

# 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. ControlCare Automation Pvt. Ltd.,  
Plot No.41 & 42, VGP Industrial Complex,  
Chettipedu Village, Thandalam (PO),  
Sriperumbudur (TK),  
Kanchipuram (Dist) – 602 105.

2. **FACTS:**


2.1 Querist is a manufacturer of electrical and electronic equipment for industrial applications. They are also exporting these goods to various countries and for such exports, realise foreign exchange.

2.2 In a particular case, M/s.JSW, Sriperumbudur is procuring complete plant from DaeHwa Industrial Machinery Co. Ltd., which is a Korean company. The above company has complete process know-how for big steel plants. In turn, DaeHwa Industrial Machinery Co. Ltd. has placed orders on the querist for supply of the electrical equipment portion for the above plant. They have placed a purchase order on the querist in US\$ and payment also will be made by them in US\$. It is further reported by the querist that DaeHwa Industrial Machinery Co. Ltd. will establish a unit in Free Trade Warehousing Zone at Chennai and the goods manufactured by the querist will be supplied to the unit in Free Trade Warehousing Zone and from there, the goods will be ultimately supplied to M/s.JSW by DaeHwa Industrial Machinery Co. Ltd. The goods will not physically go out of India. The querist has indicated that the realisation of the cost in US\$ is not a problem which can be done by them on the basis of the invoice to the Free Trade Warehousing Zone unit.

3. **QUERY:**

In the above context, the querist has indicated that they are under the impression that these will be deemed exports and 0.1% IGST is to be paid for supply to the Free Trade Warehousing Zone unit. In this context, the querist wants to know the applicable GST/IGST for this supply, requirement regarding any clearance from authorities and applicability of Form A / Form B for this supply. The querist also has attached a draft commercial invoice for confirmation of the format.

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#### 4. OPINION:

- 4.1 Legally, FTWZ is within the scope of SEZ and SEZ Act and Rules will be applicable for such zones. The only difference is FTWZ units exclusively deal in trading activities, whereas in SEZ units manufacturing / processing activity takes place. Having said that, it is to be noted that supplies made to SEZ units or SEZ developer including Free Trade Warehousing Zone units/developers are not treated as “deemed exports” for the purpose of GST law. Notification 48/2017-Central Tax dated 18.10.2017 specifies the categories of supplies that will be treated as deemed exports. A copy of the above notification is attached to this opinion. From the above, it can be seen that supplies made to SEZ units/developers including FTWZ units/developers are not treated as deemed exports under GST provisions.
- 4.2 Accordingly, the forms such as Form A related to deemed export supplies need not be confused with the present supply to FTWZ unit.
- 4.3 It is to be noted that supplies to SEZ unit/developer is treated as ‘zero rated supply’ under IGST Act 2017. In this regard, sub-sections (1), (2) and (3) of Section 16 of the IGST Act mentioned above, which are extracted below, may be seen.

**“SECTION 16. Zero rated supply.** — (1) “zero rated supply” means any of the following supplies of goods or services or both, namely :-

- (a) export of goods or services or both; or
- (b) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:


**Provided** that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.”



- 4.4 As such, there is no need to pay 0.1% tax as assumed by the querist. For supplying the goods to the SEZ unit, following three options are available.
- i. Supply upon payment of IGST,
  - ii. Supply against bond and
  - iii. Supply against LUT.

In case, IGST is paid, then, refund of the same can be taken as per the applicable provisions/rules. It is also to be noted that there is no bar for availing input tax credit for zero rated supplies.

- 4.5 On the other hand, if bond or LUT is given, clearance can be effected without payment of any tax. Which will be the best option, can be decided by the querist.
- 4.6 As supplies to SEZ units are treated as 'exports' under SEZ Act, the querist should effect the supplies under 'bill of export' and 'export invoice'. The basic details that are required to be contained in an export invoice need to be mentioned. As, basically invoice is a commercial document there is no statutory format prescribed. Once the goods are received in the SEZ / FTWZ, receipt is to be acknowledged by the designated officer there, to complete the process of supply. The procedure that is applicable for export under LUT/bond or upon payment of IGST is to be followed by the querist. The only difference will be in respect of physical exports shipping bill will be filed whereas in the present case, it will be 'bill of export'.



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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.