

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. Rolex Logistics Pvt. Ltd.,
No.85, 1st Floor, 5th Main, 1st Cross,
Domlur 2nd Stage,
Bangalore 560 071.

2. **Facts :**

- 2.1 Queriest is in the business of providing post sales past support during warranty and service contract to the customers in India of their MNC clients. Spares/units required to provide part support are exported Free of Cost (FoC) by the MNCs and are imported by the queriest in its capacity of an Importer of Record (IoR). Applicable customs duty is paid by the MNC under the queriest's IEC. While the BoE is updated in customs portal, in Mumbai and Bangalore ports, AD code of the queriest's bank is given in bloc 6 of Part II of the BoE and "Others" is chosen under C 7 of Part II of the BoE by MNCs' CHA.
- 2.2 Queriest also has major imports made from Free Trade Warehousing Zone, Panvel, Raigad, Mumbai to their warehouse in DTA and for the imports made here, their CHA invariably updates "Free of Charge" under the "Term of Payment" in the BoEs. Despite updating "Free of Cost" at the time of filing BoEs, data of the imports made by the queriest gets populated in IDPMS data of RBI as outstanding.
- 2.3 Queriest has been providing required explanation along with supporting documents to RBI through their AD since 3 years as and when they receive updated IDPMS data from RBI. Even after explanation given along with supporting documents, the outstanding in IDPMS data continues to be added.
- 2.4 Queriest has provided copies of the letter submitted by them to RBI and also the letter written to Customs official. Explaining all their imports of spare parts were FOC (though Commercial invoices does not have any mention of FOC etc.) as per the Agreements/MOU signed between MNC and the queriest for free replacement purposes i.e. the queriest imports FOC and after replacement against service RMA calls, defectives collected and return export made FOC after obtaining ADs GRW as per annual RBI approvals for the same.

...2



3. **Query :**

In connection with the above, queriest wants to know the appropriate steps to be followed to avoid their import data getting populated as “Outstanding” in IDPMS data.

4. **Opinion :**

4.1 To provide the clarification asked for, the queriest was requested to forward sample copies of the bills of entry along with related invoices. These were made available by the queriest.

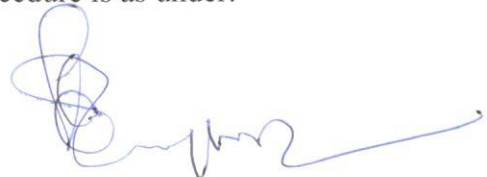
4.2 The provisions with regard to monitoring of remittances for goods imported or services imported are contained in the Master Direction on Import of Goods and Services bearing No.17/2016-17 dated 1.1.2016, as amended, and issued by the Reserve Bank of India. A copy of this Master Direction is attached as **Annexure-A** to this opinion.

4.3 There is also another Circular which is addressed to the authorised dealer banks. A copy of this Circular bearing No.65 dated 28.04.2016 is attached as **Annexure-B** to this opinion. A perusal of the above Direction and Circular will show that these are all applicable only when remittance is involved. When supply is free of charge without involving any foreign exchange, there should not be any difficulty whatsoever with regard to submission of evidence and these instructions will not be applicable at all.

4.4 However, a perusal of the sample bills of entry and the invoices forwarded by the queriest clearly show that nowhere the invoices mentioned that these are free supply or that the value indicated is only for customs purposes. Though some of the invoices do not mention payment terms, values are mentioned against the items supplied implying that there is a payment.

4.5 Also sample bills of entry forwarded include detail of AD code of Banks in the relevant column. When there is no payment involved, this column has to be left blank. Otherwise, the entry made will be captured by the system and follow up will be there with regard to remittance by the foreign exchange dealer. In this connection, the following extracts from para.C.8 of Master Direction will be relevant.

“(iii) Based on the AD code declared by the importer, the banks shall download the Bill of Entry (BoE) issued by EDI ports from “BOE Master” in IDPMS. For non-EDI ports, AD bank of the importer shall upload the BoE data in IDPMS as per message format “Manual BOE reporting” on daily basis on receipt of BoE from the customer/Customs office. In order to enhance the ease of doing business and reduce transaction costs, submission of hardcopy of evidence of import documents i.e., BoE Exchange Control copy has been discontinued with effect from December 1, 2016 as the same is available in IDPMS. The revised procedure is as under:



(iv) AD banks shall enter BoE details (BoE number, port code and date) for ORM associated with the advance payments for import transactions as per the message format "BOE settlement".

(v) In case of payment after receipt of BoE, the AD bank shall generate ORM for import payments made by its importer customer as per the message format "BOE settlement".

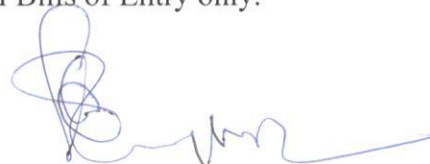
(vi) Multiple ORMs can be settled against single BoE and also multiple BoE can be settled against one ORM."

Again, the relevant extracts in the Circular issued on 28.04.2016 to the banks by RBI is reproduced below.

"3. To track the import transactions through banking system, Customs will modify the Bill of Entry format to display the AD Code of bank concerned, as reported by the importers. Primary data on import transactions from Customs and SEZ will first flow to the RBI secured server and thereupon depending on the AD code shall be shared with the respective banks for taking the transactions forward. The AD bank shall enter every subsequent activity, viz. document submission, outward remittance data, etc. in IDPMS so as to update the RBI database on real time basis. It is therefore, necessary that AD banks upload and download data on daily basis.

4. For non EDI (manual) Customs ports, till they are upgraded to EDI (computerised) ports, nodal branch of AD Category-I banks will upload Bills of Entry (BoE) data based on original BoE with stamp/signature of the Customs as submitted by importer. Under no circumstances, AD category-I banks will process the transactions till the concerned BoE is reflected in the IDPMS. Customs will share a copy of manual BoE with respective Regional Office of RBI for information as they presently do for shipping bills in the case of exports."

- 4.6 From the above, it can be seen that once entries are made in the bill of entry with regard to value and bank code, then there will not be any option left to the importer and RBI and the banks will follow up with regard to remittance particulars based on the guidelines mentioned above.
- 4.7 Accordingly, the only way to come out of this situation is to strictly instruct the customs brokers not to mention any AD code in the relevant column of the bill of entry and also get invoices from the suppliers clearly indicating that it is a free supply and the value is only for customs purposes. If the above is strictly followed then no data will be captured in the system with regard to remittance for the imports made and the queriest will be relieved of any headache for writing to the foreign exchange dealer / Reserve Bank of India explaining the situation for closing the issue. This will be for EDI Bills of Entry only.



- 4.8 In respect of non-EDI Bills of Entry, it is to be ensured that in the relevant column for indicating the details of authorised dealer, the same should be filled up as “Not Applicable” and the Bill of Entry as well as connected Invoice should clearly indicate as “Free supplies without involving any foreign exchange remittance”. If there are bank details then RBI as well as the authorised dealer will follow up for monitoring the remittance particulars. The queriest also can check with the banks whether it is necessary to submit the bills of entry to the bank in such cases (non-EDI bills) at the first instance, as there is no foreign exchange involved and consequently, no monitoring by the banks will be needed.



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.