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

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

11.08.2023

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. Arun Kumar Ghosh, Sr. General Manager - Logistics & Supply Chain Management - arun.ghosh@konicaminolta.com

C.C.: <abhinav.thakur@konicaminolta.com>

**Sub.: Exports to Nepal.**

Dear Mr. Arun,

1. This is with regard to your mails and also the discussions we had over phone on the above subject.

2. It is stated that printers, parts of printers, consumables etc. are to be supplied by the company from India to importers / trade partners in Nepal. The procedure proposed to be followed is indicated as mentioned below:

* Goods are imported into India from China
* They are cleared from customs upon payment of duty
* Such goods are held in stock in Konica’s godowns / warehouses

3. Out of these goods, exports to Nepal can be considered by adopting any one of the following procedures.

* Send the goods direct to Nepal and invoice to the Nepal importer / trade partner by road after customs clearance at the Indian border
* The second option is, send the shipment to Nepal directly but, however, payment from the importing partner / firm in Nepal will be sent to their trading partner / branch in a third country, for e.g., Singapore. In this option, it is shipment to Nepal but, billed to a third country for remittance of export proceeds.

-2-

4. In general, the following items are prohibited for import into Nepal.

* Products injurious to health:  a) narcotic drugs such as opium and morphine; and b) liquor containing more than 60 percent alcohol.
* Arms, ammunition, and explosives (except under government import license):  a) materials used in the production of arms and ammunition; b) guns and cartridges; c) caps other than those of paper; and d) arms, ammunition, and other explosives.
* Communications equipment:  wireless walkie-talkies and other similar audio communication equipment (except under import license of the Government of Nepal).
* Valuable metals and jewelry (except permitted under bag and baggage regulations).
* Beef and beef products (five-star hotels are allowed to import beef with a special license issued by the Department of Commerce).

Any other product as per notification of the Government of Nepal in the Nepal Gazette, published by the Department of Printing. Such notices can be obtained from the Department of Printing by making a request to the Director General at fax: 977-1-4228774.

5. In respect of items that are permitted import, generally import license is not required to be produced. Documents needed for customs clearance within Nepal will include commercial invoice raised by the supplier, a customs declaration form and certificate of origin, apart from other regulatory certifications depending upon the products imported.

6. It may be noted that India - Nepal have a bilateral treaty for trade and major part of import into Nepal is from India. However, in terms of the Revised Agreement of Co-operation between the Government of India and the Government of Nepal to Control Unauthorized Trade issued in October 2009, certain restrictions are envisaged. Article III of the above revised agreement reads as follows:

***Article III***

*Subject to such exception as may be mutually agreed upon, each Contracting Party shall prohibit re­-exports to the territory of the other Contracting Party of goods imported from third countries without manufacturing activity.*

*However, the above shall not be applicable in case of the export of Nepalese goods into India under the procedure set out in protocol V to the Treaty of Trade between Government of Nepal and the Government of India.*

-3-

*There will be no restriction on re-­export from the territory of a Contracting Party to third countries of the goods imported from the other Contracting Party without manufacturing activity in the Contracting Party.*

 Apart from this, for implementation of this clause, Article VI provides as follows:

***Article VI***

*The respective heads of the Border Customs Offices of each country shall meet regularly with his counterpart of appropriate status at least once in two months alternately across the common border:*

*(a) to co-­operate with each other in the prevention of unauthorized trade;*

*(b) to maintain the smooth and uninterrupted movement of goods across their territories;*

*(c) to render assistance in resolving administrative difficulties as may arise at the field level.*

 A copy of this agreement is attached as **Annexure-I** to this opinion.

7. Embassy of Nepal’s website relating to Trade and Commerce, while providing statistics of total import into the country also indicates that the agreement of co-operation between India and Nepal to control unauthorized trade signed on 27.10.2009 provides the legal framework for checking illegal trade. Extracts from the website are attached as **Annexure-II**.

8. The Exchange Control Regulations applicable to imports into and exports from Nepal and Bhutan are given in the form of a Supplement by the Reserve Bank of India. These are provided as **Annexure-III** to this opinion. The supplement refers to certain restrictions with regard to methods of payment for export of goods and services to Nepal against para 6. Again, in para 8, it is specifically provided that payments from India to suppliers in third countries against import of goods into Nepal/Bhutan are not permitted.

9. A combined reading of these provisions will suggest that import of goods supplied from third countries into Nepal through India in the ‘same condition’ is treated as “Unauthorized and Illegal Trade” and is sought to be prevented. The provisions stipulate that the imported goods can be subjected to value addition and further manufacturing activity and then exports can be effected to Nepal. However, direct supply of such goods by any Indian entity to Nepal with payment to be received directly from the Nepalese importer and also supply of imported goods to Nepal through India but getting the remittance from a third country for such supplies will amount to circumventing the provisions envisaged in the Trade Agreement.

-4-

10. It could be quite possible that from the Indian side the customs authorities may not stop export of imported goods as a matter of routine and there is scope for movement of such goods into Nepal. At the same time, the Nepalese customs should be insisting for country of origin certificates for imports from India and how far effectively this is done will be a different question. Whether or not the contents of the Trade Agreement have percolated to the field level for proper and effective implementation of its provisions is again a moot point. The Trade Treaty envisages periodical consultations between both the sides to stop unauthorized trade. How effective is this mechanism can be seen only by collection of statistics but as per the provisions in force**, legally**, there is no scope to supply imported goods, as such, from India to Nepal.

11. Hope the above clarifies your queries. Should you require any further clarification in this regard, do not hesitate to contact me.

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.