

Issues To Be Raised With The Royal Customs Malaysia (RCM)
Customs-Private Sector Consultative Panel 2/2004

1. Discrepancy in the sales tax treatment between a licensed manufacturer with repacking activities and a person who solely carries on repacking activities.

Item 8, Schedule B of the Sales Tax (Exemption from Licensing) Order exempts a person other than a licensed manufacturer who is carrying on the repacking of bulk goods into smaller packages from the requirement of applying to be licensed as a licensed manufacturer. It would appear that a licensed manufacturer who carries out both activities of manufacturing and repacking activity would not be able to enjoy the above exemption thus making the repacked goods more expensive and uncompetitive.

Alternatively, a manufacturer could set-up another company to solely carry out the repacking activities in order to benefit from the exemption. However, this course of action is inefficient and in contrary to the Government's policy of enhancing productivity and reducing the cost of doing business. If the law is interpreted in this manner, the exemption creates an uneven playing field among the manufacturer/repackers and pure repacking businesses.

The RCM should clarify the way in which the exemption will be interpreted and applied. If the interpretation is such that sales tax would be chargeable in the above circumstances, MIT would like to propose that the exemption from licensing on repacking activities be extended to licensed manufacturers carrying out repacking activities.

A meeting was held between the representatives from MIT and the RCM to discuss this issue and it was agreed a written clarification would be issued by the RCM. MIT would like to know the status of the written clarification.

2. Service Tax Exemption on Intra-group Services

Under the Service Tax (Amendment)(No 2) Regulations 2002, certain taxable services rendered by a company to another within the same group of companies shall not be regarded as taxable services and therefore exempted from service tax. However, where the company provides any of the said services to another person outside the group of companies, service tax exemption would not apply to the same services rendered within the group.

MIT are of the view that this is a major limitation on the much appreciated service tax exemption on intra-group services as in practice, it is not uncommon for the centralised services within a group to be extended to third parties, especially associated companies. In most instances, the portion of services provided to these parties is insignificant as compared to that provided to the other companies within the group. It would be inequitable to deny service tax exemption on the whole range of intra-group services due to the insignificant portion of the same rendered to a party outside the group. This issue was brought up during the 1/2003 dialogue but no further action was taken.

MIT would therefore strongly urge the RCM to reconsider the restriction imposed.

3. Submission of letter and response

MIT would like to suggest that the RCM to revert to us within a week from the submission of our letters, notifying us the officer in-charge / processing officer to facilitate our communication with the relevant officers. This will also help to expedite the lead time required by RCM to distribute files to the respective officers.

Although it was agreed in the last dialogue that the RCM will revert within a week from the date of submission, MIT feels that officers in the RCM are not aware about this issue.

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