

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

J. RAGINI, B.A., B.L.,
K.NANCY, B.COM., B.L. (HONS.),
M.S.HARSHA PRABHU, L.L.M.
K.VIGNESHKUMAR, B.Sc., L.L.B.

CONSULTANTS:

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

OPINION

1. **QUERIST:**

M/s. 3F Industries Ltd.,
"Aadhaarshila",
No.36, C.P. Ramasamy Road,
Alwarpet,
Chennai – 600 018.

2. **FACTS:**

2.1 The querist has exported Distilled Fatty Acids viz. Palmitic Acid 85% (minimum) to a buyer in Italy. There were 3 consignments exported covering 312 MTs. during December 2021. It is also reported that these were exported under Advance Authorization 0410167101 dated 25.09.2020. For exporting these goods, in terms of the subject advance authorization, the querist is permitted to import Palm Sterine, duty free.

2.2 It is reported by the querist that after receipt of 312 MTs. of Palmitic Acid, the buyer has rejected a quantity of 184.8 MTs. and as such, the querist proposes to bring back the above quantity.

3. **QUERY:**

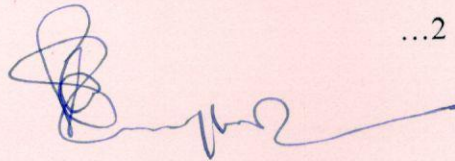
In the above context, the querist wants to know the procedure to be followed and the implications of re-import.

4. **OPINION:**

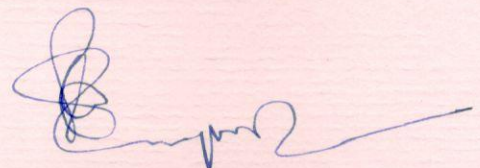
4.1 Re-import of goods exported under advance authorization are governed by Notification 45/2017-Customs dated 30.06.2017, as amended. A copy of this notification is attached to this opinion.

4.2 During the discussions it was reported by the querist that for the goods being exported under advance authorization, no IGST was paid and the goods were exported under bond.

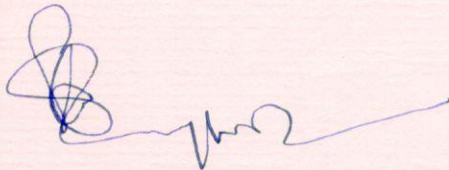
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- 4.3 Now, in terms of the notification mentioned above, the querist can bring back the goods, subject to complying with certain conditions as stipulated in the said notification. First, in respect of exports made under advance authorization, the re-import should take place within a period of one year from the date of exportation. There is a provision to get this period extended by one more year by the Principal Commissioner of Customs or Commissioner of Customs on sufficient cause being shown by the querist for not bringing back the goods within the period of one year. In the present case, it is noticed that exports have taken place during December 2021 and therefore, the querist can make arrangements to bring back the goods that have been rejected within a period of one year i.e. by December 2022 (each shipment will have a different expiry date in December). In terms of Sl.No.1(d) and Sl.No.1(e) the querist is required to pay the applicable IGST and also the quantum of exports to the extent of 184.8 MTs. is to be de-logged from the advance authorization. It is also essential that the subject advance authorization has not been redeemed or closed. During the discussions it was pointed out that the subject advance authorization is still open and further there is a possibility to get the export obligation period extended beyond September 2022 (which is the original expiry period).
- 4.4 It is also a condition in the notification [proviso (f)] that the exemption availed in respect of the imported materials used in the manufacture of goods that are re-imported is also to be paid in addition to the amount of duty/taxes mentioned above. Or in other words, apart from payment of IGST for the finished goods that are being re-imported, the applicable customs duty exemption availed at the time of import of the inputs needed for use in the manufacture of these goods initially exported will not be available and consequently, duty on them also is to be paid.
- 4.5 Before clearance of the goods it is also required that the querist intimates the details of the consignments to be imported to the Assistant Commissioner / Deputy Commissioner having jurisdiction over the factory where the goods were manufactured and also the licensing authority who granted the advance authorization regarding the fact of re-importation and the dated acknowledgements obtained in this regard are to be submitted to customs at the time of clearance.
- 4.6 The querist also has an option of clearing the goods without payment of integrated tax and compensation cess, as applicable and on the basis of a transit bond to be given to the customs authorities at the port of importation and such bond will be cancelled upon production of certificate issued by the jurisdictional customs authority about receipt of the re-imported goods into their factory. In other words, if the goods come back to the factory directly from the port, then the requirement of payment of IGST on these goods exported will not arise.



- 4.7 One of the essential conditions to be complied with to obtain benefit under this notification is identification of the goods that are re-imported. With reference to the exported goods since these are in liquid form, the only way of identification can be through the original packing and if the goods are in original packing made at the time of their export and if that can be identified with reference to export documents at the time of re-import then, the customs authorities may accept establishment of identity. In addition to this, it may be necessary for the querist to obtain confirmation from the buyers to the effect that they are returning the goods to the extent of 184.8 MTs. from the consignments which they have received and they can give reference to the bills of lading and export invoices in this regard. With the supplier's confirmation as well as identity with reference to the original packing, the customs authorities may be able to grant benefit of assessment in terms of Notification 45/2017-Customs mentioned above.



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Attached: as above.

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.