

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY, B.COM., B.L. (HONS.),
G.GAUTHAM RAM VITTAL, L.L.B.

CONSULTANTS:

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

OPINION

1. Querist :

M/s. Rolex Logistics Pvt. Ltd.,
No.85, 1st Floor, 5th Main, 1st Cross,
Domlur 2nd Stage,
Bangalore 560 071.

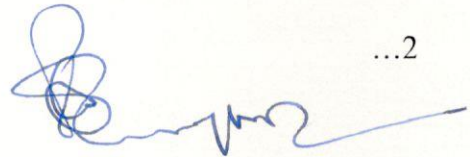
2. Facts :

- 2.1 CISCO Systems International BV, Netherlands is reported to have signed an LoA with the querist for providing post sale part support to their customers in India during warranty and service contract period.
- 2.2 CISCO Systems International BV exports spares to the querist free of cost and these goods are moved from Mumbai Airport to M/s.Arshya Logistics Services Ltd. (ALSL), in FTWZ, under transshipment BoE. ALSL hold the stock on behalf of CISCO in capacity of a Unit Holder on behalf of the querist. As and when spares are required for stocking at the querist's warehouse in DTA, the required spares are cherry picked and moved to the warehouse in DTA after discharging applicable duty for further delivery to end customers to replace a defective spare, free of cost to provide support during warranty and service contract period.
- 2.3 CISCO Systems International BV wants the querist to re-export the spares in FTWZ back to them free of cost as the imports were made by the querist free of cost. The title of the spares in FTWZ continue to be with CISCO BV and all the CI were billed to M/s.Arshya Logistics Services Ltd. (ALSL) on behalf of the querist and shipped to M/s.Arshya Logistics Services Ltd. (ALSL) on behalf of the querist.
- 2.4 Scanned copy of import documents into FTWZ were made available for reference.

3. Query :

- 3.1 In this regard, the querist wants to know the provisions in FEMA/RBI guidelines under which these spares in FTWZ can be re-exported to CISCO BV without having to obtain guaranteed remittance waiver from their AD, as the stocked spares in FTWZ were not cleared to DTA at all.

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3.2 It was subsequently further clarified by the querist that the bill to and ship to information provided by them earlier are rare cases. Otherwise, the norm is, Bill to M/s.CISCO Systems International BV, Amsterdam, Netherland and ship to M/s.Arshya Logistics Services Ltd. (ALSL) on behalf of the querist. M/s.Arshya Logistics Services Ltd. (ALSL) is the unit holder in FTWZ for CISCO BV on behalf of the querist.

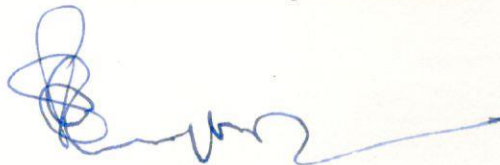
4. Opinion :

4.1 As per Master Direction on Export of Goods and Services bearing No.16/2015-16 dated 01.01.2016, as amended, it is obligatory on the part of any exporter to realize and repatriate the full value of goods exported within a stipulated period from the date of export. This includes exports from Special Economic Zones also. If there are no sale proceeds to be repatriated for specific reasons, then, EDF waiver has to be granted by the Reserve Bank through the authorised dealer. As per para.C1 in the above directions, export of goods not involving any foreign exchange transaction directly or indirectly requires the waiver of EDF procedure from the Reserve Bank.

4.2 In the present case, it is stated that CISCO Systems are sending these goods free of charge for providing warranty services. Once it is indicated in the import documents that these are free supplies, then, it becomes clear that CISCO Systems no more can claim ownership of these goods. As a result, when such free supplies are to be re-exported to CISCO Systems when they have not been utilised in India after clearance from Customs, still as per RBI regulations, waiver is required to be obtained.

4.3 In a situation where the querist or M/s.Arshya Logistics Services Ltd. functions as "importer on record" and CISCO keeps the ownership of the goods, still at the time of their re-export when they remain uncleared from the Free Trade Zone, the requirement of waiver continues. Further, it is to be noted that in such a case where CISCO Systems retains the ownership, at the time of filing home consumption bill for clearance of the warranty components for delivery to a customer, then, it becomes necessary to obtain fresh invoices from CISCO Systems as "free supply" to ensure that in respect of such home consumption bills, there are no remittances involved and there is no follow up by RBI.

4.4 It may be noted that in respect of unsold rough diamonds, there is a specific provision in the Master Direction for re-export without EDF formality. The provisions contained in para C.5 in this connection are reproduced below.



“C.5 Re-export of unsold rough diamonds from Special Notified Zone of Customs without Export Declaration Form (EDF) formality

- (i) **In order to facilitate re-export of unsold rough diamonds imported on free of cost basis at SNZ, it is clarified that the unsold rough diamonds, when re-exported from the SNZ (being an area within the Customs) without entering the Domestic Tariff Area (DTA), do not require any EDF formality.**
- (ii) Entry of consignment containing different lots of rough diamonds into the SNZ should be accompanied by a declaration of notional value by way of an invoice and a packing list indicating the free cost nature of the consignment. Under no circumstance, entry of such rough diamonds is permitted into DTA.
- (iii) For the lot/lots cleared at the Precious Cargo Customs Clearance Centre, Mumbai, Bill of Entry shall be filed by the buyer. AD bank may permit such import payments after being satisfied with the *bona fides* of the transaction. Further, AD bank shall also maintain a record of such transactions.”

4.5 From the above, it will be clear that in respect of the goods under reference, there is no specific provision like the one applicable for rough diamonds which will permit re-export without going through the EDF waiver formalities.



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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.