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Date: 18.11.2023

SHOW CAUSE NOTICE
(Under Section 28 of the Customs Act, 1962)

M/s. International Seaport Dredging Private Limited, 1st Floor, Ocean Square, Thiruvika Industrial Estate, Ekkattuthangal, Guindy, Chennai- 600032 (hereinafter referred to as the said "Noticee"), holder of IEC No. 0504016580, had entered into Contract (Letter of Award) for Capital Dredging of Rock Materials and Reclamation Works for LNG Port Terminal Facilities w.r.t. the proposed LNG Port Project at Bhankodar Village, Near Jafrabad, Gujarat (India).

2. Whereas, the Noticee vide various Bills of Entry availing the benefit of Notification No.72/2017-Cus dated 16.08.2017 had made temporary import of various Machinery, equipment or tools on lease/ rental basis under the contract of No-Sale & Nor-Transfer of Ownership of Cargo for re-export on execution of Dredging Projects.

3. Whereas, during the audit of records, the CRA, Ahmedabad, observed that the Noticee while availing the benefit of Notification No. 72/2017-Customs dated 16.08.2017, in respect of 09 Bills of Entry covering 68 items having total Assessable Value of Rs. 18,68,59,339/-, instead of ascertaining the amount of exemption ceiling of BCD with reference to aggregate of the duties of customs had ascertained the same with reference to the rate of BCD prescribed under the First Schedule to the Customs Tariff Act, 1975. Thus, it appears that the manner of ascertaining exemption by the Noticee was incorrect. The details of Bills of Entry where short-payment was observed by the CRA, Ahmedabad, is as shown in Table - A follows.

Table - A

Sl. No.	Bill of Entry No.	Bill of Entry Date	Assessable Value (INR)	Sum of Total duty payable (INR)	Sum of Duty paid	Sum of Diff. Duty, if any, paid (INR)	Sum of Total Duty paid (INR)	Sum of Duty Short-paid (INR)
1	3218159	08.11.2022	1,16,14,102.50	593678.06	63876.20	127755.13	191631.33	402046.73
2	3256510	11.11.2022	12,20,404.51	59650.05	6828.30	13656.8	20485.10	39164.95
3	3347202	17.11.2022	89,28,948.66	456421.06	49109.20	98214.44	147323.64	309097.42
4	3738243	14.12.2022	7,43,71,988.92	1267224.46	409045.30	0	409045.30	858179.16
5	3739046	14.12.2022	15,04,577.01	25636.49	8275.20	0	8275.20	17361.29
6	3739695	14.12.2022	2,65,17,803.07	404509.21	109385.90	218772	328157.90	76351.31
7	3740231	14.12.2022	89,48,416.01	136501.38	36912.30	73824	110736.30	25765.08
8	3740635	14.12.2022	1,80,11,365.86	274749.88	74296.90	148594	222890.90	51858.98
9	3741958	14.12.2022	3,57,41,731.95	545213.32	147434.70	294869	442303.70	102909.62
Total			18,68,59,338	3763584	905164	975685	1880849	1882735

4. CBIC Notification No.72/2017-Cus dated 16.08.2017 stipulates as follows:

"Exemption to temporary import of leased machinery, equipment & tools:

In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2002-Customs, dated the 1st March, 2002 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 124(E), dated the 1st March, 2002 except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description specified in column (1) of the Table annexed hereto, from the payment of so much of the customs duty leviable thereon under First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in column (3) of the said Table and from the whole of the integrated tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 subject to the limitations and conditions specified in column (2) thereof, namely:-

TABLE

Description of goods	Limitations and conditions	Extent of exemption
(1)	(2)	(3)
Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).	<p>(1) the goods have been taken on lease by the importer for use after import;</p> <p>(2) the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract;</p> <p>(3) the import of such machinery, equipment or tools is covered under item (b) of clause 1 or item (f) of clause 5 of Schedule II of the Central Goods and Services Act, 2017;</p> <p>(4) the said goods are re-exported within three months of the date of such import or within such extended period not exceeding 18 months from the date of said import, as the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, may allow;</p> <p>(5) where the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, grants extension of the aforesaid period for re-export, the importer shall pay the difference between the duty payable under the relevant clause in column (3) and the duty already paid at the time of their import;</p> <p>(6) the importer executes a bond, with a bank guarantee,</p>	<p>In the case of-</p> <p>(i) goods which are re-exported within three months of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of five per cent.;</p> <p>(ii) goods which are re-exported after three months, but within six months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of fifteen per cent.;</p> <p>(iii) goods which are re-exported after six months, but within nine months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of twenty-five per cent.;</p> <p>(iv) goods which are re-exported after nine months, but within twelve months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty per cent.;</p> <p>(v) goods which are re-exported after twelve months, but within fifteen months, of the date of</p>

