

OPINION

1. Queriest :

M/s.SASS Global Logistics, Chennai on behalf of M/s.Alma Medical Pvt. Ltd., Mumbai.

2. Facts :

2.1 M/s.Alma Medical Pvt. Ltd., Mumbai, one of the clients of the queriest, imports Surgical Laser System with parts and accessories from their related company in Israel. The Israel company sells similar goods to other buyers/distributors located in various other countries also.

2.2 The Indian company has a service centre at Mumbai and some times the equipment or their internal parts need to be repaired and therefore M/s.Alma Medical Pvt. Ltd., Mumba intend to import parts from abroad which were supplied directly from Israel to those countries for repair and re-export.

3. Query :

In this regard, the Indian company seeks clarification on the following.

- 3.1 Whether they can import repair material hand piece/parts for repair and return purpose.
- 3.2 Originally item was exported from Israel to other country. Hence here its Import or Re-import? Can they claim benefit of Notification No.46/2017 and Customs Duty payable or not?
- 3.3 Sometimes they sell system to distributors and distributors sell to buyers in their country in such cases whether the consignment can be sent directly by buyers or it should be done through distributors only for repair.
- 3.4 Sometimes repair material cannot be repairable (will be scrapped) in such case what is the procedure?
- 3.5 What is the time duration to repair and return the material to the customer.
- 3.6 They will send back the material without repair as the customer feels the price is high for repair.
- 3.7 They also provide warranty for the repair work. During the period if it fails again they need to do the repair work free of cost.

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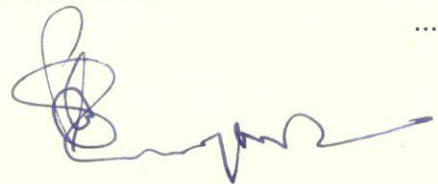


- 3.8 Can they import repair material by Courier mode also?
- 3.9 They have imported Surgical Laser System in that, 5 Systems were unsold, some systems were used for Demo purpose. Also they want to send back all the systems to the supplier.

4. **Opinion :**

- 4.1 It may be noted that the notifications issued under the Customs Tariff Act providing concessional duty / exemptions with regard to re-import of goods and their subsequent export refer to goods which were initially exported from India and then re-imported for carrying out processing, repair etc. As such, those notifications including Notification No.46/2017 dated 30.6.2017, will not be applicable to goods which are brought into the country for the first time from outside India for carrying out certain repairs and then re-export.
- 4.2 It may be noted that there is one particular notification which provides duty exemption to goods imported for carrying out repair, re-conditioning, re-engineering, testing, calibration etc. Notification 134/94-Customs dated 22.6.1994, as amended is attached as **Annexure-A** to this opinion. This covers various goods, including capital goods and spares, raw materials, components etc. for import for repair and subsequent re export. It must be noted that the import and re-export activity under this notification is subject to the following two specific conditions:
- “(a) the repairs, reconditioning, reengineering, testing, calibration or maintenance (including service) as the case may be, is undertaken in accordance with the provisions of section 65 of the Customs Act, 1962 (52 of 1962), and
- (b) the goods repaired, reconditioned, reengineered, tested, calibrated or maintained (including service) as the case may be, are exported and are not cleared outside the Unit.”
- 4.3 The notification mentioned above does not define what are capital goods, spares etc. The Customs Act also does not define these terms in the context of the above exemption. Under such circumstances, reliance can be placed upon related provisions, including the definitions of these goods in the Foreign Trade Policy. The definition of “capital goods” as per para 9.08 of Chapter 9 of the Foreign Trade Policy reads as follows:

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“Capital Goods” means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological upgradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control.

Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.

Para 9.37 of Chapter 9 mentioned above defines “Part” as below:

“Part” means an element of a sub-assembly or assembly not normally useful by itself, and not amenable to further disassembly for maintenance purposes. A part may be a component, spare or an accessory.

Para 9.50 defines “Services” as mentioned below:

“Services” include all tradable services covered under General Agreement on Trade in Services (GATS) and earning free foreign exchange.

- 4.4 The Policy for import of second-hand goods is covered by para 2.31 of the current Foreign Trade Policy. As per this, except specific items like Desktop Computers, Air Conditioners etc., other second-hand capital goods only are allowed import without restrictions. Second-hand goods other than capital goods are restricted for import and they are importable only against a specific authorisation. It may be noted that the parts of the laser equipment which are sought to be imported for carrying out repairs will not come within the definition of “capital goods”. Hence they cannot be imported freely as all second-hand goods other than capital goods are restricted for import.
- 4.5 At the same time, the following addition made in terms of Notification 58/2015-20 dated 28.3.2018 permitting import of second-hand goods subject to certain conditions will be relevant in the present case.



Second Hand Goods imported for the purpose of repair/ refurbishing/ re-conditioning or re-engineering.	Free	Subject to condition that waste generated during the repair/ refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification.
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- 4.6 From the above, it can be seen that second-hand goods for repair and re-export can be imported without restrictions subject to the conditions given in the Customs Notification and subject to the condition that the scrap generated is treated as per domestic Laws/ Rules, including taking precautions with regard to Environmental, safety and health protections.
- 4.7 Taking into account the above, following will be the clarifications for the queries raised at para nos.3.1 to 3.9.
- 3.1 Yes. Subject to following the provisions in terms of Section 65 of Customs Act 1962.
- 3.2 The import will be a fresh import and not re-import. Notification 46/2017 will not apply.
- 3.3 Consignments can be sent directly from the buyers abroad to the Indian company.
- 3.4 If the imported material is scrapped then the provisions stipulated in Section 65 have to be followed and duty discharged.
- 3.5 No specific time limit stipulated in the relevant notification mentioned above.
- 3.6 The material can be re-exported as such without carrying out repair by specifically mentioning that aspect in the export invoice.

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- 3.7 When the goods are again imported for repair work, the same procedure as applicable for the first time import has to be followed.
- 3.8 Import can take place in terms of provisions contained in Section 65 and hence individual bill of entry needs to be filed by the Indian company. Therefore courier mode is to be avoided.
- 3.9 The systems available in the country, which are imported for exhibition can be re-exported subject to RBI clearance regarding export proceeds.
- 4.8 Along with this opinion the instructions given by the Board vide Circulars 36/2020-Cus. dt.17.8.2020 and 48/2020-Cus. dt.27.10.2020 with regard to import of goods for operating under Section 65 are attached as **Annexures-B and C**, which will be self-explanatory.



S. MURUGAPPAN

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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.