**BY E-MAIL / COURIER**

**File No.205/2023-Opinion**

21.10.2023

M/s. Leistritz India Pvt. Ltd.,

Plot No.1050, 2nd Floor, I Block,

18th Main Road, Anna Nagar West,

Chennai – 600 040.

Attn.: Mr. A. Mohamed Ashruf, Assistant Manager - SCM

E-mail: <scmindia@leistritz.com>

C.C.: M/s. Blue Axis Shipping & Freight –

 Attn.: Mr. A.M.I. Shaffi, GM - Operations <rbm@blueaxisshipping.in>

Sir,

**Sub.: Legal Opinion with regard to Due Diligence Remarks.**

1. With regard to the above, please find attached the following.

i. Legal Opinion.

ii. 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

**LEGAL OPINION**

**CLIENT:** M/s. Leistritz India Pvt. Ltd.,

 Plot No.1050, 2nd Floor, I Block,

18th Main Road, Anna Nagar West,

Chennai – 600 040.

1. M/s. Leistritz India Pvt. Ltd., Chennai has sought for Legal Opinion with regard to two Due Diligence remarks made against their company. These two Due Diligence remarks have been made under Indirect Tax and the first remark relates to non-intimation of details of new service agreements entered into by Leistritz India Pvt. Ltd. with their principals subsequent to the issue of SVB Order 42/2017 dated 06.12.2017. With regard to import of Screw Pumps and spare parts from their principals by Leistritz India Pvt. Ltd. the issue of valuation has been taken up by the Special Valuation Branch of Custom House, Chennai for acceptance of value in terms of Section 14 of Customs Act when the transactions are between two related parties. After scrutiny of the documents and records filed by the company, Custom House has issued Investigation Report No.42/2017 dated 06.12.2017 as per which it has been decided to accept the declared values for the goods imported by the company from their principals.

2. In the Due Diligence report it is pointed out that subsequent to the above investigation report, the company has entered into service agreements which have been periodically renewed from 2019 onwards. It has been pointed out in the remarks that, “Accordingly, Leistritz India was obliged to intimate the same to the customs authorities/ SVB authorities by following a suitable process. However, on perusal of documents received from Leistritz India, we understand that Leistritz India has not filed a suitable declaration/ intimation to the customs authorities.”

3. In the light of the above, the report recommends that, “Leistritz India shall file suitable intimation/ declaration with customs authorities as per the procedure prescribed under the above-referred circular dated February 09, 2016 and declare the information regarding all new inter-company agreements executed between Leistritz India and its related entities to avoid any future tax and litigation cost”.

4. The second remark with regard to Due Diligence under Indirect Tax relates to taking registration under SIMS and NFMIMS for import of goods falling under Chapters 72, 73, 74, 76 and 86 of the ITC HS 2017 Schedule I. In terms of Notification No.17/2015-2020 dated 05.09.2019 for the items falling under Chapters 72, 73 and 86 of ITC HS 2017, the government has amended the policy from ‘free’ to ‘free subject to compulsory registration under SIMS’. These instructions are to be effective from 01.11.2019. Similarly, in terms of Notification No.61/2015-2020 dated 31.03.2021 for items falling under Chapters 74 and 76 of ITC HS 2017 Schedule I, the Central Government has amended the import policy from ‘free’ to ‘free subject to compulsory registration under NFMIMS’. This notification is to be effective from 12.04.2021. It is reported that in terms of these registration requirements the importer is required to provide advance information through online system. The Due Diligence report points out that the company has not taken registration under SIMS as well as NFMIMS as could be seen from the sample bills of entry made available by the company for scrutiny. Under such circumstances, the report recommends that the company should apply for compulsory registration under SIMS and NFMIMS for importing the notified goods to avoid delay in clearance of consignments, future tax and litigation cost.

5. To provide legal opinion on the above two aspects, the company has made available copies of the following documents.

* Investigation Report No.42/2017 dated 06.12.2017.
* International Offer Service Agreements entered into on 23.04.2019, 30.04.2020 and 30.06.2021.
* Bill of Entry No.7734069 dated 08.09.2023 covering import of items falling under Chapter 73 of ITC HS Policy Schedule I.
* Bill of Entry No.8084588 dated 30.09.2023 covering import of Pumps falling under Chapter 84.
* Bill of Entry No.6780793 dated 08.07.2023 covering import of Screw Pumps, Spare Parts etc. falling under Chapters 84, 72, 73 & 74.

