**OPINION**

**1.** **QUERIST:**

M/s. Surana & Surana, Chennai on behalf of M/s.Nippon Steel Chemical & Material India Pvt. Ltd., Sriperumbudur.

**2. FACTS:**

2.1 Nippon Steel is engaged in the business of manufacture of catalytic converters in India and is importing the raw material under Free Trade Agreement with Japan. They are not paying any customs duty on the import shipments (except IGST). The CTH code of their imports is 72202090.

2.2 Further, Nippon Steel manufactures their finished goods with a combination of the imported raw material and locally purchased raw materials. These finished goods are exported by them. The HSN code applicable for the exported finished goods is 84213920.

2.3 Nippon Steel claims duty drawback for the goods exported by it as per the rates specified in the Drawback Schedule though basic customs duty is not paid by it on the material imported. Querist has made available copies of relevant documents of Nippon Steel in this regard.

**3. QUERY:**

In the above context, querist wants to know whether Nippon Steel is eligible to claim duty drawback at the time of export of the finished goods.

(**Note:** The company has been claiming duty drawback in the past and the same has been approved by the customs department without any queries).

**4. OPINION:**

4.1 In respect of goods manufactured and exported out of India, drawback of duties paid on the inputs used as well as packing materials utilised is available in terms of Section 75 of Customs Act 1962. In terms of the above section, Customs and Central Excise Duties Drawback Rules, 2017 have been notified and also notification prescribing different rates for various commodities exported has been issued.

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4.2 Rule 3(c) of the Customs and Central Excise Duties Drawback Rules, 2017 reads in part as follows:

*“(c) … … a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government :*

*Provided that where any goods are produced or manufactured from imported materials or excisable materials, on some of which only the duty chargeable thereon has been paid and not on the rest, or only a part of the duty chargeable has been paid; or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 (52 of 1962) and the rules made thereunder, or of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained”*

4.3 From the above rule it can be seen that where at the time of import, duties have not been paid or only partially paid, then the drawback admissible on the goods exported is to be reduced by taking into account the lesser duty paid.

4.4 It also may be seen that there are various export goods which are manufactured by using materials imported under advance authorisation. Goods are also exported from bonded warehouses and carrying on manufacturing activities in terms of Section 65 of Customs Act and also from Export Oriented Units as well as units from Special Economic Zone. In respect of these cases various types of duty concessions are available.

4.5 By taking into account the above and also the above Rule 3, Notification No.07/2020-Customs (N.T.) dated 28.01.2020 has been issued prescribing drawback rates for various commodities. A copy of this notification is attached as **Annexure-1** to this opinion.

4.6 The opening para of this notification reads as follows:

***“G.S.R. 55 (E). –****In exercise of the powers conferred by sub-section (2) of section 75 of the Customs Act, 1962 (52 of 1962) and sub-section (2) of section 37 of the Central Excise Act, 1944 (1 of 1944), read with rules 3 and 4 of the Customs and Central Excise Duties Drawback Rules, 2017 (hereinafter referred to as the said rules) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.95/2018-Customs (N.T.), dated the 6th December, 2018 published vide number G.S.R. 1180(E), dated the 6th December, 2018, except as respect to things done or omitted to be done before such supersession, the Central Government hereby determines the rates of drawback as specified in the Schedule given below (hereinafter referred to as the said Schedule) subject to the following notes and conditions, namely :-“*

From this it can be seen that the rates notified are by taking into account the provisions contained in Rules 3 and 4 of Customs and Central Excise Duties Drawback Rules, 2017 only. Under “**Notes and conditions**”, against Sl.No.9, various categories of goods are specified and as per the condition prescribed, the rates of drawback specified in the schedule will not be applicable to these goods. Or in other words, the drawback rates can be denied only in respect of goods specified against Condition No.9 and not to other goods.

4.7 Since Rule 3 of Drawback Rules has been taken into consideration for notifying these rates, in our opinion, it may not be possible to deny the benefit for the goods exported by the company unless they fall under the excluded categories specified in Condition No.9.

4.8 In this context, it also may be noted that there are several cases where in terms of different exemption notifications issued in terms of Section 25 of Customs Act 1962, either basic customs duty exemption in full or in part will be available. While deciding the exclusions as specified in Condition No.9, in our opinion, the government ought to have taken into account such duty exemptions also available in terms of Section 25 of Customs Act but consciously decided to exclude only cases which are specified under Condition No.9.

