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CONSULTANTS:

GST, CUSTOMS,

FOREIGN TRADE LAWS,

FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **Queriest :**

M/s. Super Auto Forge Pvt. Ltd.,
3/1A, Nedunkundram Village,
Vandalur-Kelambakkam Road, Kolapakkam,
Chennai – 600 048.

2. **Facts :**


2.1 The queriest has a unit in SEZ at Tambaram for manufacture and export of cold forged heat treated machined components with an annual capacity of 32,00,000 pieces. The green card was originally issued to the unit on 12.4.2005. The approval was valid for a period of 5 years from the date of commencement of production. This was renewed by the Development Commissioner on 6.9.2012 for another 5 years from 7.9.2012 and again subsequently from 7.9.2017 to 6.9.2022 in terms of further communication dated 6.9.2017 from the Development Commissioner's office. Thus the unit is an SEZ unit as on date. However, the queriest would like to close this unit in Tambaram and come out of the SEZ scheme before expiry of the validity period.

2.2 It is reported that in the unit they have raw materials, finished goods, semi-manufactured goods, materials under process, vehicles as well as other assets.

3. **Query :**

In the above context, the queriest would like to have clarification on the following:

- i. Procedures and documentations to be complied (both Customs & GST).
- ii. When above can be transferred from SEZ to our DTA.
- iii. Invoice Format (with or without IGST).
- iv. Whether queriest can sell the items from SEZ to DTA immediately after submission of application? Or is there any time limit to be followed.
- v. Valuation of Stock.
- vi. Other points if missed, from queriest's end.

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4. Opinion :

- 4.1 In terms of Rule 74 of Special Economic Zone Rules a unit can opt out of SEZ scheme at any time before expiry of the period with the approval of the Development Commissioner. Such exit will be subject to payment of applicable duties and taxes on the imported or indigenous capital goods, raw materials, components, consumables, spares as well as finished goods in stock. If the unit has not achieved positive net foreign exchange as per the formula prescribed for SEZ units, then the exit shall be subject to penalty that may be levied under the Foreign Trade (Development & Regulation) Act 1992, by the Development Commissioner. At the time of exit, the unit has to execute a legal undertaking in Form-L. A copy of the form is attached as **Annexure-I** to this opinion.
- 4.2 It is to be noted that the unit will be treated as SEZ unit only till the date of final exit i.e. payment of applicable duties and taxes and penalty, if any, imposed by the authorities and till the final exit order is issued. Extract of Rule 74 is attached as **Annexure-II** to this opinion.
- 4.3 It must be noted that the Development Commissioner can permit a unit as one time option to exit from the SEZ scheme on payment of duty on capital goods under the prevailing EPCG scheme as per the Foreign Trade Policy in force subject to the unit satisfying the eligibility criteria under EPCG scheme. If sufficient quantum of capital goods are to be de-bonded, then, opting for EPCG scheme may be useful. This, ofcourse, will be subject to the condition that there are sufficient export orders to meet the obligation under the proposed EPCG authorization.
- 4.4 The rate of duty applicable as well as valuation to be adopted in respect of the goods to be removed from SEZ at the time of exit are governed by Rule 49 of SEZ Rules. Extract of this rule is attached as **Annexure-III** to this opinion.
- 4.5 As per Rule 49 mentioned above, duty will be levied on imported goods at depreciated value, but at the rate in force on the date of removal of the goods. The method of computing the depreciation is given in Rules 49(1)(b) and 49(1)(c). Rule 49(4) describes the situation where the goods can be removed from the SEZ unit without payment of duty.
- 4.6 Goods procured locally without payment of applicable tax can be cleared back into DTA on payment of applicable tax. The procedure to be adopted for clearance from the SEZ into Domestic Tariff Area is given in Rule 48 (**Annexure-IV**) of SEZ Rules. A bill of entry needs to be filed for clearance of these goods since clearance from the SEZ is treated as 'import' and the value for these goods will be determined on the basis of provisions contained in the Customs Act. When goods procured from Domestic Tariff Area are removed back into the DTA in the same condition or substantially same condition, then such clearances will be treated as 're-import' of goods and the provisions contained in Rule 48(3) will apply in such a case.

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- 4.7 There is also a provision for transfer of all these goods to another SEZ unit or an EOU without payment of duty subject to certain conditions. Such conditions are enumerated in Rule 38 of SEZ Rules which is attached as **Annexure-V** to this opinion.
- 4.8 As far as waste and scrap and rejects are concerned, there is an option to destroy all such waste and scrap within the unit in which case, there is no need to pay any duty/tax. In respect of destruction of goods purchased from Domestic Tariff Area, drawback on the duty exemption benefits availed, if any, have to be proportionately returned to the department. Provisions in this regard are contained in Rule 39 of SEZ Rules. Extract of this rule is attached as **Annexure-VI** to this opinion.
- 4.9 In respect of clearances as already outlined above, a bill of entry needs to be filed and in respect of goods procured from Domestic Tariff Area, they will be treated as re-import into DTA and import duties will be charged, accordingly.
- 4.10 The items can be removed into DTA only upon payment of applicable duty/taxes after determination of value and after filing documents as mentioned above. They cannot be removed immediately upon submission of an application for exit from the scheme.
- 4.11 In respect of domestic supplies to SEZ, it is quite possible that the suppliers would have availed exports / deemed export benefits. If these are to be returned to Domestic Tariff Area, then the question of paying back the export benefits will come up. In this connection, CBEC has issued a Circular No.13/2017-Customs dated 10.04.2017. The same is annexed as **Annexure-VII** to this opinion. In particular, para.6 of the circular, which is reproduced below will be relevant.

“6. It is therefore, clarified, that the indigenous goods supplied to the EOUs/EPZ/SEZ/EHTP/STP units after availing the deemed export benefits are to be treated as ‘imported goods’ and accordingly, duty as applicable to the imported goods is liable to be paid. Once the goods are treated as imported goods and applicable Customs Duty is paid at the time of their transfer/sale back into DTA or exit, there is no requirement of refund of the deemed export benefits availed on such goods or for the production of a certificate from the Development Commissioner regarding refund or non-availment of deemed export benefits at the time of clearance of such goods or exit.

Alternatively, the EOU/STP/EHTP units would also be allowed to clear the domestically procured goods or on exit, on payment of Excise Duty as per Notification No.22/2003-C.E. dated 31-3-2003 only on production of certificate from Development Commissioner to the effect that deemed export benefits have been paid back or not availed, as the case may be, as envisaged in Circular No.74/2001-Cus., dated 4-12-2001.”

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- 4.12 It also may be noted that for non-fulfilment of export obligation, if any, while action will be taken by the Development Commissioner, for demand of duty on the goods to be removed from the unit at the time of exit will be made by the jurisdictional customs authorities. In this connection, para.3.5 of Circular No.11/2017-Customs dated 31.03.2017 may be seen. The same is attached as **Annexure-VIII**.



S. MURUGAPPAN

sm/ss

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.