

	<p style="text-align: center;"> कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271423 FAX :02838-271425 Email: adj-mundra@gov.in, commr-cusmundra@nic.in </p>	
A. File No.	: GEN/ADJ/COMM/616/2023-Adjn-O/o Pr. Commr-Cus-Mundra.	
B. Order-in-Original No.	: MUN-CUSTM-000-COM-009-25-26	
C. Passed by	: Nitin Saini Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue:	: 09.06.2025 09.06.2025	
E. SCN No. & Date	: SCN No. GEN/ADJ/COMM/616/2023-Adjn-O/o Pr. Commr- Cus-Mundra dated 11.12.2024.	
F. Noticee(s) / Party / Importer	: M/s. Jaiman Metalloys LLP, 1116, 11 th Floor, CS1487, Prasad Chambers, Tata Road, No. 2, Roxy Cinema, Mumbai 400004	
G. DIN	: 20250671MO0000010560	

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सी ए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004” “Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड याशास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क,

व्याज, शास्तिया दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बैंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं°-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ छ्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

Whereas, specific intelligence developed denoted that M/s. Jaiman Metalloys LLP (hereinafter also referred to as 'the said Importer') having its registered address as 1116, 11th Floor, CS1487, Prasad Chambers, Tata Road, No. 2 Roxy Cinema, Mumbai 400004 has evaded the payment of Anti-Dumping duty applicable on imports of Stainless Steel Pipes & Tubes after the issuance of Notification no. 31/2022-Customs (ADD) dated 20-12-2022. The import has been made under Bill of Entry No. 3817867 dated 20-12-2022.

2. The applicability of the Anti-Dumping Duty is on Stainless Steel Pipes & Tubes having its origin from China or exported from China and having dimensions with diameter up to and including 6 NPS, or comparable thereof in other unit of measurement, whether manufactured using hot extrusion process or hot piercing process and whether sold as hot finished or cold finished pipes and tubes, including subject goods imported in the form of defectives, non-prime or secondary grades. It may be noteworthy to highlight that 6 NPS is equal to 168.3 mm.

3. Whereas, the said consignment of Bill of Entry No. 3817867 dated 20-12-2022 was cleared for home consumption through Out of Charge dated 21-12-2022 and without payment of Anti-Dumping Duty imposed. Further details in respect of the import is as under:

Name of Importer	:	M/s. Jaiman Metalloys LLP
Address of Importer	:	1116, 11 th Floor, CS1487, Prasad Chambers, Tata Road, No. 2 Roxy Cinema, Mumbai 400004
IEC No.	:	0315019034
Bill of Entry No.	:	3817867 dated 20-12-2022
Description of Goods (as declared)	:	Stainless-Steel Seamless Pipes (Grade S32750)
Quantity	:	28258 Kgs.
Container No.	:	FSCU8167267
Supplier	:	M/s. Zhejiang Xintondga Special Steel Mfg. Co. Ltd., No. 209, Ruiyang Road, Xiping Street, Songyang County, Lishui City, Zhejiang Province, China.
Country of origin	:	China PR
Commercial Invoice No.	:	HBO10578-1 dtd. 20-12-2022
Bill of Lading No.	:	GOSUWZU997245 dtd. 23-11-2022
Rate of exchange	:	₹ 83.55 (vide Notification No. 109/2022 - Customs (N.T.) New Delhi, dated 15-12-2022 bearing F.No. 468/01/2022-Cus.V) effective from 16-12-2022 (applicable rate of exchange)
Rate of exchange	:	₹ 83.70 (vide Notification No. 02/2023 - Customs (N.T.) New Delhi, dated 05-01-2023 bearing F.No. 468/01/2023-Cus.V) effective from 06-01-2023

3.1. Whereas, the processing of the consignment under Bill of Entry No. 3817867 dated 20-12-2022 was initiated and completed on the following dates:

Vessel Inward Date	:	18-12-2022
Appraising date	:	20-12-2022
Audit date	:	20-12-2022
Assessment date	:	20-12-2022
Duty payment date	:	21-12-2022
Out of charge date	:	21-12-2022

