

दस्तावेज़पहचानसंख्या/Document Identification Number (DIN) – 0241071MM000000B3EF

SCN No.: COMM-05/2024-25

Date: 23.10.2024

SHOW CAUSE NOTICE

(Issued under the provisions 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/ Importer") hold IEC No. 0504016580 and had entered into contract (Letter of Award) for capital dredging of rock materials and reclamation works for LNG Port Terminal Facilities at Bhankodar Village, Near Jafrabad, Gujarat (India).

2. Whereas, the Noticee had made temporary import of the goods mentioned hereunder in Table A on re-export basis, wherein the goods were on No-Sale & Non-Transfer of ownership, for execution of Dredging Projects on lease/ rent:

Table-A

Sr. No.	Bill of Entry No.& Date	Description of goods (CTSH)	Qty.	Assessable Value (INR)	Rate of Duty	Duty paid (INR)	Date of OOC
(1)	3250489 / 10.11.2022	(TEMP. IMP ON RE-EXPORT BASIS – DREDGING EQUIPKMENTS) DONUTS FLOATE – RID 1 100 X OD 3500 X 14200 (FREE OF COST) (FOR DREDGING OPERATION) (CTSH -89079000)	01 Unit	5383072.33	BCD – 10%, SWS-10%, IGST-18% (Aggregate of Duties of Customs – 30.98%)	29607/-	26.11.2022
(2)	4064532 / 06.01.2023 (Inv-01 / Item- 01)	(TEMP. IMP ON RE-EXPORT BASIS – ONE UNIT SELF-PROPELLED AHT (MULTICAT AUXILIA – IMO-9855537 – BUILT – 2019, (FREE OF COST) (FOR DREDGING OPERATION) (CTSH -89040000)	01 Unit	960561707	BCD – 10%, SWS-10%, IGST-18% (Aggregate of Duties of Customs – 30.98%)	52818183	14.01.2023

3. Whereas, the Noticee had classified the above mentioned goods under Customs Tariff Heading No.89079000 & 89040000 of the First Schedule to Custom Tariff Act,1975 (hereinafter referred to as "the said goods") and had availed the benefit of Notification No.72/2017-Cus, dated 16.08.2017 to claim exemption from payment of customs duty. Notification No. No.72/2017-Cus, dated 16.08.2017 read as under:-

Notification No. 72/2017-Cus. Dated 16.08.2017 - 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 (1)	Limitations and conditions (2)	Extent of exemption (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</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 import, so much of the</p>

	<p><i>of their import;</i></p> <p>(6) the importer executes a bond, with a bank guarantee, 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><i>duty of customs as is in excess of the amount calculated at the rate of thirty-five per cent.;</i></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><i>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.</i></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. Whereas, during the audit of records, it appeared that the goods mentioned in Table-A above, imported by the Noticee were floating apparatus falling under CTH 89079000 & 89040000 and the Noticee themselves have voluntarily filed the Bills of Entry classifying the goods under the said heading. Further, these goods appears to be floating structure in nature. The title of Chapter 89 read as "Ships, boats and floating structures". Careful reading of the Notification No.72/2017-Cus. transpires that the goods mentioned in Col.1 – Description of the Goods – states that the goods to qualify to avail the benefit of said notification should be "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)", whereas in the present case it appears that the goods in question imported by the Noticee are definitely '**floating structures**' and therefore, appears not to fall in the

category of any machinery, equipment or tools. Hence, it appears that these goods in question do not qualify for benefit under Notification No. 72/2017-Cus. ibid.

5. Whereas, it appears from the above that, the goods described hereinabove viz. (1) DONUTS FLOATE – RID 1 100 X OD 3500 X I4200 and (2) ONE UNIT SELF-PROPELLED AHT (MULTICAT AUXILIA – IMO-9855537 – BUILT – 2019 covered under two Bills of Entry i.e. Bills of Entry No.3250489 dated 10.11.2022 and No.4064532 dated 06.01.2023 imported by the Noticee, since not eligible for exemption from Customs Duties under Notification No.72/2017-Cus., attract duties of Customs as tabulated here-in-below :-

