

S. MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

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

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

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CONSULTANTS:

CUSTOMS, GST,

FOREIGN TRADE LAWS,

FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **QUERIST:**

M/s. Apollo Hospitals Enterprise Limited
Ali Towers, IV Floor
55, Greams Road
Chennai 600 006

2. **FACTS:**

- 2.1 The Querist has imported a Digital Linear Accelerator with accessories from Elekta Solutions AB, Sweden. A copy of the Purchase and License Agreement made available by the Querist shows the value at 18,00,000 USD for the subject goods. In terms of Clause B of the Purchase and License Agreement dated 28.09.2023, it is seen that the payment for the equipment supplied will be spread over in a period of eight years. A copy of the Purchase Order dated 30.06.2023 placed by the Querist on Elekta Solutions AB, Sweden based on which the above Purchase and License Agreement has been made also was made available.
- 2.2 This also refers to supply of Digital Linear Accelerator with accessories for a consolidated value of 18,00,000 USD with payment spread over eight years period.
- 2.3 The Querist confirms that initial payment of 2,50,000 USD and the first instalment of 62,500 USD have been made and thus a total of 3,12,500 USD have been made to the supplier. It is seen that the goods were imported in 2023 itself and the Querist has cleared the goods by filing a Bill of Entry 9393414 dated 24.12.2023 by adopting the invoice value of 18,00,000 USD as per the commercial invoice sent by the supplier which is dated 15.11.2023.
- 2.4 At the same time, it is observed that the commercial invoice mentioned above refers to payment of 100% of the invoice value at sight. Now, it is reported that the above amount of 18,00,000 USD is inclusive of interest portion for payment of cost spread over an eight-year period and that because of restrictions with regard to payment of interest beyond a stipulated period, the Querist has asked the supplier to waive the interest part. It is also stated that the supplier has agreed for a total payment of 15,00,578 USD after taking into account the initial payment made what remains to paid is 11,88,078 USD.



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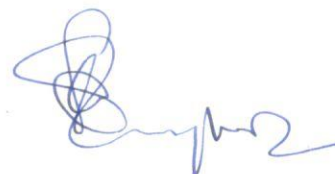
- 2.5 The Querist has indicated that this is proposed to be remitted as one-time payment to the supplier; but however, the supplier has indicated that no revised invoice will be issued for this amount because of certain restrictions from their side.

3. QUERY:

- 3.1 In the above background, the Querist would like to know whether they can send the one-time payment of 11,88,078 USD.

4. OPINION:

- 4.1 The payment for imported goods is governed by the Master Direction – Import of Goods and Services issued by Reserve Bank of India bearing No.17/2016-17 dated 01.01.2016. This Master Direction has been updated upto 01.10.2025 with various amendments.
- 4.2 As per Clause B.2 of the above Direction, any AD Category I Bank can allow remittance for making payments for imports after ensuring that all the requisite details are made available by the importer and the remittance is for bona fide trade transactions as per applicable laws. In terms of Clause B.5.1, remittance against imports should be completed not later than six months from the date of shipment. The settlement of import dues beyond the above period is permitted when payments have not made due to disputes, financial difficulties etc.
- 4.3 However, it is also provided that interest, if any, on such delayed payment is payable for only a period up to three years from the date of shipment and can be permitted in terms of Directions in Clause C.2.
- 4.4 Clause C.2 states that any AD Category – I bank can allow payment of interest on delayed payments for a period of less than three years from the date of shipment at the rate prescribed for trade credit from time to time. Further, in terms of Clause C.2.(iii) in case of change in value due to the above, the respective AD bank needs to ensure proper remark/indicator is entered for ORM mark off in IDPMS etc. as per the guidelines. A copy of the above Directions is attached.
- 4.5 Perusal of the above will clearly show that interest can be paid only for a period upto three years at the rate prescribed for trade credits. In the present case, the amount relatable to the interest is not indicated and it is only stated that supplier has agreed for final payment of 15,00,578 USD.



- 4.6 Based on the initial negotiations and discussions, it is to be seen what was the cost of the equipment that was agreed to and then how much interest element was sought to be added for eight-year period to arrive at the total amount of 18,00,000 USD. If the interest, if any, is within the permissible limits as per the above Master Direction, then there will not be any difficulty in remittance.
- 4.7 It is also to be noted that the commercial invoice is for 18,00,000 USD without any break-up towards interest and if the payment is to be settled at 15,00,578 USD, the revised invoice needs to be issued by the supplier. Alternatively, he can also give a credit note for the differential amount. Only based on the original invoice and the subsequent revised invoice or credit note, the bank will be able to close the entries in IDPMS. It is possible that the bank will insist for a revised bill of entry. However, the goods were imported in December 2023 and now it will not be possible to make any amendment in the bill of entry based on subsequent invoice and also, it will not be possible for the hospital to claim refund of any differential duty on account of reduction in the invoice value.
- 4.8 It will be advisable for the Querist to provide an explanatory letter to the bank explaining how much interest is being paid, in case any interest is paid, and how it will be within the permissible limit as per Clause C.2.(i). It will also be necessary to get a revised invoice or a credit note. As amendment of the bill of entry will be time barred at this stage, the same also needs to be explained to the bank.



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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.