

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY B.COM, B.L. (HONS.),

VINUPRIYA MUTHURAMALINGAM, B.A., L.L.B. (HONS.)

CONSULTANTS:

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

OPINION

1. **Queriest :**

M/s. Comstar Automotive Technologies Pvt. Ltd.,
Keelakaranai Village, Malrosapuram Post,
Marai Malai Nagar,
Chegalpattu – 603 204.

2. **Facts :**

The queriest is engaged in the manufacture of automotive components and it has a unit in Maramalainagar. It is operating under Export Oriented Unit Scheme and its turnover and investment details are as given below:

- Total Sales Revenue for FY 2019-20 INR 5,303 Million (Exports INR 4,290 Million + Domestic Sales INR 1,013 Million).
- Net Investment in Plant and Equipment INR 554 Million as on 31st March 2020.

3. **Query :**

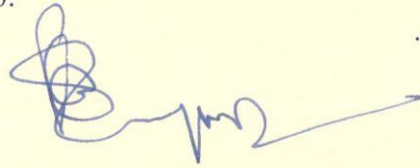
On the basis of the above details, the queriest would like to seek clarification on the following with regard to their eligibility to come within the purview of MSME Act.

- i. What is to be considered as the Turnover of the Company for MSME regulations, is it Export + Domestic Turnover OR only Domestic Sales value to be considered?
- ii. What is the Investment in Plant and Machinery for MSME regulations – should the queriest consider the Net Investment Value or Gross Investment Value?

4. **Opinion :**

- 4.1 The MSME Act enacted in 2006 has undergone various changes and with a view to promote ease of doing business and manufacturing activities, the government of India has carried out several changes, including amendments with regard to eligibility criteria in June 2020.

...2



No.1, 4th Floor, Ceebros Centre, New No.39, Old No.45, Red Cross Road, Egmore, Chennai – 600 008.

Email: smurugappan53@yahoo.com

Website: www.smurugappan.com

Phone: 42122660, 42122661, 28521223, Fax: 28521398

4.2 As on date, in terms of Section 7, in the case of a manufacturing enterprise, the following will be the limits for investment in plant and machinery.

- a) Micro enterprise - not exceeding Rs.25 lakhs.
- b) Small enterprise - investment above Rs.25 lakhs and not exceeding Rs.5 crores.
- c) Medium enterprise - investment with more than Rs.5 crores but not exceeding Rs.10 crores.

4.3 Section 7 of MSME Act 2006 is reproduced below:

“7. Classification of enterprises.— (1) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,—

(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), as—

(i) a micro enterprise, where the investment in plant and machinery does not exceed twenty-five lakh rupees;

(ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or

(iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;

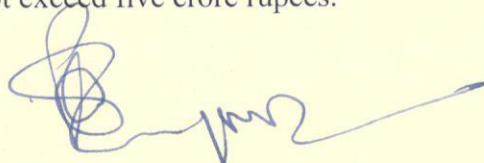
(b) in the case of the enterprises engaged in providing or rendering of services, as—

(i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;

(ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or

(iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

...3



Explanation 1.— For the removal of doubts, it is hereby clarified that in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.

Explanation 2.— It is clarified that the provisions of section 29B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall be applicable to the enterprises specified in sub-clauses (i) and (ii) of clause (a) of sub-section (1) of this section.”

- 4.4 From the above it can be seen that for calculation of the value of investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices are to be excluded. The calculation of investment in plant and machinery is linked to Income Tax Returns of the previous years filed under the Income Tax Act. In this regard, the queriest can check clause 4 of the Ministry of Micro, Small and Medium Enterprises Notification dated 26.6.2020 which is attached as Annexure.
- 4.5 With regard to the turnover, clause 5 of the above Notification can be seen.
- 4.6 As per clause 5, it can be seen that for calculation of turnover, export value of goods and services will be excluded. The exports turnover will be linked to the Income Tax Act or CGST Act and GSTIN.
- 4.7 In respect of enterprises which do not have PAN, the turnover will be decided based on self-declaration upto 31st March 2021 and thereafter PAN as well as GSTIN will be mandatory.



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.