TABLE - B

Sr. No.	Types of Duties	DESCRIPTION OF THE GOODS	
		DONUTS FLOATE – RID 1 100 X OD 3500 X I4200	ONE UNIT SELF-PROPELLED AHT (MULTICAT AUXILIA – IMO-9855537 – BUILT – 2019
(1)	Bill of Entry No. & Date	3250489 / 10.11.2022	4064532 / 06.01.2023
(2)	CTH No.	89079000	89040000
(3)	Assessable Value (INR)	53,83,073/-	96,05,61,707/-
(4)	Basic Customs Duty (BCD) @ 10% adv. (INR)	5,38,307/-	9,60,56,171/-
(5)	Social Welfare Surcharge (@ 10% of BCD (INR)	53,831/-	96,05,617/-
(6)	Value for calculation of Integrated Tax (IGST) (INR)	59,75,211/-	106,62,23,495/-
(7)	Integrated Tax (IGST) (@5%)	2,98,761/-	5,33,11,175/-
(8)	Total Customs Duty Payable (2+3+5)	8,90,899/-	15,89,72,858/-
(9)	Customs Duty paid	88821/-	52818183/-
(10)	Differential Duty payable	8,02,078/-	10,61,54,675/-
	TOTAL short levy of Customs Duty	Rs.10,69,56,753/-	

5.1 Whereas, as per the calculation of customs duty stipulated in the above table, it appears that the Noticee is liable to pay total customs duty amounting to Rs. 15,98,63,757/- [Rs.8,90,899/- + Rs. 15,89,72,858/-] in respect of aforesaid two Bills of Entry. Whereas, it further appears that as against the above duty liability, the Noticee has paid Customs duty amounting to Rs. 5,29,07,004/-, while clearing the imported goods. Therefore, it appears that there is short-levy of duty amounting to Rs.10,69,56,753/-, as calculated in the table above. Further, it appears that the Noticee had also voluntarily paid interest amounting to Rs. 1,23,721/- and penalty of Rs. 75,26,391/- subsequently.

6. RECOVERY OF DUTIES, CONFISCATION OF GOODS & IMPOSITION OF PENALTIES

6.1 Section 17(1) of the Customs Act, 1962 reads as: -

Section 17. Assessment of duty. – (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

Board Circular No. 17/2011-Customs dated 08.04.2011 reproduced here under for ready reference:

‘.....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.

2..... The importer or exporter at the time of self-assessment will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported/export goods while presenting Bill of Entry or Shipping Bill.....;

6.2 **Section 28 of the Customs Act, 1962** provides for recovery of duties not levied or not paid or short-levied or short-paid as under :

(1)-----

(2) -----

(3) -----

(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 willful 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.

6.3 **Section 28AA of the Customs Act, 1962** provides for levy of interest on delayed payment of duty as under:

- (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.
- (2) Interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.
- (3)

6.4 **Section 46(4) of the Customs Act 1962** provides that 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 and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods.

6.5 **Section 46(4A) of the Customs Act, 1962** provides that the importer who presents a bill of entry shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

6.6 **Section 111(m) of the Customs Act, 1962** provides for confiscation of improperly imported goods as under:

111. Confiscation of improperly imported goods, etc. –The following goods brought from a place outside India shall be liable to confiscation:-

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case

baggage with the declaration made under Section 77 in respect thereof or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of Section 54.

6.7 **Section 112 of the Customs Act, 1962** provides for penalty for improper importation of goods, etc. – Any person,

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111,

shall be liable,-

- (i)
- (ii)
- (iii)
- (iv)
- (v)

6.8 **Section 114A of the Customs Act, 1962** provides for penalty for short-levy or non-levy of duty in certain cases as under:

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 willful 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.

6.9 The import of goods has been defined in the IGST Act, 2017 and Section 5 of IGST Act, 2017 stipulates that “Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the customs Tariff Act, 1975 on the value as determined under the said act at the point when duties of customs are levied on the said goods under section 12 of the customs Act 1962. Further, as per Sub Section 7 of Section 3 of Customs Tariff Act 1975, any article which has been imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent, as is leviable under Section 5 of the IGST Act

2017 on a like article on its supply in India, on the value of the imported article as determined under sub section 8 or sub section 8A as the case may be.

VIOLATIONS OF VARIOUS LEGAL PROVISIONS UNDER CUSTOMS ACT

7. Whereas as per Section 17 of the Customs Act, 1962, an importer entering any imported goods under Section 46, shall self-assess the duty leviable on such goods. In the instance case, it appears that the Bill of Entry, as detailed in Table-A above, were wrongly assessed and therefore these bills of entries are required to be re-assessed in terms of the provision of Section 17 of the Customs Act, 1962. Since, the terms assessment includes re-assessment, accordingly these Bills of Entry are required to be re-assessed in terms of the provisions of Section 17 of the Customs Act, 1962.