6. With regard to the first remark relating to intimating details of the new agreements entered into by the company, it may be noted that from 2016 onwards the Central Board of Excise & Customs has modified the procedure relating to Special Valuation Branch functioning and has dispensed with periodical renewal of SVB circulars. After one-time verification is carried out, investigation reports are made available and the importers are required to provide further details for the subsequent period, in case there are changes in the valuation methods or signing of new/ additional agreements. Para 10 of Circular 5/2016 dated 09.02.2016 states that in cases “where the circumstances of sale or terms and conditions of the agreement between the buyer and the related seller change or any other payments of the kind referred under Rule 10(1)(c), (d) and (e) of Customs Valuation Rules 2007 become payable”, then, in such cases, the importers are required to declare the same at the place of import in the format prescribed and attached as Annexure-C to the above circular. Upon such intimation, officers will examine the transactions as per the procedure laid down in the above circular and if necessary, the issue will be referred to the jurisdictional Special Valuation Branch.

7. In the present case, the Due Diligence report refers to four International Offer Service Agreements entered into by the company from 2019. All these agreements contain identical terms and conditions and, in fact, the subsequent agreements after 2019 are only for renewing the earlier agreements since the agreement entered into is valid for one year only. The agreement entered into in 2019 envisages the Indian company providing services for screw pumps manufactured by their principals worldwide. Under “Services” the following is stated.

“LIPL shall provide International Offer services and perform such other functions as LPG may from time to time reasonably request at such place(s) and at such time(s) as shall be mutually agreeable. LIPL agrees to perform its services with the degree of skill and care as observed by professional companies performing the same or similar services.”

Under “Compensation” the following is stated.

“LPG shall pay LIPL a monthly fee of Euros 3.000 (Three Thousand Euros) which shall be due and payable on the first day of each month during the term of this Agreement. Because LIPL is an Independent Contractor, there shall be no withholdings made from the fees due under this Agreement.”

Again, under “Reimbursement of Expenses” the following is stated.

“During the term of this Agreement - if -LPG may require LIPL staff to travel internationally for training and discussions, for such designated travel, and upon submission of proper documentation, LPG shall reimburse LIPL for reasonable out-of-pocket expenses, including travel expenses, incurred by LIPL while performing services pursuant to this Agreement. LIPL shall itemize and submit such business expenses to LPG on a monthly basis not later than 30 days after incurring such expense.”

8. A perusal of the above service agreement and their renewal agreements will clearly show that these are for providing services by the Indian company to their principals at international level and the Indian company is to receive from their principals a monthly fee as compensation. These agreements do not have any impact with regard to the valuation of the screw pumps and their spare parts imported by the Indian company for trading in India. There is no apparent relationship between import of the goods by the company and their offering of service through their technical personnel worldwide and receiving a compensation for that. Circular No.5/2016 stipulates that when changes take place affecting the transaction value or the conditions contemplated in terms of Rule 10, then, the importer is required to make available all the details in that regard. The present situation will not be covered by the above requirement and therefore, in our view, any non-intimation of the details by the company to the Custom House cannot be faulted.

9. With regard to the second remark relating to registration under SIMS and NFMIMS, it is true that importers of goods falling under specified items within Chapters 72, 73, 74, 76 and 86 are required to be registered and to provide advance intimation online to the government. In terms of Policy Circular No.29/2015-20 dated 04.10.2019 issued by DGFT, it has been specifically provided that such registration under SIMS will not be applicable on air-freighted goods as this mode is used for emergency/ small volume high value goods required at short notice. Similarly, in terms of Policy Circular 42/2015-2020 dated 27.7.22 it is provided that registration under NFMIMS will not be applicable for goods imported under airfreight mode. Copies of these circulars are attached for ready reference. Leistritz India Pvt. Ltd. has informed that all their imports are by air only and that they don’t have any imports by sea. The company also made available three sample bills of entry which reveal that those bills of entry cover consignments imported by air. As such, since the company is not resorting to import through sea and since air imports are excluded from the registration requirements, in our view, the company need not seek registration**, as on date**, under the above SIMS and NFMIMS.

**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 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.