###### **BY E-MAIL / COURIER**

#### File No.271/2022 (General)

03.06.2023

M/s. Konica Minolta Business Solutions India Pvt. Ltd.,

10th Floor, Building 8, Tower C,

DLF Cyber City Phase II,

Gurgaon – 122 002, Haryana.

Attn.: Mr. Abhinav Thakur <abhinav.thakur@konicaminolta.com>

C.C.: <arun.ghosh@konicaminolta.com>

Dear Mr. Abhinav,

1. Please refer to your trailing mail.

2. With regard to software import, it is stated that your company will be importing these software items from overseas companies and that the software keys will be shared to you by e-mail by the suppliers. It is stated that the user has to download the software through internet and then it can be activated, once you supply the license key after invoicing the customer.

3. In the above transaction, it may be noted that there are two stages involved. One is import of the software and obtaining software key through online by you. For this, obviously there will be payment made to the foreign company by Konica (though it is not specifically indicated in the mail). The second stage is activation of this software involving actual supply of the software to the end customer. This is achieved by downloading of the software by the end user from the internet and getting it activated after the license keys details are intimated / supplied by you to the end user. For this transaction, Konica will be charging the end customer separately by raising an invoice.

4. As far as the first stage is concerned, it may be noted that there is no movement of goods, as such. There are several decisions holding that when software is imported or obtained in any media like CD/Cartridge then such supply is treated as “supply of goods” and the applicable HS code will be Heading “8523”. When supply of software is by online without involving any medium, under GST law, it is treated as a “service”. Under such circumstances, there is no need to file any bill of entry for import of goods, but for the foreign supplier’s invoice, Konica is required to make remittance by treating the supply as ‘supply of service’, and by paying applicable IGST.

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5. In terms of Schedule II to CGST Act 2017, development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property rights are treated as “services”. When such software is obtained from abroad, then, this will constitute ‘import of services’ as per Section 2(11) of IGST Act. Again, in terms of Section 7(4) of IGST Act 2017, supply of services imported into the territory of India shall be treated to be “supply of services” in the course of Inter-State trade or commerce and consequently IGST will be payable. When the services are covered within the scope of ‘import of services’, then, tax on the same is to be paid by the recipient of service i.e., Konica, in terms of Notification No.10/2017-IGST (Rate) dated 28.06.2017.

6. Thus, with regard to the first stage of import, Konica is required to pay applicable IGST (at present 18%) when invoices are raised / payments are made. The IGST paid under reverse charge on import will be available as input tax credit to Konica.

7. In the second stage, when software key is supplied to the local customer after invoicing by Konica, then, such a transaction also will be treated as ‘supply of services’ and depending upon the location of the end customer, applicable IGST or CGST on domestic supply of services is to be paid.

8. With regard to import of CCTVs as samples for testing, it is indicated by you that for the items sought to be imported, there is no BIS registration available as on date. In term of Ministry of Electronics and Information Technology Order No.S.O.1248(E) dated 18.03.2021, the registration requirement is exempted in respect of goods or articles that are meant for export and also to goods for which the Central Government has issued specific exemption letter based on reasons to be recorded in writing. Now, in terms of Ministry of Electronics and Information Technology Order No.S.O.2844(E) dated 01.07.2021, there is an exemption provided for highly specialized equipment from registration requirements. The order does not refer to any other exemptions.

9. In terms of a communication dated 18.12.2013 from the Ministry of Communications & Information Technology - Department of Electronics & Information Technology, addressed to Ms.Praveen Mahajan, Chairperson of CBEC, the Ministry referred to certain exemptions from the operation of the registration requirement and requested Customs to permit clearance of such categories by providing guidelines and clarifications in para 3 of the above communication. One category of items excluded from this registration requirement are models for testing/R&D/demonstration purposes. A copy of this communication is attached.

10. However, it may be noted that in terms of Notification No.50/2015-2020 dated 08.01.2019, DGFT has notified certain restrictions with regard to import of IT goods. A copy of this notification also is attached. As per this notification, the notified goods will be permitted import, subject to registration with BIS or a specific exemption letter from Ministry of Electronics and Information Technology for a particular consignment and as such, import of unregistered / non-compliant notified products as in CRO 2012, as amended, is “prohibited”.

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11. It is further stated that import consignments without valid registration with BIS shall be re-exported by the importer failing which Customs shall deform the goods and dispose them as scrap under intimation to MeitY.

12. In the light of the above notification, import of CCTVs as samples for testing without BIS registration will not be possible.

Regards,

S. Murugappan

Attached: as above.

sm/ss

**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.