	<p>undertaking -</p> <p>(a) to pay integrated tax leviable under sub-section (1) of section 5 of the Integrated Goods and Services Act, 2017 on supply of service covered by items 1(b) or 5(f) of Schedule II of the Central Goods and Services Act, 2017;</p> <p>(b) to re-export the said goods within three months of the date of import or within the aforesaid extended period;</p> <p>(c) to produce the goods before the Assistant Commissioner of Customs or the Deputy Commissioner of Customs for identification before re-export;</p> <p>(d) to pay the balance of customs duty, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, 1962, for the period starting from the date of import of the said goods and ending with the date on which the duty is paid in full, if the re-export does not take place within the stipulated period; and</p> <p>(e) to pay on demand an amount equal to the integrated tax along with applicable interest payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions.</p>	<p>import, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty-five per cent.;</p> <p>(vi) goods which are re-exported after fifteen months, but within eighteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of forty per cent.,</p> <p>of the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962 read with any notification for the time being in force in respect of the duty so chargeable.</p>
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Note: The goods imported under this concession shall not be eligible for drawback under sub-section (2) of section 74 of the Customs Act, 1962.

4.1 Thus, the aforesaid Notification *inter alia* exempts from the payment of duty of customs, as is in excess of the amount calculated at certain prescribed rates (keeping in view the period between import and re-export of imported goods) of the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962 read with any notification for the time being in force in respect of the duty so chargeable. In other words, the exemption from duty of customs is in correlation with the aggregate of the duties of customs. Further, the extent of such exemption is at the rate varied upon period between import and re-export of imported goods. It also appears that the aggregate of the duties of customs includes all types of duties of customs chargeable on any goods (i.e. BCD+ SWS+IGST). As per the observation of CRA, Ahmedabad, it appears that the Noticee while availing the benefit of the aforesaid exemption Notification has calculated the extent of exemption of duty of customs as "Basic Customs Duty (BCD)" instead of "Aggregate of the

duties of Customs". Thus, by adopting incorrect methodology of calculation to the extent of exemption, it appears that the Noticee has short paid the customs duty to the tune of Rs. 18,82,735/- (Rupees eighteen lakh, eighty two thousand, seven hundred and thirty five only) as detailed at Table – A above.

5. Whereas, as per Section 46(4) of the Customs Act 1962, the importer, while presenting a bill of entry, shall make and subscribe to a declaration as to the truth of the contents of such bill of entry. Also as per Section 46(4A) the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

6. Whereas, the Finance Act, 2011 (Act No.08 of 2011) dated 08.04.2011 has introduced the concept "Self-Assessment of Customs duty with effect from 08.04.2011. The Central Board of Indirect Taxes & Customs has issued Circular No.17/2011- Customs dated 08.04.2011 regarding implementation of Self-assessment in Customs. The relevant portions of the said circular are given below:

"The Finance Bill, 2011 stipulates 'Self-Assessment' of Customs duty in respect of imported and export goods by the importer or exporter, as the case may be. This means that while the responsibility for assessment would be shifted to the importer / exporter, the Customs officers would have the power to verify such assessments and make re-assessment, where warranted."

7. Whereas, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods while filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form (Section 46 or 50 of the Customs Act, 1962, as amended). The importer or exporter at the time of self-assessment shall ensure that he declares the correct classification, applicable rate of duty, value, and benefit of exemption notifications claimed, if any, in respect of the imported/ export goods while presenting Bill of Entry or Shipping Bill. However, in the instant case, it appears that the Noticee while self-assessment of Bills of Entry adopted the incorrect methodology to arrive at leviable duty of customs.

8. Whereas, provisions of Section 17 of the Customs Act, 1962 stipulates, where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods. Therefore, it appears that these bills of entry are required to be re-assessed in terms of the provision of Section 17 of the Customs Act, 1962.

