**BY E-MAIL / COURIER**

**File No.59/2024-Opinion**

22.03.2024

M/s. LTIMindtree Limited,

L&T Construction Campus,

CRR 4th Floor, A Wing,

Manapakkam, Chennai – 600 089.

Attn.: Mr. P. Karthimurugan, Senior Executive - Procurement

**Mobile: 9176731619**

E-mail: <karthimurugan.p@ltimindtree.com>

**Sub.: Import of Instruments and their Export under ATA Carnet.**

Dear Karthimurugan,

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 bill.

Regards,

Murugappan

Attached: as above.

sm/ss

**OPINION**

**1. QUERIST:**

M/s. LTIMindtree Limited,

L&T Construction Campus,

CRR 4th Floor, A Wing,

Manapakkam,

Chennai - 600 089.

**2. FACTS:**

2.1 Querist imported through ATA Carnet facility, survey equipment consisting of various items including GNSS Receiver, Lenovo Notebook, Inverter, Data Cables and Aerial Mapping Meeker Mount. These were brought from M/s. GSS-Geotechnik, Geoinformatik and Services GmbH Germany by hand through their employee Mr. Peter Bochmann at KIA, Bengaluru on 17.05.2023. Based on the ATA Carnet the goods were allowed clearance by the customs authorities.

2.2 Subsequent to the completion of the work, the querist sought to re-export the goods and when they approached the authorities at Bengaluru International Airport / Cargo they were informed that the re-export ought to have taken place within two months from the date of import. It was also pointed out by the customs authorities that the above period of two months can be extended by another two months and not beyond that. Since the goods were sought to be re-exported after expiry of the above period including any possible extension, customs authorities have asked the querist to make payment of the duty along with applicable interest.

**3. QUERY:**

In the above context, querist would like to know the various options as mentioned below:

3.1 Whether duty can be paid along with interest as applicable and the goods retained by the querist here in India based on purchase of the equipment from the German company.

3.2 Payment of duty and interest and then re-export the goods – Whether in this option, is there any scope to get drawback of the duty paid.

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**4. OPINION:**

# 4.1 In terms of Notification No.4/2018-Customs dated 18.01.2018, a period of two months is available for re-export of the goods brought into the country under ATA Carnet scheme. The above period of two months can be extended by another two months by the Principal Commissioner of Customs. In the present case, it is seen that the original period as well as the extension period that is possible have already expired. In this background, the customs authorities have asked the querist to pay the duty with applicable interest.

4.2 One of the options that can be considered by the querist will be to pay the applicable duty and interest and retain the goods by purchasing them from the German company. However, it is to be noted that such retention of the goods can encounter various issues as mentioned below:

1. Valuation – The German supplier should agree to sell the goods to the querist and raise a sales invoice.
2. The agreed price should be acceptable to the customs authorities as obviously this will not indicate the price of the new equipment and the items supplied under the ATA Carnet.
3. To justify the value adopted, the querist may have to indicate the original price of new equipment and components and also obtain a chartered engineer certificate with regard to the present condition of these items and get a valuation report by him with regard to the acceptance or otherwise of the value declared on the basis of purchase price as on date. Independent of the chartered engineer certificate to be produced by the querist, customs authorities may engage their own chartered engineers to verify the acceptance of the declared value. After carrying out the examination of the goods it is possible that the customs authorities may revise the value upwards for collecting customs duty.

4.3 The goods imported include GPS receiver, Lenovo notepad, cables etc. These items happen to be used once as these are in use by the German company for carrying out survey work. In this background, the restrictions imposed for import of second-hand goods under the Foreign Trade Policy will apply when the querist seeks retention of these goods in India. Second-hand computers/ laptops are not allowed to be imported. Apart from that, for certain items like GPS receiver, Department of Electronics clearance will be required depending on the frequency range. In addition, for items such as cables / inverters, BIS certification will be necessary. Considering these, retention of the goods after complying with the above procedural requirement can be a long drawn-out affair.

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4.4 The other option will be to pay the applicable duty and interest and re-export the goods in terms of Section 74 of Customs Act and claim drawback.

4.5 At the time of bringing the goods into the country, there is no bill of entry filed and by use of ATA Carnet form, these items have been brought into the country by hand. Therefore, for the purpose of re-export when the querist is paying duty and interest, the packing lists, invoices etc. forming part of the ATA Carnet certification should be attested for identification purposes at the time of their re-export.

4.6 Subject to identification at the time of re-export, the querist can file a shipping bill for drawback under Section 74 of Customs Act 1962 which provides for refund of duties paid at the time of import when the goods are re-exported.

4.7 It is also to be noted that depending upon the usage of the goods, the drawback permissible will be restricted. In this connection, attention of the querist is invited to Notification No.19-Cus. dated 6.2.1965, a copy of which is attached as Annexure to this opinion. Depending upon the usage of the goods imported, the drawback permissible will get reduced. When the usage is between 9 and 12 months – 70% drawback will be available and when the usage is between 12 months and 15 months – 65% of the duty paid will be permissible as drawback. It is to be noted that beyond 18 months there will not be any drawback available.

4.8 It is also to be noted that interest paid for the belated payment of duty will not be available as drawback.

**S. MURUGAPPAN**

Attached: as above.

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**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.