3.2. Whereas, the details especially the dimensions of the goods viz. Stainless Steel Seamless Pipe as mentioned in the packing list attached with the Commercial Invoice No. HBO10578-1 dated 20-12-2022 is as under:

S. No.	Outer Diameter of the Stainless Steel Seamless Pipes	Quantity (kgs.)
1.	33.4 x 2.77	1906
2.	33.4 x 3.38	2497
3.	42.2 x 2.77	3308
4.	42.2 x 3.56	5453
5.	60.3 x 5.54	4101
6.	88.9 x 4	959
7.	88.9 x 5.49	3404
8.	88.9 x 8.56	3487
9.	114.3 x 8.56	3143
TOTAL		28258

4. Whereas, Section 15 of the Customs Act, 1962 stipulates the date for determination of rate of duty and tariff valuation of imported goods. For sake of convenience, Section 15 is reproduced hereunder:

Section 15. Date for determination of rate of duty and tariff valuation of imported goods. -

(1) /The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

(a) in the case of goods entered for home consumption under Section 46, on the date on which/a bill of entry in respect of such goods is presented under that section];

(b)

(c) in the case of any other goods, on the date of payment of duty:

[Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft for the vehicle] by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

(2) The provisions of this section shall not apply to baggage and goods imported by post.

5. Whereas, the date for determination of rate of duty and tariff valuation of imported goods shall be the rate and valuation in force, in the case of goods entered for home consumption under Section 46 of the Customs Act, 1962 i.e. on the date

of which a Bill of Entry in respect of the imported goods has been presented. In the instant case, the date of presentation is recognised as 20-12-2022.

6. Whereas, Anti-Dumping Duty was made effective under Notification No. 31/2022-Customs (ADD) dated 20-12-2022 vide G.S.R. No. 890(E) on 20-12-2022. It is provided that Anti-Dumping Duty is hereby imposed on Stainless-Steel Seamless Tubes and Pipes when the subject goods are originating in the countries as specified in the corresponding entries in column (4), exported from the countries as specified in the corresponding entries in column (5), produced by the producers as specified in the corresponding entries in column (6), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entries in column (7), in the currency as specified in the corresponding entries in column (9) and as per unit of measurement as specified in the corresponding entries in column (8), of the Table incorporated therein. For sake of ready reference, the relevant columns of the Table incorporated in Notification No. 31/2022-Customs (ADD) dated 20-12-2022 in respect of the goods with the country of Origin of goods as "China PR" denoted hereafter:

S. No.	Country of export (5)	Producer (6)	Amount of ADD (7)	Unit (8)	Currency (9)
1.	Any country including China PR	Zhejiang Bangnuo Steel Pipe Co., Ltd.	114	MT	USD
2.	Any country including China PR	Zhejiang HongQuan Stainless Steel Co., Ltd. and Zhejiang Yinlong Stainless Steel Co., Ltd. and Zhejiang Yinlai Steel Tube Co., Ltd.	886	MT	USD
3.	Any country including China PR	Wenzhou Sodo Stainless Steel Manufacturing Co., Ltd.	1,492	MT	USD
4.	Any country including China PR	Zhejiang Huatian Stainless Steel Manufacturing Co., Ltd.	1,005	MT	USD
5.	Any country including China PR	Zhejiang Yi Jia Wang Steel Tube Co., Ltd.	3,191	MT	USD
6.	Any country including China PR	Zhejiang Jiuli Hi-Tech Metals Co., Ltd.	Nil	MT	USD
7.	Any country	Huadi Steel Group Co., Ltd.	Nil	MT	USD
8.	Any country including China PR	Jiangsu Wujin Stainless Steel Pipe Group Co., Ltd.	Nil	MT	USD
9.	Any country including China PR	Zhejiang Tsingshan Steel Pipe Co., Ltd.	Nil	MT	USD
10.	Any	Any producer other than serial number 1 to 9	3,801	MT	USD
11.	China PR	Any	3,801	MT	USD

6.2. Further, para 2 of the Notification No. No. 31/2022-Customs (ADD) dated 20-12-2022 provides that –

"The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette, and shall be payable in Indian currency."

