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CONSULTANTS:

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

OPINION

1. **Queriest :**

M/s. Kubota Agricultural Machinery India Pvt. Ltd.
Block No.94, Tower-1,
8th Floor, TVH Beliciaa Towers,
MRC Nagar,
Chennai – 600 028.

3. **Facts :**

- 2.1 The queriest imports various earth moving equipment and parts for trading. At the time of import, the packages contain stickers attached by the exporter which do not provide complete details as required under Legal Metrology Act and Rules.
- 2.2 At present, additional stickers are pasted by the queriest in their warehouse before the packages are sold. It appears that the officials of Legal Metrology department pointed out that even when the goods are in the warehouse, since these are in pre-packed condition, they should carry the labels and that it is not sufficient to affix labels only when the goods leave the warehouse for subsequent sale etc.
- 2.3 The queriest also has referred to changes in address or change in the company name at a future date. In such situations, since alterations are not authorised in the labels affixed, labeling beforehand with incorrect address or company name can pose problems.

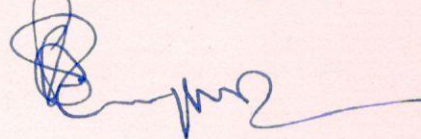
3. **Query :**

In the above background, the queriest has sought for clarifications on these aspects. To explain the issue involved samples of the labels used were also forwarded.

4. **Opinion :**

- 4.1 It is to be noted that all pre-packaged commodities which are meant for sale to distributors or to ultimate customers need to carry labels. It is not sufficient that labels are affixed only when they are removed from the warehouse. Section 18(1) of the Legal Metrology Act 2009 states the following.

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“No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.”

4.2 Apart from the above, Rule 10 of Legal Metrology (Packaged Commodities) Rules 2011 also stipulate that even when the packages are kept or exposed for sale, they should bear labels containing necessary details. An extract of Rule 10 is attached as **Annexure-I** to this opinion.

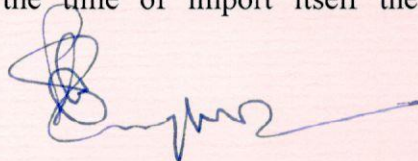
4.3 Since in the present case these goods are imported from abroad in retail packing, it is necessary that at the time of import itself the labelling requirement is complied with. Note 5 of General Notes regarding Import Policy as contained in ITC (H)S Classifications of Export and Import Items Vol.3-A reads as follows:

“5. Packaged Products :

All such packaged products, which are subject to provisions of the Legal Metrology (Packaged Commodities) Rules, 2011 when produced/ packed/ sold in domestic market, shall be subject to compliance of all the provisions of the said rules, when imported into India (These rules can be accessed from the website of the Department of Consumer Affairs, Ministry of Food and Consumer Affairs - <http://fcamin.nic.in>). All prepackaged commodities, imported into India, shall in particular carry the following declarations :

- (b) Name and address of the importer;
- (b) Generic or common name of the commodity packed;
- (c) Net quantity in terms of standard unit of weights and measures. If the net quantity in the imported package is given in any other unit, its equivalent in terms of standard units shall be declared by the importer;
- (d) Month and year of packing in which the commodity is manufactured or packed or imported;
- (e) Maximum retail sale price at which the commodity in packaged form may be sold to the ultimate consumer. This price shall include all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertising, delivery, packing, forwarding and the like, as the case may be.”

4.4 From the above, it will be clear that at the time of import itself the final labels that are to be affixed to the packages should be in place. Earlier, Customs authorities used to permit affixing of labels in respect of imported packages before they leave their custody / customs bonded warehouses. In most of the customs jurisdictions, this has been stopped and as per the Foreign Trade Policy provisions, it is required that at the time of import itself the labelling requirement is complied with.

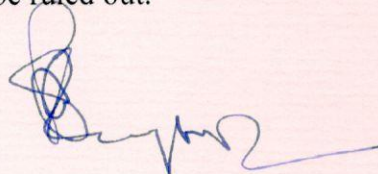


- 4.5 Rule 6 of Legal Metrology (Packaged Commodities) Rules 2011 indicates what are the details to be incorporated in the label. The relevant Rule is attached as **Annexure-II** to this opinion. In particular, in respect of imported packages, the following details need to be incorporated.

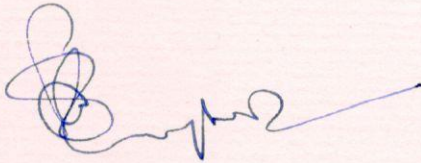
Imported by, Manufactured by, Country of Origin, Unit Quantities, Description of the product, MRP, Manufacturing Date details, Contact details for customer complaint etc.

Apart from these, any additional details also can be incorporated according to the importer's requirements.

- 4.6 It may be noted that alteration of particulars provided in the labels affixed to the packages is not permitted under the Legal Metrology Act and the Rules. This will definitely pose problems in case of change of address of the seller or company name change etc. In case of wrong entries relating to quantities etc. there is a provision in the Legal Metrology (Packaged Commodities) Rules 2011 under section "Deceptive Packages" as per which the seller can repack the goods in proper form. No specific provision with regard to change of address etc. are available in the Act or the Rules mentioned above. However it is not uncommon that many retailers repack goods and affix fresh labels.
- 4.7 Therefore in this context, in case, revised particulars are to be provided in the packages then, the querist can repack the goods and affix fresh labels. However a record of such repacking has to be necessarily kept in the warehouse so that the departmental officials can at any point of time correlate the goods with the changed packages and also the details of changes provided.
- 4.8 The querist also wants to explore the options available for carrying on the re-labelling activities in a Free Trade Warehousing Zone. It may be noted that such re-labelling operations are permissible in a Free Trade Warehousing Zone. However, it is to be noted that the basic concept of SEZ / FTWZ is that the developer as well as the units located in the zones should be net foreign exchange earners. Or in other words, there has to be export of services or goods and there should be net foreign exchange surplus in respect of such operations involving import and export. Subject to meeting this requirement, provisions are available for clearing the goods in Domestic Tariff Area. If goods are to be cleared only in Domestic Tariff Area then, earning of net foreign exchange will not be possible and that procedure has to be ruled out.



- 4.9 Subject to the above, it may be noted that in terms of Rules 27 and 28 of the SEZ Rules 2006 the unit can import all goods other than prohibited items under the Import Policy. Re-packing, re-labelling etc. are one of the authorised operations permitted within the zone. Thus, subject to meeting the other requirements of SEZ Act, such re-labelling activity can be undertaken for clearance of goods in DTA.

A handwritten signature in blue ink, consisting of a large, stylized initial 'S' followed by a series of loops and a long horizontal stroke extending to the right.

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.