

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

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CONSULTANTS:

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

OPINION

1. QUERIST:

M/s. Sea Hydrosystems India Pvt. Ltd.,
B-76, SIPCOT Industrial Park,
4th Main Road, Irrungattukottai,
Sriperumbudur – 602 117.

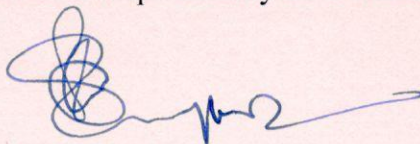
2. FACTS:

- 2.1 The querist, a 100% EOU, is a manufacturer of Hydraulic Cylinders and is a 12-year-old company.
- 2.2 **Re-Import of Cylinders:** In order to grow their business in the USA, they have exported a few new design cylinders to their customer and the querist has realised the payment. There are few cylinders that have been exported in 2017 and few in 2021 which remain unsold at the customer location (approximate value USD 40000) and have no scope for sale in the near future. The querist intends to bring them back, re-work, modify, re-export to the same customer or alternatively use it for other purposes. These cylinders were exported without payment of IGST. The querist also has availed MEIS on a few parts.
- 2.3 **Deemed Export:** Querist is supplying to a Domestic Company (Merchant Exporter) by paying tax at 0.1% GST. Merchant Exporter has a valid IE Code and are registered under GST. At the time of export, the Merchant Exporter is filing shipping bill showing the querist as 'Manufacturer'. A copy of the shipping bill (edited with no prices displayed) is being shared with the querist by the Merchant Exporter. Merchant Exporter is claiming drawbacks and RoDTEP on the supplies made by the querist.

3. QUERY:

In the above background, the querist wants clarification on the following.

- 3.1 How the cylinders remaining unsold in USA can be re-imported?
- 3.2 Whether the drawbacks and RoDTEP claimed by the Merchant Exporter on the supplies made by the querist is correct?
- 3.3 What is the querist's responsibility as a Manufacturer in Deemed Export Supplies?



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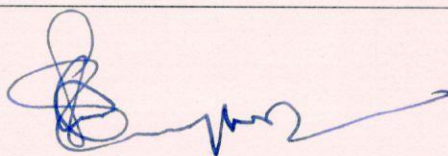
3.4 What are the documents to be maintained in the records of the querist for Deemed Exports?

4. OPINION:

4.1 In respect of re-import of goods, there are a few notifications that are applicable depending upon the period of exports. After introduction of GST, in respect of exports made on or after 01.07.2017, Notification No.45/2017-Customs dated 30.06.2017 was introduced. This notification covers several categories of exports and the conditions applicable in respect of re-imports. However, in terms of a proviso to the above notification goods exported by a 100% Export Oriented Unit or a unit in a Free Trade Zone will not be covered by this notification. Or in other words, the benefits available in terms of Notification 45/2017 cannot be claimed when exports and subsequent re-imports are made by an Export Oriented unit.

4.2 It may be noted that Notification No.52/2003-Customs dated 31.03.2003, as amended, which permits duty free import of capital goods, consumables, components and various other items by a 100% Export Oriented unit also provides for re-import of goods originally exported by the unit. In this connection, attention is invited to Sl.Nos.14 and 15 of Annexure-I to the above notification. These entries read as follows:

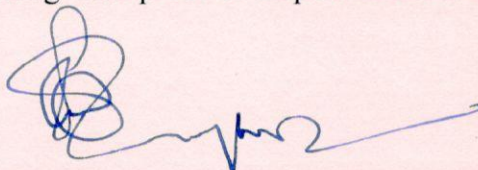
Sr. No.	Description of Goods
14.	(i) Goods re-imported (other than specified in Annexure-VII to this notification) within three years from the date of exportation, for repair or reconditioning. (ii) Goods re-imported, as specified in Annexure-VII to this notification, within seven years from the date of exportation, for repair or reconditioning. Provided that such re-imported goods mentioned at (i) and (ii) above are re-exported within one year of the date of re-importation.
15.	Goods re-imported within one year from the date of exportation from the unit due to failure of the foreign buyer to take delivery.
	Explanation. - For removal of doubts, it is clarified that the goods for which there is failure of the foreign buyer to take delivery shall include goods rejected by the foreign buyer.



- 4.3 Hydraulic cylinders are not covered in Annexure-VII of the above notification and as such, any re-import has to take place within a period of three years from the date of exportation for repair / reconditioning, subject to the condition that these goods are re-exported within one year from the date of re-importation. In terms of Sl.No.15, goods can be re-imported within a period of one year from the date of exportation where the foreign buyer fails to take delivery, which situation will include rejects by foreign buyer also. In the present case, it is stated that these items have remained unsold in the local market abroad. Therefore, in respect of exports made within a period of three years the stock remaining can be re-imported without payment of any duty, subject to the condition that they are re-exported within one year. In case, this condition cannot be complied with and in respect of other goods which are beyond the time limit stipulated in the above notification, then there is no scope to re-import them without payment of duty.
- 4.4 As per the provisions of Customs Act, re-import of goods will be given the same treatment as import of goods and therefore, in the absence of any exemptions, the re-import will be treated as any other import and will be subjected to all applicable Customs duties including IGST and Social Welfare Cess. It also may be noted that however there will not be any condition requiring reexport of these goods in respect of such cases where full duties are paid upon re-import.

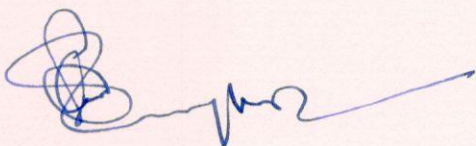
In respect of re-import of cylinders where MEIS benefit has been already claimed and given by the DGFT, it becomes necessary that the proportionate incentive to the extent the goods have been re-imported needs to be paid back to the department.

- 4.5 With regard to supply of goods to merchant exporters upon payment of 0.1% IGST, querist's attention is invited to Notification No.41/2017-Integrated Tax (Rate) dated 23.10.2017. These supplies are treated as exports by merchant exporter and not as 'deemed exports' as envisaged in the Foreign Trade Policy. In terms of the above notification, it is sufficient that 0.1% IGST is paid by the supplier of these goods. There are specific conditions attached to such supplies which need to be complied with by the goods supplier as well as the third-party exporter (merchant exporter).
- 4.6 As far as the querist is concerned, as supplier, they are required to supply the goods to the recipient / merchant exporter on a tax invoice. Further, the goods have to be moved from the querist's premises directly to the port/airport/ICD. Subsequent to the exports to be made by the merchant exporter, the merchant exporter is required to provide copy of the shipping bill containing the details of GST number, Tax invoice raised by the supplier (querist) along with proof of Export General Manifest (EGM) of



the goods to the supplier (querist) as well as the jurisdictional tax officer. This will ensure that the goods supplied by the querist were actually exported by the merchant exporter and evidence in that regard is produced to the department. Apart from the above, there will not be any impact on the querist as goods supplier for merchant exports. It also may be noted that any claim for export incentives made by the merchant exporter will be his sole responsibility.

- 4.7 It is seen from the copy of the shipping bill forwarded by the querist that though the export schemes are referred to in the shipping bill, in respect of drawback and RODTEP there are no specific amounts claimed or indicated against the relevant columns and therefore, it appears that no claims were made by the exporter in that regard.



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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.