8. Whereas it appears from the above that imported goods, as mentioned in Table-A above, are floating structures and thereby do not qualify for benefit of any concession in customs duty under Notification No.72/2017-Cus. dated 16-08-2017, instead the same would attract full customs duty, as applicable. Whereas, it further appears that the Noticee being fully aware of the fact that though their imported goods being undisputedly 'floating structures' falling under Chapter 89 and not Machinery, Equipment or Tools falling under Chapter 84, 85 or 90 as mandated in the said Notification, they have wrongly availed the benefit of exemption notification by knowingly and deliberately indulging in mis-representation of above material facts at the time of self-assessment of the Bill of Entry with an intention to evade payment of applicable Customs Duty. Thus, the Bills of Entry appears to have been self-assessed incorrectly to avail benefit of Notification which was inadmissible to them, as discussed hereinabove, resulting in short-payment of Customs Duty amounting to Rs.10,69,56,753/- as calculated in Table-B above. Moreover, the fact of short-payment of customs duty came to the notice of the department only at the time of audit of the Bills of Entry. Therefore, it appears that the short-paid customs duties amounting to Rs.10,69,56,753/- are required to be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962.

9. Whereas it further appears that the Noticee have imported goods covered under two Bills of Entry as detailed in Table-A above, totally valued at Rs.96,59,44,780/-, by deliberately mis-declaring the imported goods as Machinery, Equipment or Tools instead of floating structures, in contravention of the provisions of Section 46 (4) of the Customs Act, 1962. In terms of Section 46(4) of Customs Act, 1962, the Noticee was required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty, which in the instant case, the Noticee failed to do in

respect of imports of the said goods through CH Pipavav. For these contraventions and violations, the goods appear to fall under the ambit of 'smuggled goods' within the meaning of Section 2(39) of the Customs Act, 1962, and are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

10. Whereas it appears that the aforesaid acts of suppression of facts and wilful mis-statement by the Noticee led to short levy and short-payment of customs duty of Rs.10,69,56,753/-, as mentioned in Table-B above, thus rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the duty amounting to Rs.10,69,56,753/- was short levied and short-paid by reason of wilful mis-statement and suppression of facts with a mala fide intention of evasion of Customs duty by wrongly claiming the benefit under Notification No.72/2017-Cus. dated 16-08-2017, which was inadmissible to them. All the aforesaid acts of omission and commission on the part of the Noticee appear to have rendered the subject imported goods totally valued at Rs.96,59,44,780/- liable for confiscation under Section 111(m) of the Customs Act, 1962 and the Noticee therefore appears to be liable to penalty under Section 112 of the Customs Act, 1962.

CHARGING SECTION:

11. Now, therefore, for the aforementioned reasons, the Noticee, M/s. International Seaport Dredging Private Limited, 1st Floor, Ocean Square, Thiruvika industrial Estate, Ekkattuthangal, Guindy, Chennai- 600032 [IEC No.0504016580] is hereby called upon to show cause to the Commissioner of Customs, Customs Commissionerate (Preventive), Jamnagar having his office situated at 'SEEMA SHULK BHAVAN', Jamnagar-Rajkot Highway, Near Victoria Bridge, Jamnagar, PIN: 361 001 within 30 days of the receipt of this Notice as to why:

- (a) the benefit of Exemption Notification No. 72/2017-Cus, dated 16.08.2017 claimed by the Noticee M/s. International Seaport Dredging Private Limited, Chennai- 600032, should not be denied and Customs duty, as applicable, should not be recovered from them;
- (b) the differential Customs duty amounting to Rs.10,69,56,753/- (Rupees Ten Crores, Sixty Nine Lakhs, Fifty Six Thousand, Seven Hundred and Fifty Three only), as detailed in Table-B above, short paid by them, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- (c) interest on the Customs duty as mentioned in (b) above should not be charged and recovered from them, under the provisions of Section 28AA of the Customs Act, 1962;

(d) the imported goods valued at Rs.96,59,44,780/- (Rupees Ninety Six Crores, Fifty Nine Lakhs, Forty Four Thousand, Seven Hundred and Eighty only), as detailed in Table-B above, should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962;

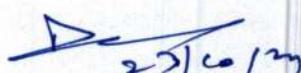
(e) Penalty should not be imposed upon them under the provisions of Section 112 and / or 114A of the Customs Act, 1962.

12. The above Noticee is further required to note that their written submissions, if any, should reach this Office within 30 (thirty) days from the date of receipt of this Notice. If no cause is shown by them against the action proposed above within 30 days from the date of receipt of this Show Cause Notice 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 evidences available on record.

13. The Noticee also has an option under Section 127B of the Customs Act, 1962 to settle the case through Settlement Commission by filing an application, if eligible.

14. This Show Cause Notice is issued without prejudice to any other action that may be taken against the Noticee or any other persons concerned in respect of the aforesaid goods under the Customs Act, 1962 and / or any other law for the time being in force.

15. Department reserves its right to amend, modify or supplement this notice at any time prior to the adjudication of the case.


[Dhirendra Lal]
Commissioner

F. No. CUS/5634/2024-Adjn.

Date: 23.10.2024

By Speed Post A.D. / E-Mail

To,
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.