

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 has received a business proposal for providing services as an Importer on Record (IOR) using their IEC to import storage drives from a manufacturer in USA Free of Cost (FOC) and distribute as Free samples to various entities/individuals (B2C) in India.
- 2.2 The value of imports in a year will be around US\$ 10 Million consisting of each part priced in the range of US\$ 5 to US\$ 15.
- 2.3 All these imports will be made through courier mode just in time and there will not be any warehousing most of the time.
- 2.4 Querist will discharge applicable customs duty and IGST and claim reimbursement with the service provider of the manufacturer based in Malaysia, with their agreed service charge.
- 2.5 After customs clearance, querist will also provide transportation services for delivery of the drives to the end customers premises.

3. Query :

In connection with the above, querist wants clarifications on the following.

- 3.1 Will there be any violation if multiple samples are delivered to the same end customer Individual or any entity?
- 3.2 Is this business model in compliance with Customs and FEMA Regulations, though querist signs agreement with the manufacturer with certain terms and conditions, such as, to meet statutory compliance of Customs, FEMA, GST etc. including support to the querist in case any clarifications sought by Customs/GST on Price, Technical write up etc.

...2



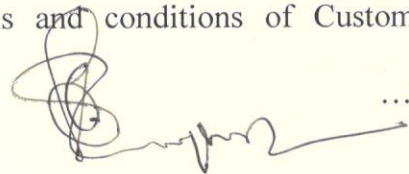
- 3.3 Would the value and frequency of imports raise any doubts/ misinterpretation by Customs / RBI authorities?
- 3.4 What should be the documentation required?
- 3.5 What should be the declaration in the Commercial Invoice while exporting to the querist Free Samples and also process to be followed at the time of customs clearance?
- 3.6 What should be the nomenclature in the commercial invoice for Bill to/ship to importer on record and the Inco- terms.
- 3.7 Whether the querist should pay duty/GST on local transportation and then claim reimbursement of these charges from the foreign supplier.
- 3.8 Can the bill to address and ship to address to the end customer be specified in the commercial invoice so that the goods can be directly delivered to the end customer to save time.
- 3.9 What will be the implication under EPRA.

4. Opinion :

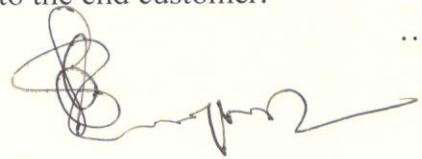
- 4.1 As per the Foreign Trade Policy bona fide samples can be imported free of charge. **What is a bona fide sample will depend upon the facts of each case.** Para.2.65 of the Handbook of procedures for states the following regarding 'Import of Samples'.

"2.65 Import of Samples

- (a) No Authorisation shall be required for Import of *bona- fide* technical and trade samples of items restricted in ITC (HS) except vegetable seeds, bees and new drugs. Samples of tea not exceeding Rs.2000 (CIF) in one consignment shall be allowed without an Authorisation by any person connected with Tea industry.
- (b) Duty free import of samples up to Rs.3,00,000 for all exporters shall be allowed as per terms and conditions of Customs Notification."



- 4.2 Therefore, if samples are repeatedly sent to the same entity or person, it can give room for reasonable doubts by the authorities concerned which can lead to detailed verification or investigation. The import should be really as sample and not for actual use.
- 4.3 Also it may be noted that the details / specification of the electronic items to be imported are provided except a generic statement that storage devices are being imported. Depending upon the type and specification of the products it has to be ensured whether they come under compulsory registration for import of electronic goods. It is presumed that all these storage drives are new and not used.
- 4.4 It is necessary that in the import documents it is indicated as 'free supply' and the customs may like to verify the correctness of the value declared. This can lead to delays in clearance of the goods and also possible enhancements where the customs feel that the value declared is low. Therefore, with each import it may be useful to take full specification of the product from the supplier along with details of prevailing market price for the purpose of payment of duty. The charges to be paid to the querist for the service being rendered can be mentioned in a separate invoice as that supply of service will be under IGST provisions and attract tax, as applicable.
- 4.5 Since these will be free supplies, the nomenclature in the invoice should be "free sample". Value for customs purposes can be indicated with the confirmation that it represents the fair market price for the sample supplied. There will not be any payment terms.
- 4.6 the querist need to pay import duties on these are samples as applicable. For local transportation GST, if any, needs to be paid by the querist under reverse charge. Since it is a free supply to the end customer the amounts incurred as expenses/reimbursables can be claimed from the supplier abroad
- 4.7 Since, at the time of import, documents are to be filed with customs for completion of customs formalities and clearance of the goods upon payment of duty it will be advisable to have only one address as importer. In the import documents delivery address to a third party is not required. If the same is mentioned the customs can raise the issue of 'beneficial owners' and hold them as importers in terms of the definitions contained in the Customs Act for the expression "importer". After clearance of the goods from customs the querist to can effect the supply to the end customer.



- 4.8 It is presumed that the reference to EPRA is to the Electronic Product Recycling Association. It is stated, when clarifications were sought orally, that the samples to be imported will be **new and not used**. After their clearance they will be supplied to the end customer. Under such circumstances provisions regarding E waste or their recycling will not apply to the querist.

A handwritten signature in black ink, appearing to be 'S. Murugappan', written in a cursive style.

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.