

# 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. Super Auto Forge Private Limited,  
B3, Phase II, Zone A, MEPZ-SEZ,  
Tambaram,  
Chennai – 600 045.

**2. FACTS:**

Querist intends to remove machinery procured for use in their SEZ unit in Tambaram upon payment of applicable duties. It is stated that in respect of domestically procured and used capital goods from SEZ unit to DTA unit, on sale basis, customs officials are demanding the following duties:

Basic Customs Duty @ 7.50%;  
Cess on Basic Duty @ 10%  
IGST on (Value + BCD + Cess on BCD) @ 18%

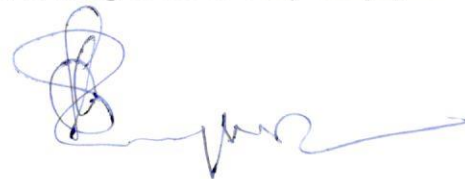
**3. QUERY:**

Querist would like to have clarifications on the following.

- 3.1 At the time of removal of machinery, the querist wants to surrender the applicable duties (on depreciated value) which was suffered at the time of procurement of subject machinery.
- 3.2 If the machinery is imported machinery, all the duties, viz., BCD, Cess on BCD and IGST need to be paid by the querist.
- 3.3 In case, if it is only domestically procured, whether IGST only needs to be paid by the querist.

**4. OPINION:**

- 4.1 It is to be noted that as per SEZ Act 2005 and Rules made thereof, any supplies made to an SEZ unit / SEZ Developer are treated as 'exports' and export benefits are available. As per the FTP and Customs Act, incentives are admissible for such supplies. Similarly, in respect of clearances from SEZ into Domestic Tariff Area, such clearances are treated as 'imports' and all provisions including Foreign Trade Policy restrictions for such clearances are applied. Consequently, the procedure envisaged for such clearances is filing of bill of entry and payment of applicable import duties.



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- 4.2 In this connection, querist's attention is invited to Section 30 of Special Economic Zone Act aforesaid which reads as follows:

***"30. Domestic clearance by Units***

*Subject to the conditions specified in the rules made by the Central Government in this behalf,—*

- (a) *any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and*
- (b) *the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty."*

- 4.3 A perusal of the above section will clearly indicate that the duties payable on such goods will be customs duties that are applicable when such goods are actually imported. Thus, this is a deemed import concept whereby such clearances are treated as equal to imports and all applicable customs duties are charged. The goods referred to here include all goods i.e., inputs, manufactured/finished goods, scrap, remnants of inputs imported/domestically procured, machinery imported/domestically procured etc.

- 4.4 The querist's attention also is invited to Rule 47 of Special Economic Zone Rules which reads as follows:

***"47. Sales in Domestic Tariff Area***

*(1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely:—*

- (a) *Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:*

*PROVIDED that goods imported or procured from the Domestic Tariff Area and sold as such without being subjected to any manufacturing process shall be subject to the provisions of the Foreign Trade Policy as applicable to import of similar goods into India.*

(b) Domestic Tariff Area sale under sub-rule (1) of rejects or scrap or waste or remnants arising during the manufacturing process or in connection therewith by the Unit shall not be subject to the provisions of the Import Trade Control (Harmonized System) of Classification of Export and Import Items:

*PROVIDED that the Central Government may notify restrictions, as it deems fit on all or any class of such goods mentioned under this clause."*

4.5 Further, attention of the querist is invited to the procedure for sale in Domestic Tariff Area as prescribed in Rule 48 of the above rules. Sub-rules (1) to (3) of Rule 48 read as follows:

**"48. Procedure for Sale in Domestic Tariff Area**

(1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or services namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers:

*PROVIDED that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.*

(2) Valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India:

[xxx]

(3) Where goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods and shall be subject to such procedure and conditions as applicable in the case of normal re-import of goods from outside India:

*PROVIDED that in the case where such goods are supplied back to the Domestic Tariff Area, as it is, and where the import duty on such goods is "Nil" and while procurement of such goods no export benefits were allowed against such goods, the Unit may be allowed to supply back such goods to Domestic Tariff Area on the basis of invoice only and filing of Bill of Entry in such cases shall not be required."*

- 4.6 Sub-rule (3) of Rule 48 will make it clear that the domestically procured goods by the SEZ at an earlier date when cleared into the Domestic Tariff Area subsequently, will be treated as 're-imported' goods and will be subject to all procedures and conditions, as applicable in the case of normal re-import of goods from outside India.
- 4.7 Apart from the above, Rule 49 also prescribes abatement of duties in certain circumstances and in respect of capital goods that are being used, depreciation can be availed by the unit as prescribed in that rule.
- 4.8 From the above, it will be obvious that duties, as applicable to imported goods need to be paid when domestically procured goods are removed from SEZ unit into DTA.



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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.