4.9 However from the documents forwarded, we find that the company has filed a drawback claim by quoting Sl.No.8421B. It may be noted that as on date there are no two rates of drawback in the drawback schedule and therefore, the marking of products with codes A and B has been dispensed with. As on date, the entry reads only as “8421”. The relevant extract is attached as **Annexure-2** to this opinion. This needs to be rectified by the company.

4.10 It is also noticed that the company has claimed, apart from drawback, RODTEP benefits for the very same goods. In the sample drawback shipping bill attached and forwarded to us for giving the opinion, it is noticed that drawback claimed is 67017.58 and RODTEP benefit claimed is Rs.50,263/- for the very same goods. The salient features of the scheme for RODTEP i.e., Remission of Duties and Taxes on Exported Products are specified in para 4.54 of the current Foreign Trade Policy. These are extracted and attached as **Annexure-3** to this opinion. From 4.54(ii) it may be noted that rebate under this scheme will not be available in respect of duties and taxes already exempted or remitted or credited. As per the definitions under Customs and Central Excise Duties Drawback Rules mentioned above, “drawback” [Rule 2(a)] is defined as mentioned below:

*(a) "drawback” in relation to any goods manufactured in India and exported, means the rebate of duty excluding integrated tax leviable under sub-section (7) and compensation cess leviable under sub-section (9) respectively of section 3 of the Customs Tariff Act, 1975 (51 of 1975) chargeable on any imported materials or excisable materials used in the manufacture of such goods;*

4.11 Thus, it may be noticed that the company has claimed drawback in respect of duties and taxes paid on the materials utilised in the production of export goods and at the same time, since RODTEP scheme also is for remission of duties and taxes with a broader scope and in the light of specific exclusion in para 4.54(ii), in our view, the company may not be entitled to claim both the benefits.

4.12 As per the expressions used in Drawback scheme as well as RODTEP scheme, RODTEP scheme also should cover duties and taxes paid on the inputs / materials used in the production of the export product, though its scope is much broader than the Drawback scheme as it is intended to compensate various levies which are incurred during manufacture of the goods like duty on purchase of electricity, municipal taxes, stamp duties on export documents, excise duty on fuel used in generation of electricity etc. It may be noted that the customs authorities are permitting both Drawback as well as RODTEP benefits without any objections. Even in the CBIC website under ‘frequently asked questions on RODTEP scheme’, the following answers are provided for the first two questions.

**Q. What is RoDTEP scheme?**

**Ans.** RoDTEP stands for the Remission of Duties or Taxes on Export Products Scheme. This scheme has been introduced by the Government of India by making amendments in the Foreign Trade Policy 2015-20 vide DGFT Notification No. 19/2015-20 dated 17.08.2021. The scheme has been introduced with an objective to neutralize the taxes and duties suffered on exported goods which are otherwise not credited or remitted or refunded in any manner and remain embedded in the export goods. This scheme provides for rebate of all hidden Central, State, and Local duties/taxes/levies on the goods exported which have not been refunded under any other existing scheme. This does not only include the direct cost incurred by the exporter but also the prior stage cumulative indirect taxes on goods. It is a WTO compliant Scheme and follows the global principle that the taxes/duties should not be exported; they should be either exempted or remitted to exporters, to make the goods competitive in the global market. The RoDTEP scheme has been made effective for the exports **from 1st January 2021**.

**Q. Which taxes are intended to be compensated to the exporters in RoDTEP Scheme?**

**Ans:** The scheme intends to compensate the duties/taxes/levies at the Central, State and Local level borne on the exported product including prior stage cumulative indirect taxes on goods and services used in the production and distribution of the exported product. Illustrative taxes would be as follows:

1. VAT and Excise duty on the fuel used in self-incurred transportation costs; on the fuel used in generation of electricity via power plants or DG Sets; on the fuel used in running of machineries/plant;

2. Electricity duty on purchase of electricity;

3. Mandi Tax/ Municipal Taxes/ Property Taxes;

4. Stamp duty on export documents; etc …….

4.13 In our view, however, it will be appropriate that the company obtains a categorical clarification from the department to the effect that the above two schemes are mutually exclusive to rule out any demands at a later date on the ground of double benefit.

**S. MURUGAPPAN**

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**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the queriest 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.