**OPINION**

**1. QUERIST:**

M/s. Turbo Energy Private Limited,

100, Old Mahabalipuram Road,

Paiyanoor,

Kanchipuram District – 603 104.

**2. FACTS:**

Querist used to sell their Turbochargers to Ford Sanand Plant, Gujarat.  Ford in turn, assembles the Turbocharger in Engine and exports the same to Ford Thailand and other countries.  When there are some rejected parts, Ford India, Sanand plant used to re-import the Turbocharger from their overseas office to India and send the same to the querist for revalidation purpose. But in recent times, M/s.Ford India is having some problems in customs clearance.  Ford India wants the querist to import the defective parts directly from their overseas offices.

**3. QUERY:**

3.1 According to the querist, Ford India exports their engine with TC assembled.  As per the Government procedure, exporters only can re-import their returned parts.  This is because exporters used to claim export benefits for their exports like duty drawback, RoDTEP scrip, EPCG scheme, Advance Authorisation scheme, Status hold licence etc., so that they have to return back the export benefits while re-importing the goods.

3.2 According to the querist, further used items are not allowed to be imported into India except capital goods. So, third party importers, even the original manufacturer, cannot import used parts which are in the restricted list.

3.3 Querist also has clarified that the defective parts imported will not be re-exported.

**4. OPINION:**

# 4.1 Re-import of Indian origin goods i.e. goods manufactured in India and exported can be re-imported, subject to certain conditions. There are two aspects to any such re-import. One is the licensing angle i.e. eligibility to import a defective/used part. Second is duty exemption with suitable surrender of export incentives obtained at the time of export.

4.2 It may be noted that Notification 158/1995 dated 14.11.1995 provides for re-import of Indian goods and parts thereof at concessional duty or without payment of duty, subject to certain conditions being complied with, including re-export after their repair, re-processing, re-conditioning etc. A copy of this notification is attached as **Annexure-1** to this opinion.

4.3 A perusal of the above notification will show that a certain time limit is stipulated for the re-importation period. Also, various export incentives obtained at the time of export need to be returned. Necessary bond/ undertaking is to be executed for repairing the goods imported and then their re-export within a stipulated period.

4.4 There is another Notification 45/2017-Customs dated 30.06.2017 which covers duty exemption for goods exported out of India and then re-imported without any obligation for carrying out repairs and re-exporting them. A copy of this notification is attached as **Annexure-2** to this opinion.

4.5 In the above notification also there are certain conditions to be complied with for availing duty concession. These relate to surrender of export incentives obtained at the time of export, payment of applicable IGST, if not paid at the time of export.

4.6 The above notifications do not stipulate any conditions with regard to change of ownership except that Notification 45/2017 mentioned above stipulates that ownership should not have changed between the time of export of such goods and their re-import in respect of goods falling under Sl.No.2 of the table attached to the above notification. This condition applies to goods exported for repairs abroad.

4.7 In view of the above, there will not be technically any bar for the querist importing these items when they have been exported as forming part of engines by Ford India. However, it has to be established with documents that the particular turbo charger which is being imported is/was an integral part of the engines manufactured and exported by Ford India in a particular shipping bill. For this purpose, though Ford India is exporting only engines and documentation made by them at the time of export will normally show only the engine details, it will be necessary to incorporate the specific part number as well as serial numbers of the turbo chargers used in the production of such engines. The exporter i.e. Ford India can mention that these engines are fitted with turbo chargers manufactured by the querist carrying the identification details which are to be enumerated. Only such a mention at the time of export will enable the querist to get the turbo charger re-imported by them by way of linking and identification with export documents. In the absence of such details, customs authorities may not accept any mere declaration because in the absence of documentary evidence, a turbo charger re-imported at a particular point of time cannot be linked to an earlier export of engines with that particular turb charger fitted as a part of engine. At the time of re-import by the querist, Ford India should be able to share documents such as packing list, invoice, shipping bill etc. to establish identity to the satisfaction of the customs authorities.

4.8 Secondly, it may be necessary that all the export incentives are returned by Ford India proportionately as a part of the engine which was exported has come back and evidence needs to be produced for such return of the incentives. In the absence of any such evidence, the customs authorities may not extend the benefit of exemption for the goods under these notifications and this will mean that full duty is to be paid.

4.9 The second aspect relates to licensing angle. Since what is re-imported is a turbo charger, which was found defective after being put to use and thus, it will be a second-hand item. It is also to be noted that this is not a part of second-hand capital goods and thus, specific authorisation under the import policy will be required to clear such second-hand goods unless they are covered by licensing exemptions. Foreign Trade (Exemption from application of Rules in certain cases) Order 1993 dated 31.12.1993 issued by the Ministry of Commerce stipulates that the policy conditions stipulated in the import policy will not apply to goods of Indian manufacture and foreign made parts of such goods exported and received back by the manufacturer from the consignee for repair and re-export. This is subject to the condition that the customs authorities are satisfied that the goods received back by the said manufacturer are the same which were so exported and in the case of goods other than those exempted from customs duty on re-importation, a bond is executed by the importer to the effect that the goods imported will be re-exported after repair within six months. A copy of the exemption order is attached as **Annexure-3** to this opinion. Thus, the import policy for re-import of the defective item is linked to duty exemption available under the Customs Act provisions.

4.10 Unless identity is established, as per the provisions contained in chapter 2 of the current Foreign Trade Policy, these defective second-hand turbo chargers cannot be imported without an authorisation and as such, there will be difficulties at the point of customs clearance leading to adjudication and imposition of penalties etc.

**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.

**BY E-MAIL / COURIER**

**File No.26/2024-Opinion**

14.02.2024

M/s. Turbo Energy Private Limited,

100, Old Mahabalipuram Road,

Paiyanoor,

Kanchipuram District – 603 104.

Attn.: Mr. L. Srinivasan, Manager <srinivasan.l@turboenergy.co.in>

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**Sub.: Re-Import of defective Turbo Chargers.**

Dear Srinivasan,

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.

Regards,

**S. Murugappan**

Attached: as above.

sm/ss