SION H404** specification, Nylon film is not covered. Hence queriest has obtained two advance licences. The details of advance licences are as follows:

Import of Nylon Film - Advance licence details						
License No	License Date	Qty (MT)	Import Value (Rs Lacs)	Qty (MT) - Actually Imported	Actual Import Value of (Rs Lacs)	Actual import duty (Rs Lacs)
410166561	26-02-2020	19.4	35.3	19.4	35.3	3.52
410166562	26-02-2020	14.7	26.7	14.7	26.7	2.67

- 2.8 While exporting the finished product, it is mandatory to mention details of inputs cleared under advance licence in the Shipping Bill (online in the portal). Accordingly, for export of 24.38 MT. of finished product where both inputs were used (vide Invoice No.H33A120111001265 dated 12.03.2020), the queriest tried incorporating details of both advance licences in the Shipping Bill as per details given below:
- 2.9 While submitting data for shipping bill preparation, under "licence details" section, queriest has mentioned:

Sl. No.	Licence detail	Input	Output
1.	Advance licence 410166455	Aluminum foil – 4.211 MT	Multi layer film 24.282 MT
2.	Advance licence 0410166461	Nylon film – 4.896 MT	Multi layer film 24.282 MT

Using both inputs, single export product "multi-layer film" is manufactured.

- 2.10 However, the customs portal did not accept details of two advance licence numbers against single export product. Queriest met the Dy. Commissioner of Appraising Section and the Dy. Commissioner of EDC (Electronic Data Capture) section in Customs office, Chennai and explained the issue in detail.
- 2.11 Though the officials agreed with the queriest's explanation in principle, they have expressed their inability to correct the portal. They suggested the queriest to submit a detailed representation so that the same will be forwarded to Delhi

office with suitable recommendations for correction in software of the portal. However, they were non-committal on the timelines and mentioned that the corrective action may take 6 – 8 months.

- 2.12 Queriest also met the officials in Joint Director General of Foreign Trade, Chennai and explained the issue but as the matter of shipping bill falls under Customs, the officials informed the queriest that they are not the right authority to deal with the issue.
- 2.13 This effectively means that till the time portal is corrected, export obligation fulfilment is possible only for one input and not both inputs. As foil attracts anti-dumping duty, it is more beneficial to complete export obligation fulfilment of the same as compared to Nylon film.

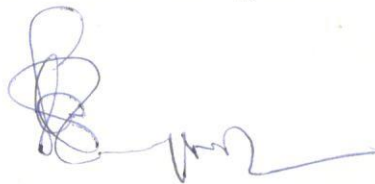
3. Query :

- 3.1 In the above factual matrix, the queriest has suggested the following as the way out for finding a solution.

- To get the Nylon film added as additional input in the SION (H404) – Queriest has already applied to norms committee (NC7) on this. The approval of norms committee is likely to take time.
- Since the above process has long gestation period, below described procedure is proposed to be followed by them.
 - 1) Since the problem in documentation with Customs department is only having two advance licences against single export quantity, the way out is to obtain single licence for both inputs aluminum foil and nylon film.
 - 2) The procedure to obtain single advance licence is to claim advance licence benefit for aluminum foil as well as nylon film through advance licence falling under “no norms” category.
 - 3) As there is no restriction to claim any input (aluminum foil) under “no norms” category even though the same is prescribed in SION the above mentioned procedure is suggested.

- 3.2 Considering the above, queriest seeks clarification for the following queries.

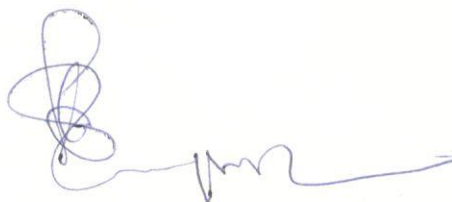
- To confirm that the queriest’s understanding in this regard is correct or not.



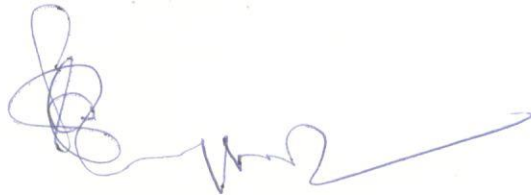
- Whether the queriest can file advance licence application mentioning Aluminium foil & Nylon film as inputs for manufacture of Multi-layer film under “No Norms” category in one single licence.
- Are there any better or alternative procedures available for the explained situation.

4. Opinion :

- 4.1 For a further query as to how exactly the shipping bill was processed by the Customs, the queriest clarified that they decided to mention the licence No.0410166455 dated 24.1.2020 which covers import of aluminium foil. It was further stated that since aluminium foil attracts anti-dumping duty, the queriest decided to import aluminium foil under advance licence.
- 4.2 It may be seen that Sl.No.H 404 of Standard Input-Output norms covers export of printed flexible packaging materials as well as laminated/extrusion laminated flexible packaging material of multi-layers of relevant substrate. The norms cover various types of inputs and the formula states that relevant substrate of either one or more in combination of more than one layer subject to a specific formula.
- 4.3 From the above, it can be seen that while the norms were framed for production of flexible packaging material as well as laminated flexible packaging material of multi-layers, the authorities considered these inputs with option to use any of those inputs with the relevant hot melt, printing ink and adhesive.
- 4.4 Therefore, in our view, export of such flexible packaging material by use of nylon film with aluminium foil cannot be taken under the category of a product for which no norms have been fixed. Nylon film also needs to be included as one of the possible substrates in the option given in the inputs and as such, in our view, the issue will be covered more appropriately as requiring modification of input-output norms. Para.4.23 of the Handbook of Procedures refers to modification of existing norms and an application under ANF-4B is to be filed for this purpose. Sl.No.12 of the above application provides for indicating the nature of modification required and details of modification required.
- 4.5 As a matter of fact, getting the modification approved based on the actual usage already made will be easier than getting fresh norms fixed by stating that the product is covered under “no norms” category. If the application has been already processed, the queriest can go ahead and in case, it is still pending, modification of norms can be tried. Once the norms are modified, then it will be possible for the company / queriest to get both aluminium foil as well as nylon film mentioned as permissible for imports and then what items are to be imported can be decided.



- 4.6 In the mean time, for the exports already made by mentioning only one licence number, the queriest can make a representation to customs to include the other licence by appropriate modification of software or issue a no objection certificate since the queriest has used both the materials for manufacture of the product exported. On account of technical issues, the rights granted to the queriest under statutory provisions cannot be denied and in case, the authorities are not prepared to issue no objection certificate, then the matter can be agitated before higher forums or by approaching the High Court for directions to the authorities.



S. MURUGAPPAN

sm/ss

Disclaimer:- The above opinion is provided based on the information and documents made available to us by the queriest and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.