Additionally, it is also explained therein, that –

"For the purposes of this notification, rate of exchange applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by Section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under Section 46 of the said Act."

7.1 Anti-Dumping Duty

7.1.1 Whereas, as per the provisions of the Notification, Serial No. 11 provides that when the Country of Origin is China PR, the Country of Export is China PR and any producer of China has manufactured the goods, Anti-Dumping Duty @ 3801 USD per MT is leviable on all such goods. The same notification very specifically stipulates that the Anti-Dumping Duty shall be effective from the date of publication of the notification in the Official Gazette and the notification has been published vide G.S.R. No. 890(E) on 20-12-2022. As the date of presentation of the import under Bill of Entry No. 3817867 being 20-12-2022 and the vessel inward being 18-12-2022, the applicable date of rate of duty and tariff valuation of imported goods shall be the rate and valuation in force, in the case of goods entered for home consumption under Section 46 of the Customs Act, 1962 in terms of para 2 of Section 15 of the Customs Act, 1962. In the instant case being 20-12-2022, the date on which a Bill of Entry in respect of the imported goods has been presented. The Notification also provides an add-on to the description of goods viz. Stainless Steel Seamless Tubes and Pipes that *"Stainless-Steel Seamless Tubes and Pipes with diameter up to and including 6 NPS, or comparable thereof in other unit of measurement, whether manufactured using hot extrusion process or hot piercing process and whether sold as hot finished or cold finished pipes and tubes, including subject goods imported in the form of defectives, non-prime or secondary grades.*

7.1.2 Whereas, the goods contained in the instant Bill of Entry have an outer diameter less than 168.3 mm, thus, all the goods weighing 28258 kgs. attract the Anti-Dumping Duty as prescribed in Notification No. 31/2022-Customs (ADD) dated 20-12-2022.

7.1.3. Whereas, the rate of exchange applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by Section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the Bill of Entry under Section 46 of the said Act. Thus, the rate of exchange applicable on the instant import being ₹ 83.55 for each USD in view of the rate being notified vide Notification No. 109/2022 - Customs (N.T.) New Delhi, dated 15-12-2022 bearing F.No. 468/01/2022-Cus.V) effective from 16-12-2022. In view of the above narrations, the Anti-Dumping Duty in the import under Bill of Entry No. 3817867 dated 20-12-2022 works out to Rs. 89,74,022 as follows:-

Quantity (in Kgs.)	Assessable Value (CIF) (in Rs)	ADD applicable (in USD)	ADD payable	Conversion rate (USD=INR)	ADD payable (in ₹)
28,258	9585481/-	3801 (per MT)	1,07,409	1 = 83.55	89,74,022

7.2 Integrated Tax (IGST) [Section 3(7) of the Customs Tariff Act, 1975]

7.2.1. Whereas, it appears that non-payment of Anti-Dumping Duty, as discussed hereinabove, has also resulted in short-payment of Integrated Tax (IGST) on the total assessable value arrived at by adding Anti-Dumping Duty (ADD) in the landed value, for the purpose of calculation of IGST on imported goods and the differential amount of IGST comes to Rs.16,15,324/- (being 18% of Anti-Dumping Duty amounting to Rs.89,74,022).

7.3. Thus, total amount of Customs Duty due to be recovered from the said importer comes to Rs.1,05,89,346/- (ADD of Rs.89,74,022/- + Differential IGST of 16,15,324/-).

8. Whereas, the said Importer's Bill of Entry No. 3817867 was filed on 20-12-2022 i.e. the date of Notification No. 31-2022-Customs (ADD) dated 20-12-2022 coming into effect. The Vessel inward date being 18-12-2022, the date of filing the Bill of Entry becomes the appropriate date for determination of rate of duty and tariff valuation of imported goods in terms of Section 15(1)(a) of the Customs Act, 1962. Now having filed the Bill of Entry on 20-12-2022, the rate of duty applicable on the goods should have invariably included the Anti-Dumping Duty made effective in terms of Notification No. 31-2022-Customs (ADD) dated 20-12-2022 along with all other duties paid up by the said Importer. Moreover, the said Importer had made the payment of tax through challan on 21-12-2022, a day after the effectiveness of Notification, thus, it had become the primary responsibility of the said Importer to have properly self-assessed the duty in terms of Section 17 of the Customs Act, 1962 and made the payment of Anti-Dumping Duty and differential IGST accordingly.

