

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

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

M.S.HARSHA PRABHU, L.L.M.

CONSULTANTS:

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

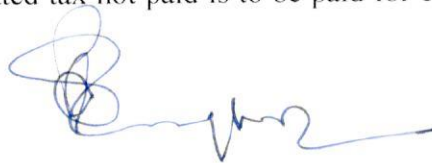
OPINION

1. QUERIST:

M/s. Mando Automotive India Pvt. Ltd.,
Plot No.S-1A & S-5, SIPCOT Industrial park,
Vengadu Village, Pillaipakkam,
Sriperumbudur Taluk – 602 105.

2. FACTS:

- 2.1 The querist is supplying automobile components based on CEPS Technology. Tata Motors is one of their customers for buying the parts based on the above technology and in this connection, Tata Motors wanted their vehicles, using the technology mentioned above, to be tested under various climatic and driving conditions.
- 2.2 It is reported by the querist that CEPS technology and advanced driving assistance features are supplied to them by their principals in Korea and further, advanced test facilities are not available in India. Under such circumstances, the vehicles sent by Tata Motors for test purposes were sent to Korea on 'no-charge' basis for the limited purpose of carrying out tests and then return them to India. It is reported that two such vehicles were sent and after completion of testing, returned by their principals from Korea to India. These vehicles upon re-import were cleared by the querist by availing complete duty exemption in terms of Notification 45/2017-Customs dated 30.6.2017, as amended. The duty exemption was availed in terms of Sl.No.5 of the table attached to the above notification.
- 2.3 It is also noticed that initially Tata Motors has sent these vehicles to the querist in terms of a delivery challan, as provided for in Rule 55(1)(c) of CGST Rules 2017 which is applicable to transportation of goods for reasons "other than by way of supply". It is also noticed that subsequent to receipt of these vehicles by the querist, the querist has exported, in their name, these vehicles without payment of any IGST in terms of the general LUT executed by them with customs for export purposes without payment of GST / IGST.
- 2.4 It is noticed that subsequent to clearance of these vehicles without payment of any duty, customs department has sent a consultative letter asking the querist to pay applicable IGST on the ground that the goods were initially exported without payment of IGST and in terms of Sl.No.1(d) of the table attached to Notification 45/2017-Customs mentioned above, when goods are exported under bond without payment of integrated tax, then, at the time of re-import the amount of integrated tax not paid is to be paid for clearing the goods from customs.



A-2, Srivatsam, 58, Thirumalai Pillai Road, T.Nagar, Chennai – 600 017.

Email: smurugappan53@yahoo.com

Website: www.smurugappan.com

Phone: 044-28340431

3. **QUERY:**

Querist has informed that goods were exported to Korea on returnable basis and no foreign exchange is involved and that the vehicles were sent only for testing purposes and that Tata Motors have not despatched these goods as a "supply" to them. In this background, the querist seeks to know whether payment of any GST can be legally avoided. They also would like to know that, in case, GST / IGST is paid, whether they can take input tax credit. Since these transactions are likely to be recurring in nature, the querist would like to have a solution on this.

4. **OPINION:**

- 4.1 From the information and documents provided, it is clear that Tata Motors have despatched the vehicles to the querist under cover of a delivery challan in terms of Rule 55(1)(c) of CGST Rules 2017. Since tests have to be carried out abroad it is noticed that the querist has, indeed, despatched these vehicles by way of export to their Korean principals on the strength of LUT without payment of applicable IGST. It is to be noted that any export can be made without payment of applicable IGST, subject to execution of LUT. When the goods exported as above are re-imported, then, applicable customs duty, including IGST will be payable in terms of the provisions of Customs Act 1962 as well as Customs Tariff Act 1975 irrespective of the fact that the re-import is by way of any supply or sale or otherwise. Notification 45/2017-Customs referred to above refers to different situations where duty will be payable or otherwise, upon re-import of goods exported earlier. In a case where goods were exported without payment of IGST, then, upon re-import the amount of IGST which otherwise, ought to have been paid will be payable for clearing the goods from customs. To this extent, there is no option open to the querist to legally avoid payment of IGST. It is true that the vehicles were sent by Tata Motors only for testing purposes. However, because the goods were exported out of India, the question of payment of IGST has arisen. Otherwise, upon carrying out tests within India, the querist also could have returned the vehicles to Tata Motors in terms of the very same rule under which the vehicles were received by them without payment of GST / IGST.
- 4.2 It is to be noted that the IGST that is to be paid upon re-import is permissible as input tax credit in terms of the relevant sections of CGST Act / IGST Act. In this connection, the provisions contained in Section 16(1) of CGST Act 2017 which read as mentioned below may be seen.

"(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person."



- 4.3 But, unfortunately, in the present case, the querist will not be in a position to avail the input tax credit as the initial transportation of the cars from Tata Motors to the querist is not by way of “supply” but by way of a delivery challan as “other than supply”. There is no consideration involved in the transportation of the cars sent to the querist. Further, the querist is not the owner of the cars under reference. Under such circumstances, though IGST is payable in terms of the relevant customs notification at the time of import, its availment and utilisation as credit is not possible in the present case as even subsequent to payment of IGST, the querist cannot transport the cars under reference as supplies since there is no consideration involved. It will become too complex if Tata Motors are to treat the initial transportation as supply and discharge tax etc. at this juncture.
- 4.4 Had the vehicles been exported in the name of Tata Motors, who are the owners of the vehicles, then, it would have enabled Tata Motors themselves to clear the goods from customs upon payment of IGST and utilise the credit availed for subsequent supply of the vehicles to their dealers / customers.
- 4.5 In respect of future transactions, the querist can plan the shipments in such a way that the vehicles are exported for carrying out tests in the name of the vehicle owners and then the subsequent clearance at the time of re-import is also done by the owners of the vehicles. This will enable them to avail the IGST paid and use it for subsequent supply as and when the vehicles are sold by them.
- 4.6 It also may be noted that at the time of export of these vehicles for tests, the car manufacturers / owners will have the option of paying IGST and not claiming refund, so that the subsequent import is without any payment of IGST. Alternatively, the vehicles can be exported under LUT by them and upon re-import, IGST can be paid, which can be taken as credit and utilised for subsequent supply to their dealers / customers.



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.