

# S.MURUGAPPAN

ADVOCATE, HIGH COURT

**ASSISTED BY:**

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**CONSULTANTS:**

GST, CUSTOMS,  
FOREIGN TRADE LAWS,  
FOREIGN EXCHANGE MANAGEMENT ACT.

## OPINION

1. **Queriest :**

M/s. Rolex Logistics Pvt. Ltd.,  
No.85, 1<sup>st</sup> Floor, 5<sup>th</sup> Main, 1<sup>st</sup> Cross,  
Domlur 2<sup>nd</sup> Stage,  
Bangalore 560 071.

2. **Facts :**

Queriest is proposing to set up a repair hub either in FTWZ / SEZ / DTA, to have arrangement with OEM's abroad, to import mother boards, high end data storage and transmission equipments, servers, electrical and electronic products and repair and return to the OEM, re-export non-repairable equipments or scrap in India. In order to achieve this the queriest intends to set up a repair unit with high end tools and skilled staff.

3. **Query :**

In connection with the above, queriest wants clarification on the following.

1. Where the repair unit should be set up – FTWZ / SEZ / DTA?
2. What are the general subsidies/grants/ tax holiday period given by the GoI for these kind of activities?
3. What are the licences required for setting up repair facility / import of defective / export of refurbished units / scrap / disposal of scrap in India, such as any special import licence etc. to re-import defectives and re-export later?
4. Any concessions / support provided for purchase of capital equipments for use in the repair centre.
5. Duty drawback.
6. Can the defectives be imported without payment of duty.

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#### 4. Opinion :

- 4.1 It may be noted that even though the Government of India has relaxed the policy provisions with regard to import of used / second-hand goods, still the procedural requirements are quite tedious. There are registration requirements in terms of Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order 2012, for obtaining of EPR Authorisation and also observing the procedures as per E-waste (Management) Rules 2016. Considering these aspects, setting up a unit in Domestic Tariff Area for carrying out such activities and then re-exporting the goods may not provide any advantage but can prove cumbersome.
- 4.2 This leaves the option of setting up such a unit in Free Trade Warehousing Zone or Special Economic Zone. The activities that can be undertaken in free trade warehousing zone will be limited to packing, re-packing and trading of goods. Installation of machinery and carrying out repairing / refurbishing activities will not be within the scope of a free trade zone. As such, it will be appropriate that the querist opts for setting up a unit in special economic zone where the equipment can be imported / procured without payment of duty and also goods imported for carrying out repair without duty implication.
- 4.3 As far as tax liability is concerned, attention of the querist is invited to Rule 27 of Special Economic Zone Rules 2006 which reads as follows:

#### **“27. Import and Procurement**

(1) A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park unit or Bio-technology Park unit, all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items:

PROVIDED that exemptions from payment of duty, taxes or cess, drawbacks and concessions on all types of goods and services, required for setting up and maintenance of the factory building, allowed to a unit shall also be available to the contractors appointed by such unit and all the documents in such cases shall bear the name of the unit along with the contractor and these shall be filed jointly in the name of the unit and the contractor:

PROVIDED FURTHER that the unit shall be responsible and liable for proper utilization of such goods and services in all cases:

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PROVIDED ALSO that items prohibited for import can be procured by a Special Economic Zone Unit or Developer from a place outside India to the Special Economic Zone with the prior approval of Board of Approval.”

- 4.4 From the above provision, it will be clear that goods can be procured / imported free of all customs duties and IGST.
- 4.5 It also may be noted that these rules permit import of all goods which are not prohibited in terms of the Foreign Trade Policy provisions. Here also, as per the proviso to Rule 27, prohibited items also can be imported with the prior approval of the Board of Approval. As per the current Foreign Trade Policy, as amended on 07.05.2019, the following types of second-hand goods, among others, are restricted / freely importable.

