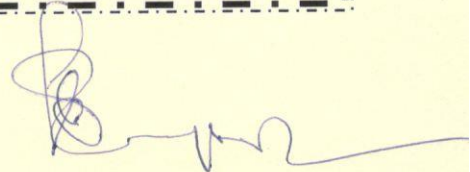


QUERIEST

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

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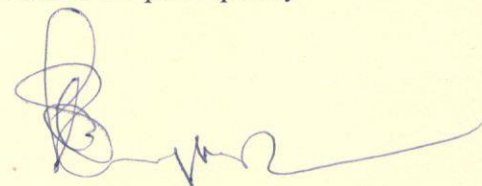
1. **FACTS**

1.1 Queriest has indicated that they are incurring the following expenditure on account of their wholly owned subsidiary in U.S. and Belgium. These expenses are with regard to the export and subsequent sale of their products abroad.

- i. Sorting & Cleaning Expenses – Incurred by the queriest through the subsidiary - to separate defective parts and also cleaning the material.
- ii. Sorting & Cleaning Expenses – Incurred by the customer and debited to subsidiary account - to separate defective parts and also cleaning the material.
- iii. Customer debits – deducted from queriest's invoice – due to Price difference, Quality Issue, Line Stoppage, Warranty etc.
- iv. Business Development Expenditure / Sales Rebate – for acquiring new business and to continue existing business.

1.2 It is reported that these expenditures are paid by their subsidiary or deducted by their customers who are the ultimate purchasers from their payables. These expenses are booked in India by the queriest by raising debit notes on the subsidiary.

1.3 It is also clarified that these subsidiaries are separate legal entities in the countries of their presence and not “branches” of the queriest. They are audited by the local auditors in the respective countries and they pay ‘Income tax’ there. The expenses incurred by them are solely at their discretion and necessity, without any directions or request from the Indian parent. Wherever the cause of action for such rework or sorting etc. is attributable to the poor quality of supplies from India, they raise a “Claim” for such expenditure on the queriest and this is equivalent to claims raised by any external customer for poor quality of supplies.



2. **QUERY**

In the above context, queriest wants to know the GST liability on these charges.

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3. ANALYSIS OF FACTS AND LEGAL PROVISIONS

3.1 From the information provided it is clear that five types of services are involved,

- (a) Relates to separation of defective parts and cleaning the materials for which the expenses are incurred by the subsidiary and which are to be reimbursed by the queriest
- (b) Services relating to separation of defective parts and cleaning of the materials at the customer's end for which charges are debited to the subsidiary by the customer and which in turn are reimbursed by the queriest
- (c) On account of quality issues, warranty replacements, price variations etc. customers raise debit notes for which payments are made by the subsidiary and then claimed from the queriest
- (d) Services relating to business development plans for which payment is made by the queriest to the subsidiaries.
- (e) Sales rebates provided to the subsidiaries by the queriest to promote and continue the existing business.

3.2 From the above, it is clear that with regard to (a) and (b) the goods are to be made physically available abroad either in the warehouses of the subsidiaries or in the customer's places; (c) involves reduction in sales price indirectly; (d) and (e) involves services provided for business promotion.

3.3 It may be noted that in terms of Notification No.10/2017-Integrated Tax (Rate) dated 28.6.2017, as amended, the services provided by the subsidiaries as mentioned above will attract GST in the hands of the queriest under reverse charge mechanism. Sl.No.1 of the entry in the above notification reads as follows:

Sl.No.	Category of Supply of Services	Supplier of Service	Recipient of Service
1.	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient

3.4 Section 13 of IGST Act 2017 defines the places of supply of services where location of the supplier or location of the recipient is outside India. As per sub-section (2) of Section 13 mentioned above, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Under the exceptions to the above rule, sub-section (3) refers to making available goods to the service provider. This sub-section reads as follows:

“(3) The place of supply of the following services shall be the location where the services are actually performed, namely :-

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:”

3.5 From the above definition it may be seen that in respect of services referred to at 3.1(a) and (b) it is to be deemed that services are performed outside the country. However, in view of the reverse charge mechanism, the service recipient in India is liable to pay the tax. Or in other words, for all the services mentioned above, GST will be payable under reverse charge by the querist. The fact that the subsidiaries are separate legal entities in their countries will not have any impact in this regard.

3.6 Section 20 of IGST Act 2017 provides that the various provisions contained in the CGST Act including the provisions relating to time and value of supply will apply to IGST Act also *mutatis mutandis*. As far as time of supply is concerned, Section 13 of CGST Act stipulates various dates as constituting supply dates. Sub-sections (2) and (3) of Section 13 reads as follows:

“(2) The time of supply of services shall be the earliest of the following dates, namely :—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply :

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation. — For the purposes of clauses (a) and (b) —

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely :—

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

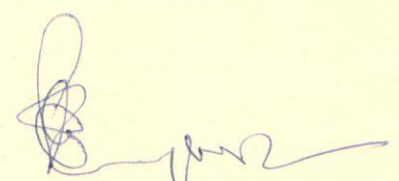
(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier :

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply :

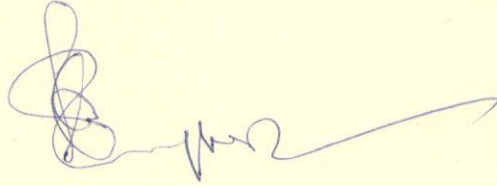
Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.”

3.7 A perusal of the proviso to sub-section (3) will indicate that once book entries are made, then, the supply date is with reference to such book entries and the tax liability accrues from that date.

3.8 Therefore irrespective of the fact that payment has been made or not, the GST liability will arise once book entries are made.

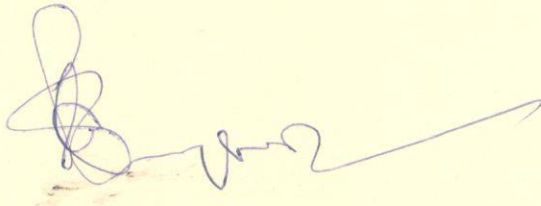


- 3.9 With regard to 3.1(c) relating to reduction by customers on account of quality issues or warranty replacements, it is not clear why the adjustments are to be made between the ultimate customers and the subsidiaries and then reimbursements made to the subsidiaries by the parent company / queriest. As these adjustments involve reduction in the prices from the customer's end, a better option will be adjustments in actual invoices for payments by the customers with RBI approval. That will not involve any service element by subsidiaries but will involve adjustment of export incentives, if any, taken, to the extent of reduction in value.

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4. CONCLUSION

- 4.1 GST will be payable under reverse charge by the queriest in respect of payments made for the services referred to in para.2.1.
- 4.2 The issue relating to "Claims" by ultimate customers on account of quality issues, warranty replacements etc. can be re-examined as to whether the same can be brought under sales price reduction to the ultimate customers.



S. MURUGAPPAN

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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.