9. whereas, the provisions of Section 28(4) of the Customs Act, 1962 reads as follows:

"28 (4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice"

10. Whereas, it appears in light of the facts and circumstances of the case as discussed herein above, that the Noticee while self-assessment of Bills of Entry wilfully adopted the incorrect methodology to arrive at leviable duty of customs despite of the clear terms specified under the said Notification, which exempts the duty of customs to the extent of "Aggregate Duties of Customs" and not to the extent of "Basic Customs Duty". Thus, it appears that the Noticee had

knowingly and deliberately indulged in misrepresentation of material facts by way of adoption of incorrect method of calculation of duty of customs at the time of self-assessment of the Bills of Entry filed before the Customs through EDI system, with an intention to evade payment of appropriate duty of customs. Moreover, the fact of short-payment of customs duty came to the notice of the department only at the time of Audit of the said Bills of Entry as such provisions of Section 28(4) appears to be invokable to recover the differential duty of customs. Thus, it appears from the above discussions that the short paid duty of customs as shown in Table-A above total amounting to Rs. 18,82,735/- is liable to be recovered from the Noticee under Section 28(4) of the Customs Act, 1962 alongwith applicable interest as per the provisions of Section 28AA of the Customs Act, 1962.

11. Whereas, it appears that the Noticee while self-assessment of Bills of Entry wilfully adopted the incorrect methodology to arrive at leviable duty of customs despite of the clear terms specified under the Notification No. 72/2017-Customs dated 16.08.2017, which exempts the duty of customs to the extent of "Aggregate Duties of Customs" and not to the extent of "Basic Customs Duty" has rendered themselves liable for penalty under Section 114A of the Customs Act, 1962, which stipulates,

"Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

12. Whereas, it appears that the Noticee has subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962, in respect of all their Bills of Entry. Further, with the introduction of self-assessment and consequent amendments to Section 17 of the Customs Act, 1962 in April, 2011, it is the responsibility of the importer to correctly classify, determine and pay the duty of customs applicable in respect of the imported goods. It appears, from the discussion in foregoing paras, that the Noticee has adopted improper & incorrect method to arrive to the extent of exemption from the payment of duty of customs in respect of the said 09 (nine) Bills of Entry filed by them under Section 46 of the Customs Act, 1962, which is not in accordance with the exemption provided under relevant Notification, which led to short-payment or short-levy duty of Rs. 18,82,735/- due to *mala fide* intention on the part of the Noticee for evasion of duty of customs, therefore, it appears that they are liable to penalty under Section 114A of the Customs Act, 1962.

13. Now, therefore, M/s. International Seaport Dredging Private Limited, 1st Floor, Ocean Square, Thiruvika Industrial Estate, Ekkattuthangal, Guindy, Chennai- 600032 is hereby called upon to show cause to the Additional Commissioner, Customs (Preventive), Jamnagar having his office at Room No.301, Jamnagar-Rajkot Highway, Near Victoria Bridge, Jamnagar within 30 days from the date of receipt of this Show Cause Notice as to why:

- (i) Short paid duty of customs amounting to Rs.18,82,735/- (Rupees eighteen lakh, eighty two thousand, seven hundred and thirty five only) as calculated in Table-A of

this Show Cause Notice should not be recovered under the provisions of Section 28(4) of the Customs Act, 1962;

- (ii) Interest as applicable under the provisions of Section 28AA of the Customs Act, 1962 should not be recovered;
- (iii) Penalty should not be imposed under Section 114A of the Custom Act, 1962;

14. The noticee is hereby directed to produce all evidences upon which they intend to rely in support of their defence at the time of showing cause.

15. The above noticee is further required to state specifically in their written replies as to whether they wish to be heard in person before the case is adjudicated. If no specific mention is made about this in their written submissions, it shall be presumed that they do not wish to be heard in person.

16. Their reply should reach within 30 (thirty) days or within such extended period as may be allowed by the adjudicating authority. If no cause is shown against the action proposed above within 30 days from the receipt of this SCN or if they do not appear before the adjudicating authority as and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidence available on record.

17. The show cause Notice is issued without prejudice to any other action that may be taken against them or against any other persons, under provision of the Customs Act, 1962 and/or the Rules framed there under or under any other law for the time being in force.

18. This show cause notice is being issued on the basis of the evidence available on record and relied upon documents as enclosed herewith in Annexure-A.

19. The department reserves the right to add, alter, amend, modify, or supplement this notice at any time on the basis of any evidence, material facts related to the import of goods under investigation, which may come to the notice of the department after issuance of this notice and prior to the adjudication of the case.


(Amit Kundan Singh)
Additional Commissioner

F. No.: CUS/5638/2024-Adjn.

Date: 18.11.2024

By Speed Post/Email:

M/s. International Seaport Dredging Private Limited,
1st Floor, Ocean Square, Thiruvika industrial Estate,
Ekkattuthangal, Guindy, Chennai- 600032.