### 2.31 Second Hand Goods

S.No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
I.	Second Hand Capital Goods		
(a)	(i) Desktop Computers, (ii) refurbished / re-conditioned spares of refurbished parts of Personal Computers / Laptops (iii) Air conditioners (iv) Diesel generating sets	Restricted	Importable against Authorization
(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time.	Restricted	(i) Importable against Authorization subject to conditions laid down under Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time. (ii) Import of unregistered/non compliant notified products as in CRO, 2012, as amended from time to time is “prohibited”
(b)	Refurbished / re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare.

S.No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
(c)	All other second hand capital goods {other than (a) & (b) above}	Free	
II.	Second Hand Goods other than capital goods	Restricted	Importable against Authorization
III.	Second Hand Goods imported for the purpose of repair / refurbishing / re-conditioning or re-engineering.	Free	Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/Rules/Orders/Regulations/technical specifications/ Environmental/ safety and health norms and the imported item is re-exported back as per the Customs Notification.

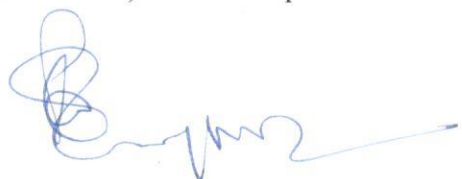
4.6 It may be seen that as per para.2.31 I (b), import of unregistered / non-compliant notified products as in Compulsory Registration Order 2012, as amended from time to time is prohibited. As already mentioned, all items except prohibited items can be imported by a SEZ unit. Therefore, when a particular item is sought to be imported it has to be ensured that whether these are from unregistered suppliers or non-compliant notified products as per Compulsory Registration Order 2012.

4.7 With regard to disposal of scrap arising during the processing operations, attention is invited to Rule 47 of Special Economic Zone Rules. This rule reads as follows:

**“47. Sales in Domestic Tariff Area**

(1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely:—

- (a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:



PROVIDED that goods imported or procured from the Domestic Tariff Area and sold as such without being subjected to any manufacturing process shall be subject to the provisions of the Foreign Trade Policy as applicable to import of similar goods into India;

- (b) Domestic Tariff Area sale under sub-rule (1) of rejects or scrap or waste or remnants arising during the manufacturing process or in connection therewith by the Unit shall not be subject to the provisions of the Import Trade Control (Harmonized System) of Classification of Export and Import Items:

PROVIDED that the Central Government may notify restrictions, as it deems fit on all or any class of such goods mentioned under this clause.”

- 4.8 In this regard, attention also is invited to para.2.33 of the current Foreign Trade Policy as per which a SEZ unit is allowed to dispose in DTA any waste or scrap generated during manufacturing or processing activity without an authorization on payment of applicable customs duty.
- 4.9 At the same time, it may be noted that such disposal in DTA will again be governed by the provisions relating to E-waste (Management) Rules 2016.
- 4.10 Since goods are imported under SEZ unit category, there will not be any duty payment on capital goods. At the time of removal of these goods from the SEZ area, duties will be payable in terms of Rule 49 of SEZ Rules referred to above. There is no complete exemption in this regard.
- 4.11 Since there is no duty element involved in import of capital goods or items imported for repair, the issue of drawback will not be relevant.
- 4.12 Defective items also can be imported without payment of duty into the SEZ for repair and re-export.
- 4.13 Independent of SEZ status, goods can be imported for repair and re-export in terms of Customs Notification 134/94-Cus. dated 22.6.1994. A copy of the notification is attached as **Annexure-I**.
- 4.14 In this case, the re-conditioning / repair activity has to be undertaken in terms of Section 65 of Customs Act 1962. For carrying out these activities CBEC has issued a Circular No.34/2019-Customs dated 01.10.2019. A copy of the circular also outlining the detailed procedure is attached as **Annexure-II**.



- 4.15 Subject to following these conditions the processing operations can be done in terms of Section 65 of Customs Act 1962 read with para.2.31 III of the Foreign Trade Policy.



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**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the querist 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.