9. LEGAL PROVISIONS APPLICABLE IN THE CASE:

Apart from the stipulations and provisions narrated above at para 3 and 6, the following provisions of law also appear to be relevant in the case of the import under Bill of Entry No. 3817967 dated 20-12-2022:

SECTION 15 of the Customs Act, 1962: Date for determination of rate of duty and tariff valuation of imported goods. -

(1) *[The rate of duty] and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -*

(a) in the case of goods entered for home consumption under Section 46, on the date on which [a bill of entry in respect of such goods is presented under that section];

(b) in the case of goods cleared from a warehouse under Section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft ⁵ [or the vehicle] by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

SECTION 17 of the Customs Act, 1962: 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.

SECTION 28 of the Customs Act, 1962: Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. -

(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been 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;

Provided that before issuing notice, **the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;**

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,-
(i) his own ascertainment of such duty; or
(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:

Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under Section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (2).

SECTION 28AA of the Customs Act, 1962: *Interest on delayed payment of duty—*
 (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 thereunder, 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 paid 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.*

SECTION 46(4) of the Customs Act, 1962:

(4) *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 as may be prescribed.*

Section 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 of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

Section 114A of the Customs Act, 1962: 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"

10. In response to Summons dated 13-04-2023, Shri Ashok Shah, Partner of M/s. Jaiman Metalloys LLP had appeared for giving his statement under Section 108 of the Customs Act, 1962 on 26-04-2023 (**RUD-01**). In his statement he had interalia stated that –

- the Importer is engaged in trading business of Stainless Steel Sheet/ Coils and Seamless/Welded Pipes;
- he is aware that the statement has been recorded for import of Stainless Steel Seamless Pipes from China vide Bill of Entry No. 3817867 dated 20-12-2022;

- out of charge of the same was given on 20-12-2022;
- Govt. of India vide notification no. 31/2022-Customs (ADD) dated 20-12-2022 had imposed Anti-Dumping Duty on Stainless Steel Seamless Pipes from China PR;
- Bill of Entry No. 3817867 dated 20-12-2022 is only such type of matter;
- they were not aware about the imposition of Anti-Dumping Duty;
- the option of Anti-Dumping Duty was not available on ICE Gate at the relevant time as it was updated 4 to 5 days after the issuance of the notification no. 31/2022-Customs(ADD) dated 20-12-2022.
- the Importer vide its letter dated 28-04-2023 submitted a reference of judgement passed by the Hon'ble High Court of Gujarat in WP No. 11887 of 2019 involving M/s. Rasrasna Food Pvt. Ltd. The Importer has tried to contend that the Hon'ble Court had dismissed the appeal of the Union of India holding that it cannot levy enhanced Customs Duty from the Importers who had already presented the Bills of Entry for home consumption before the time the enhanced rate was notified in the e-Gazette.
- It also conveyed in their letter that if the department is not inclined to consider their request, a demand notice under Section 28 of the Act be issued so that they may seek legal remedies against such notice in terms of the law as settled by the Supreme Court.

11. Whereas, elaborating the judgement of the Hon'ble High Court of Punjab and Haryana, it may be highlighted that the judgement involves the issue related to demand of duty subsequent to imposition of 200% vide Notification No. 5/2019-Custom dated 16-02-2019. The judgement speaks –

- about the contention of the Petitioner that duty payment challan was generated prior to 8:45 PM on 16-02-2019;
- that the import orders were placed before the supplier prior to 16-02-2019; the goods were received in India on or before 16-02-2019. The impugned Notification was issued/uploaded at 8.45 PM on 16-02-2019 i.e. after the working hours.
- if the impugned notification is made applicable to them, it would amount to retrospective application which is not permissible in law.

Thus, it was held that the Petitioners would be liable to pay duty as was applicable at the time of filing of bill of entry coupled with the fact of the imported goods having entered territory of India on 16-02-2019 prior to the issuance of the impugned notification.

