

# S. MURUGAPPAN

ADVOCATE, HIGH COURT

**ASSISTED BY:**

ANUGRAHAN.X, B.B.A., LL.B.

POOJA.M, B.A., M.A., LL.B.

PRIYADARSINI KTK, B.COM. (CA), LL.B.(HONS.)

**CONSULTANTS:**

CUSTOMS, GST.

FOREIGN TRADE LAWS.

FOREIGN EXCHANGE MANAGEMENT ACT.

## OPINION

### I. QUERIST:

M/s.Mitsuba India Private Limited,  
Unit 1, D8, SIPCOT Industrial Complex,  
Gummidipoondi,  
Thiruvallur District - 601 201.

### II. FACTS:

1. The querist is a manufacturer of various components used in automobiles and it imports child parts from its principals in Japan and other group companies for use in the manufacture of automobile products.
2. It is reported that for an effective and efficient way of shipping and transporting of these parts, their principals are following the system of shipping in 'Oricon' Bins along with pallets. These bins are foldable containers made of plastic. These are kept on top of one another in pallets and caps are used to secure the bins in the pallets. These are also made of plastics. The capacity of the bins will vary depending upon the parts to be shipped. Accordingly, holding capacity of the pallets will vary depending upon the size of the bins.
3. It is reported that in terms of Oricon Lease Expense Agreement entered on 01.07.2020 between Mitsuba Corporation, Japan and the querist, the Oricon bins are manufactured and supplied and then, re-exported back. The agreement envisages payment of advance and also payment of rentals based on the period the bins are kept with the querist. After the child parts are imported in the bins and after usage of the parts, when the bins are empty, these are shipped back as empty bins in pallets and caps to principals or other group companies by the querist. It is also informed that at times these bins are shipped back with parts to other group companies.
4. It is reported that when import takes place in these bins, the part's value is declared to customs. However, there is a separate invoice for the bins and pallets supplied along with the shipment of parts showing nominal value of these packings and materials for customs purpose and such invoices are not disclosed to the customs, probably, under the impression by the querist, since these are re-exported and are reusable containers and as such there is no duty liability.



5. It is also reported that when rentals are paid to the principals, based on the period, for which, the bins are in the custody of the querist. However, advance amount envisaged in the agreement has not been paid to the principals.
6. It is reported that when rental invoices are raised by the principals, based on the period, for which, these are kept with the querist, on periodical basis, payments are made to the principals as per such invoices and applicable GST also is paid under reverse charge on these rental payments.
7. When the exports take place, the querist has informed that the bins are not identified with regard to any specific import shipment and bins and pallets received under cover of various import shipments can be re-exported under one shipping bill depending upon their availability. It is also informed by the querist that in respect of such re-exports, there is no payment involved from the principals and therefore, with GR waiver, these are exported.
8. The querist clarified that no identification marks will be available on the bins or pallets and these cannot be identified with any reference to a particular shipment.
9. For a specific query, the querist has confirmed that no GST is paid, when these bins and pallets are shipped back to their principals or other group companies

### **III. QUERY:**

In the above context, the querist would like to know the correctness or otherwise of the procedures being followed for import as well as export and whether any modifications are to be made.

### **IV. OPINION:**

#### **1. Imports:**

- 1.1 As per the current practice, it is noticed that value of bins, pallets and caps, which are intimated to the querist by the principals or other group companies through a separate invoice, are not disclosed to customs. Though the invoices are no-payment invoices, but, invoices for customs nominal value as these are durable nature ultimately to be re-exported, it is necessary that their details are also declared to customs.





- 1.2 There is a Notification bearing No.104/1994-Customs dated 16.03.1994, as amended, which provides exemption for containers of durable nature. A copy of this Notification is enclosed to this opinion. Basic Customs Duty as well as IGST are exempt for such durable containers subject to the following conditions.

*“Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer’s failure to do so:*

*Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit”.*

- 1.3 From the above, it can be seen that for availing exemption, the containers should be re-exported within a period of six months or extended period as permitted by customs and for such purpose, it is necessary that the containers are identifiable with marks and numbers. In the present case, there is no way of identifying the bins or pallets, as imported, under a particular shipment in the absence of marks and numbers. Further, it is confirmed by the querist that for operational reasons, bins and pallets, which are ready for re-export are re-exported without reference to a specific import shipment. In view of this, the export lot will contain bins and pallets imported through different shipments.
- 1.4 Besides the above, it is also to be noted that the above notification refers to containers of durable nature and going by the words used in the notification, it should be possible to cover only the foldable bins under this notification. Obviously, pallets and caps will not come within the scope of the above notification. This means that the querist is liable to pay applicable import duties at the time of import of these packing materials by including nominal value declared by the shipper through separate invoices. This will ensure that appropriate packing charges or expenses incurred for supply of these parts are included in the assessable value and appropriate duty is paid.
- 1.5 Secondly, for the period of detention of such foldable bins and pallets, principals charge rentals based on a specific percentage and such rentals are remitted to the principals periodically.



- 1.6 The querist has indicated that GST is paid under reverse charge in respect of such rental payments. Such a procedure will be in order. It is also to be noted that such rental charges, which are basically charged for detention of the containers by the querist, is distinct from the packing charges and inclusion of rental value in the imported cost of the component parts will therefore not arise.
- 1.7 The querist has confirmed that though agreement provides for payment of advance for production and lease of such containers, no actual payments have been made. In view of this, there will not be any GST payment involved in respect of such advances not remitted.

**2. Exports:**

- 2.1 The querist has clarified that the foldable bins with pallets and caps are re-exported after getting GR waiver and declaring their value for customs purpose only.
- 2.2 It is reported that for transport of these bins and pallets for export from the querist's premises to the port, GST Authorities raised queries about non-payment of GST.
- 2.3 It appears that initially, the transportation was done by the querist under Delivery Challan without showing GST and now, after being questioned by the GST Authorities, still the goods are transported to the port under Delivery Challan, but, after showing 18% IGST; the querist fairly conceded that though 18% IGST is indicated in such delivery challan, actual payments were not made in the past.
- 2.4 It is to be noted that delivery challans will be applicable only when there is no GST and consequently, the present practice followed by the querist will not be proper.
- 2.5 It is to be noted that as per Section 7(1)(c) of CGST Act 2017, the activities specified in Schedule I, made or agreed to be made without a consideration, will amount to supply and tax will be payable on such supplies. In terms of Schedule-I, supply of goods or services or both between related persons when made in course of furtherance of business, is included against Sl.No.2. Therefore, since in the present case, the supplies are to related persons though there is no consideration involved in such exports, GST will be payable.

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- 2.6 In terms of Section 20 of IGST Act, the above definition of scope of supply contained in the CGST Act will be equally applicable for the purpose of Integrated Tax leviable under IGST Act.
- 2.7 Therefore, under such circumstances, even when the supply is without consideration to the querist from the principals located outside India, applicable 18% IGST needs to be discharged based on the value declared in their transport documents, E-Way Bill and Shipping Bill.
- 2.8 It was reported by the querist that though the bins are received by different units of the querist, all are exported from the unit-1 to the port under their no charge invoices. As such, for movement of these foldable bins, pallets, etc., between the units, delivery challans can be used with the same GSTIN Number in case the movement is within the State of Tamil Nadu. In case the movement is from a unit located outside of Tamil Nadu, then, such movement will be treated as supplies and the querist needs to discharge IGST for the local movement itself.



**S. MURUGAPPAN**

Encl: 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.