Copy to:

1. The Assistant Commissioner, Customs House – Pipavav
2. Guard File

Annexure - A

LIST OF RUDS IN RESPECT OF M/S INTERNATIONAL SEAPORT DREDGING PVT LTD

Sr. No.	Relied upon Documents	Remarks
1	BE No. 3218159 dt 08.11.2022	Available with the Noticee
2	BE No. 3256510 dt 11.11.2022	Available with the Noticee
3	BE No. 3347202 dt 17.11.2022	Available with the Noticee
4	BE No. 3738243 dt 14.12.2022	Available with the Noticee
5	BE No. 3739046 dt 14.12.2022	Available with the Noticee
6	BE No. 3739695 dt 14.12.2022	Available with the Noticee
7	BE No. 3740231 dt 14.12.2022	Available with the Noticee
8	BE No. 3740635 dt 14.12.2022	Available with the Noticee
9	BE No. 3741958 dt 14.12.2022	Available with the Noticee
10	CRA Inspection Report (OBS-1490847)	Relevant Portion Enclosed herewith


Inspector


Superintendent


Assistant Commissioner

**Inspection Report on the audit of office of the Assistant Commissioner of Customs,
Customs House, Pipavav for the period 2022-23 to 2023-24**

Reference Number: OBS-1490847

Para 5: Short levy of duty on import of goods on lease rent.

As per Notification No.72/2017-Cus, dated, if machinery, equipment or tools, falling under Chapter 84, 85, 90 or any other chapter of the First Schedule to the Customs Tariff Act, 1975 are imported on lease by the importer for use after import, subject to other conditions, then the following elements of Customs Duty shall be exempted-

- i) the duty leviable thereon under First Schedule to the Customs Tariff Act, 1975 as specified in column (3) of the said Table, inter alia, upto the following extent –
- ii)

Sl. No.	Time period	Amount of exemption
1	If goods are re-exported within three months of the date of import	so much of the duty of customs as is in excess of the amount calculated at the rate of five per cent. of the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962 read with any notification for the time being in force in respect of the duty so chargeable
2	If goods are re-exported after three months, but within six months from the date of import	so much of the duty of customs as is in excess of the amount calculated at the rate of fifteen per cent. of the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962 read with any notification for the time being in force in respect of the duty so chargeable

- iii) the whole of the Integrated Tax leviable thereon under sub-section (7) of Section (3) of the Customs Tariff Act, 1975.

During scrutiny of records of Customs House, Pipavav for the period of 2022-23 to 2023-24, it was found that 33 BEs consisting of 155 entries having gross assessable value of Rs.162,42,11,922/- were filed for import of goods on lease by a single importer named M/s. International Seaport Dredging Private Limited. Audit examined all these 33 BEs.

In nine BEs consisting of 68 items and having total assessable values of Rs.18,68,59,339/-, it was noticed that instead of ascertaining the amount of exemption ceiling of BCD with reference to aggregate of the duties of customs, it was ascertained with reference to the rate of BCD prescribed under first schedule of the Customs Tariff Act. Thus, the manner of ascertaining exemption was incorrect.

This resulted in short levy of duty to the tune of Rs.18,82,735/-, as shown below, which is required to be recovered along with interest.

BE No.	BE Date	Sum of Assess Value(item)	Sum of Total duty payable	Sum of Duty (item)	Sum of Differential duty, if any, paid	Sum of Total duty paid	Sum of Total Short payment
3218159	08.11.2022	11614102.5	593678.06	63876.2	127755.13	191631.33	402046.73
3256510	11.11.2022	1220404.51	59650.05	6828.3	13656.8	20485.1	39164.95
3347202	17.11.2022	8928948.66	456421.06	49109.2	98214.44	147323.64	309097.42
3738243	14.12.2022	74371988.92	1267224.46	409045.3	0	409045.3	858179.16
3739046	14.12.2022	1504577.01	25636.49	8275.2	0	8275.2	17361.29
3739695	14.12.2022	26517803.07	404509.21	109385.9	218772	328157.9	76351.31
3740231	14.12.2022	8948416.01	136501.38	36912.3	73824	110736.3	25765.08
3740635	14.12.2022	18011365.86	274749.88	74296.9	148594	222890.9	51858.98
3741958	14.12.2022	35741731.95	545213.32	147434.7	294869	442303.7	102909.62
Grand Total		18,68,59,338	37,63,584	9,05,164	9,75,685	18,80,849	18,82,735

Detailed Statement I enclosed.

STATEMENT- I

STATEMENT SHOWING SHORT PAYMENT OF DUTY ON IMPORT OF GOODS ON LEASE RENT UNDER NOTIFICATION NO 72/2017-CUS

