

# S.MURUGAPPAN

ADVOCATE, HIGH COURT

**ASSISTED BY:**

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**CONSULTANTS:**

GST, CUSTOMS,

FOREIGN TRADE LAWS,

FOREIGN EXCHANGE MANAGEMENT ACT.

## OPINION

1. **Queriest :**

Mr.Suresh Jayaraj on behalf of M/s.Shimoga Life Sciences Pvt. Ltd., Plot No.5, Industrial Park, Attivaram, Ozili (Mandal), SPSR Nellore (Dt.) – 524 421.

2. **Facts :**

2.1 M/s.Shimoga Life Sciences Pvt. Ltd., one of the clients of the queriest is a manufacturer and exporter of chemicals. They import raw material described as “SCLAREOLIDE” from their parent company and export Orcanox produced out of the imported raw material back to the parent company. It is stated that at present the company is importing these goods by paying duty and IGST and exporting them with duty drawback at All Industry Rate and MEIS benefit.

2.2 The company has made available a worksheet where for an FOB value of Rs.5,26,19,991/- of the finished goods. The duty incurred, including IGST on the raw material imported is Rs.1,21,06,705/-. The duty incurred without taking into account the IGST paid comes to Rs.36,01,237/-. It is reported that under All Industry Rate, the company will be eligible to claim drawback of 1.3% which comes to Rs.6,84,060/-. The MEIS benefit at 2% works out to Rs.10,52,400/-. From the above calculation, it can be seen that there is considerable amount of tax paid which goes into the cost of the export product which is not recoverable.

3. **Query :**

In this context, the company would like to know the various options available for recovering the duty paid on the inputs to the maximum extent possible.

4. **Opinion :**

4.1 On the basis of the information and details provided by the company, it may be stated that the company can consider the following three options to reduce the tax liability.

- a) Preferring Brand Rate of Drawback.
- b) Importing goods under Advance Authorisation Scheme.
- c) Carrying out manufacturing operations in terms of Section 65 of Customs Act 1962 in a Customs bonded warehouse.

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- 4.2 It is noticed that as of now, All Industry Drawback for the chemical under reference is only 1.3%. On the other hand, the duty on the imported material paid by the company is quite substantial and the All Industry Drawback rate does not take into account this much outflow of funds. Therefore in this context, it will be possible for the company to claim brand rate of drawback. As per Rule 7 of Customs & Central Excise Duties Drawback Rules 2017 notified in terms of Notification No.88/2017-Customs (N.T.) dated 21.09.2017, an exporter can claim brand rate of drawback in a case where the All Industry rate of drawback is less than 80% of the duties paid on the materials used in the production of the goods exported. In the present case, the All Industry rate is far less than 80% of the duty incurred by the company and thus, they will qualify to apply for a brand rate. The procedure for applying brand rate of drawback is indicated in Rule 7 mentioned above. An extract of the above Rule is enclosed to this opinion as **Annexure-1**.
- 4.3 It must be noted that if the company prefers to include IGST paid also for claiming brand rate, then, refund of IGST paid cannot be claimed and no input tax credit of such IGST also is permissible.
- 4.4 It is also to be noted that in respect of brand rate of drawback, it will be a case where the company pays the duties and incurs expenses before export and then claim drawback after export. Thus basically, this will be a scheme of reimbursement of the duties already suffered.
- 4.5 The second option will be to utilise the facility of Advance Authorisation Scheme. If already input-output norms are notified for manufacture and export of these chemicals, then based on such norms the importer can apply for advance authorisation to import the materials needed. If norms are not yet fixed, then the Authorisation can be obtained under no norms category and then the norms fixed through norms Committee in the DGFT office.
- 4.6 In this case, there will not be any payment of duty beforehand in terms of the advance authorisation issued and as per Notification No.18/2015-Customs dated 01.04.2015, as amended the goods can be cleared without payment of Basic Customs Duty, any Additional Duty as well as IGST, including compensation Cess, if any.
- 4.7 It must be noted that in terms of the above notification the importer is eligible to have an option of paying the IGST by cash, in which case, there is no requirement to use the materials imported after discharging the export obligation by him or by his job worker. In this connection, Condition No.vi(a) of the above Notification as reproduced below will be relevant.





(vi)(a) that in respect of imports made after the discharge of export obligation in full, if facility of input tax credit under relevant Goods and Services Tax law on inputs used for manufacture and supply of goods exported has been availed, then the importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture and supply of taxable goods (other than nil rated or fully exempt supplies) and to submit a certificate from a chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used;

**Provided** that if the importer pays integrated tax and the goods and services tax compensation cess leviable on the imported materials under sub-section (7) and sub-section (9) respectively of section 3 of the said Customs Tariff Act on the imported materials but for the exemption contained herein, then such imported materials may be cleared without furnishing a bond specified in this condition.”

- 4.8 The IGST paid can be taken as input tax credit and the accumulated credit can be claimed as refund in terms of Section 54 of CGST Act 2017, subject to the condition that no drawback is claimed on such Central Tax paid. It is further to be noted that, in case, the company chooses to pay tax at the time of export, then, the input credit available can be utilised for payment of such tax and then rebate of the tax paid on the finished goods exported can be claimed later without taking recourse to refunds of the taxes paid on the inputs. A copy of Notification No.18/2015 mentioned above is attached as **Annexure-2** to this opinion.
- 4.9 In this second option, it must be noted that to get the materials duty free, the importer has to periodically apply for advance authorisation or obtain Advance Authorisation for annual requirement and execute necessary bond with security for complying with the export obligation and then once the export obligation is completed, get the bonds cancelled. Thus, in this case, it will be import without payment of duty and cancellation of the bonds by following the procedural requirements. Or in other words, funds will not be blocked.
- 4.10 The third option will be to carry out the manufacturing operations in terms of relevant regulations and Section 65 of Customs Act 1962 under Customs bonded warehouse. In this case, the materials can be imported without payment of any import duty used in the manufacture of export goods and then the goods exported without payment of any IGST, without taking recourse to advance authorisation scheme.



- 4.11 A consolidated Circular No.34/2019-Customs dated 01.10.2019 has been issued in this regard. A copy of the said circular is attached as **Annexure-3** to this opinion. A perusal of the circular will show that after complying with the procedural requirements and approval of the warehousing facility, the company can import the materials duty free, use them in the manufacture and then export the finished goods, subject to keeping necessary records as required in terms of the instructions contained in the circular mentioned above.
- 4.12 It must be noted that, in case, the goods manufactured using the material imported duty free are to be cleared locally then there will be a liability to pay appropriate CGST & SGST or IGST depending upon the place of supply. Apart from this payment of Central Tax on the imported material content contained in these finished goods, import duty needs to be paid. Or in other words, the benefit of duty free import is not available for the materials used in production of goods that are locally sold.
- 4.13 In respect of this option, there will not be any need to apply for periodical advance -authorisations. Once manufacturing permission is obtained for the warehousing facility, necessary records are to be maintained and then the company can export the goods without incurring any duty liability. Choosing this option will depend upon the quantum of exports made and the quantum of local sales and consequently, the financial advantages in adopting this procedure.



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