**BY E-MAIL / COURIER**

**File No.178/2023-Opinion**

13.09.2023

M/s. Rolex Logistics Pvt. Ltd.,

No.85, 1st Floor, 5th Main, 1st Cross,

Domlur II Stage,

Bangalore – 560 071.

Attn.: Mr. O.S. Rajan Paul, Chief Financial Officer <osrajanpaul08@gmail.com>

**Mobile:  9342518637**

Sir,

**Sub.: Clarifications with regard to reduction in invoice values for export of services.**

1. In connection with the above, find attached the following.

(a) Opinion.

(b) Our Bill towards professional charges.

2. Should you need any further clarification in this regard, please feel free to contact me. Kindly arrange for payment of the attached bill.

Yours faithfully,

**S. MURUGAPPAN**

Attached: as above.

sm/ss

**OPINION**

**1. QUERIST:**

M/s. Rolex Logistics Pvt. Ltd.,

No.85, 1st Floor, 5th Main, 1st Cross,

Domlur II Stage,

Bangalore – 560 071.

**2. FACTS:**

2.1 On 17.03.2016, querist entered into an agreement with M/s.Le Corporation Hong Kong and M/s.Lesai  Sales Hong Kong for import of Le mobiles, mobile spares  and TVs  and to sell  in India through their market place (E-Commerce platform) M/s.Le Ecosystem Technologies India Pvt Ltd.

2.2 During the month of April 2016, DIPP issued a circular to restrict monopoly, wherein it was stated that an importer was restricted to sell only 20% of the product. In order to be compliant to this circular, four distributors were engaged and querist had to sell 80% of the imports made through these distributors. Import of mobiles started from April 2016 and the querist sold through market place and to the distributors as per the instructions of Le Ecosystems Technologies India Pvt. Ltd. (LETIPL).  LETIPL had engaged DHL for storage and distribution of the products and the entire stock imported was stored at DHL premises in Bivandi, Maharashtra, where the querist was registered under VAT/CST along with the four other distributors.

2.3 Sale of mobiles were made through Lemall (market place) of LETIPL and the sales proceeds were also collected by Lemall and as per the agreement querist had with Lemall, Lemall had to retain Service Tax, expenses and their margin and transfer the balance amount to the querist for remittance to the two HK companies from whom querist had imported Mobiles and spares, after retaining taxes, expenses and their margin as agreed.

2.4 Querist also sold to the four distributors and on receipt of sales proceeds remitted the commercial value amount to the HK companies after retaining taxes, expenses and their margin as per agreement.

2.5 In order to promote sales as the product was new to Indian market, Free bees were given to celebrities and also discount was offered to make a pitch in the Indian market. Discount was given to the querist and also to the four distributors to accelerate sales. The whole sales activities were managed by LETIPL staff based in Bangalore and Biwandi. Credit notes were issued by the two HK companies for the discount offered, sale made at loss, Freebees, expenses, taxes paid and the querist’s margin amounting to Rs.41 Crore.

2.6 As time passed, sales proceeds received by LETIPL was not being paid to the querist and was used for their operational expenses. Simultaneously the distributors were also not being paid as committed by LETIPL. Owing to spiralling overheads ETIPL was unable to sustain it’s operations in India. And similar scenario unfolded in their parent companies in HK.

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2.7 At the time of finalisation of the querist’s books of account in March 2018, their statutory auditors raised objection to accepting credit notes issued by the two HK companies on the ground that the FEMA regulations restricted discount to 5% of the invoice value only and as the value of credit notes amounted to 30% of the import invoice value it cannot be accepted and the amount remains outstanding / payable in the querist’s balance sheet even as of today even after both the HK companies have gone into liquidation in HK and the company in India facing the similar situation.

2.8 Details of imports made, expenses incurred, remittance made, taxes paid and querist’s margin retained along with reconciliation were made available by the querist.

**3. QUERY:**

In the above context, querist would like to know the provision under RBI / FEMA guidelines for having this matter addressed by passing the credit notes and having the balance in their books of accounts corrected.

**4. OPINION:**

# 4.1 The relevant provisions with regard to variation in invoice value in respect of imports can be found in Master Direction No.17/2016-17 issued by RBI and relating to import of goods and services and updated as on 21st November 2022. The relevant provisions are contained in Para C.8 titled “Detailed Operational Procedures for IDPMS”. Sub-para (i) of para C.8 refers to creation of Outward Remittance Message (ORM) for all outward remittance/s for import payments on behalf of their importer customer for which the prescribed documents for evidence of import have not been submitted. From sub-para (iii) of para C.8 instructions relating to settlement of ORM with BoE are provided for. Coming to extension for submission of proof of import and write-off, instructions are contained from sub-para (ix) onwards. The relevant extracts from the Master Direction are attached to this opinion.

# 4.2 In this connection, sub-paras (ix), (x) and (xi) are reproduced below for appreciation of the issue involved.

“(ix) AD Category I banks shall give extension for submission of BoE beyond the prescribed period in terms of the extant guidelines on the matter, and the same will be reported in IDPMS as per the message “Bill of Entry Extension” and the date up to which  extension is granted will be indicated in “Extension Date” column.

(x) AD Category I banks can consider closure of BoE/ORM in IDPMS that involves write off to the extent of 5% of invoice value in cases where the amount declared in BoE varies from the actual remittance due to operational reasons and AD bank is satisfied with the reason/s submitted by the importer.

(xi) AD Category I banks may close the BoE for such import transactions where write off is on account of quality issues; short shipment or destruction of goods by the port / Customs / health authorities in terms of extant guidelines on the matter subject to submission of satisfactory documentation by the importer irrespective of the amount involved. AD Bank shall settle and close ORM/BoE with appropriate “Adjustment Indicator” in IDPMS.”

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# 4.3 A combined reading of the above provisions will indicate that as far as sub-para (x) is concerned, the 5% limit is with regard to excess payment made, which is established on the basis of bill of entry produced for closure of ORM. Or in other words, if remittance has been made for 100 $ the evidence for import i.e. bill of entry needs to be produced showing the declared value of 100 $ to customs. In case, the value shown is less, for e.g., 80 $, then there is an excess outward remittance of 20 $. This will amount to 20% excess payment. The provision in sub-para (ix) enables writing off to the extent of 5% of the invoice value if the AD bank is satisfied with the reasons submitted by the importer.

4.4 From the above, it has to be noted that this does not involve any reduction in invoice value by any percentage by the supplier himself **for which payment has not been made**. It is to be noted that write-off will become relevant only when excess payment has been made and such remittance has not been accounted for by submission of proper documents.

4.5 On the other hand, when the supplier himself reduces the invoice value for the purpose of remittance and issues credit note, the Indian authorities or the Reserve Bank of India cannot have any quarrel with such reduction and stipulate that only to the extent of 5% of the original invoice value the foreign supplier is entitled to give reduction to the Indian importer.

4.6 Therefore, in our view, the stand taken by the bank as well as the auditors does not appear to be in conformity with the instructions contained in the Master Direction issued by RBI. For reduction in invoice value by the supplier, the provisions mentioned above cannot be applied at all and such reduction can be given to any extent by the foreign supplier. As such, by accepting the credit notes, the transactions need to be closed both by the banks and the auditors.

**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.