12. Whereas, it is found during the course of investigation that despite –

- the publishing of Notification No. 31/2022-Customs (ADD) dated 20-12-2022 stipulating the applicability of Anti-Dumping Duty on imports of

Stainless-Steel Seamless Tubes and Pipes with diameter up to and including 6 NPS, or comparable thereof, wherever the goods are originating in, or exported from China PR;

- Anti-Dumping Duty being made effective from the date of publication of the notification in the Official Gazette as the notification has been published vide G.S.R. No. 890(E) on 20-12-2022;
- the date for determination of rate of duty and tariff valuation of the imported goods under Bill of Entry No. 3817967 dated 20-12-2022 being entered for home consumption under Section 46, recognised as 20-12-2022 in terms of Section 15 of the Customs Act, 1962;

The said Importer who was under the obligation –

- i. in terms of Section 46 of the Customs Act, 1962, to present the Bill of Entry No. 3817967 dated 20-12-2022 by making and subscribing 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 as may be prescribed, failed to do so;
- ii. in terms of Section 17 of the Customs Act, 1962 for entering the imported goods under the provisions of Section 46 of the Customs Act, 1962 after self-assessing the duty, if any, leviable on such goods, has failed to do so and;

thereby, evaded the payment of Anti-Dumping Duty on the goods viz. Stainless-Steel Seamless Tubes and Pipes. Further, as per section 46(4), the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein, the authenticity and validity of any documents supporting it and 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. Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011 cast a heightened responsibility and onus on the importer to **determine duty**, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that they declared the correct classification, **applicable rate of duty**, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Hence, Importer has violated the provisions of section 46, 46 (4A) and section 17 of the Customs Act, 1962 and rendered the goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. Due to this act of omission/commission, the goods have been rendered liable for confiscation, accordingly it also appears that the Importer is liable to be penalized under section 112(a) of the Customs Act, 1962.

13. Whereas, as the Bill of Entry was filed on 20-12-2022, the duty paid on 21-12-2022 and the crux lying in the date of determining the rate and tariff, which becomes 20-12-2022 with the date of payment of duty happening subsequent to the issuance of the notification, the judgement of the Hon'ble Punjab and Haryana Court cannot be made applicable to the instant case.

14. Whereas, the said Importer failed to exercise option under Sub-section (2) of Section 28 of the Customs Act, 1962 in as much as they did not voluntarily file any intimation or come forward before the Department to pay up the applicable Anti-Dumping Duty after being apprised about the levy of such Anti-Dumping Duty on

Stainless Steel Seamless Pipes; this fact is evident, since, similar consignments belonging/imported by the said Importer were kept on hold for levying Anti-Dumping Duty and a statement was recorded under Section 108 of the Customs Act, 1962.

15. The importer vide letter dated 27.04.2023 had in the last para to that requested to issue demand notice, hence the pre-notice consultation was not initiated towards to the importer.

16. Whereas, the Anti-Dumping Duty amounting to ₹ 89,74,022 applicable in terms of Notification No. 31/2022-Customs (ADD) dated 20-12-2022 and differential IGST amounting to Rs.16,15,324/- on the goods imported under Bill of Entry No. 3817867 dated 20-12-2022 having not been paid/discharged by the said Importer requires to be recovered under Section 28(1) of the Customs Act, 1962 as the same Anti-Dumping Duty and differential IGST has not been paid/short-paid .

17. Whereas, the said Importer having contravened the provisions of Section 17 of the Customs Act, 1962 in as much as failing to properly self-assessing the duty involved in the import of the goods; contravened the provisions of Section 46 of Customs Act, 1962 in as much as have failed to make and subscribe to a declaration as to the truth of the contents of such bill of entry and failed to pay/discharge the Anti-Dumping Duty amounting to ₹ 89,74,022 applicable in terms of Notification No. 31/2022-Customs (ADD) dated 20-12-2022 and differential IGST amounting to Rs.16,15,324/- on the goods imported under Bill of Entry No. 3817867 dated 20-12-2022 through suppression of facts and have made themselves liable for penalty under the provisions of Section 114A of the Customs Act, 1962 and liable to pay interest under the provision of Section 28AA of the Customs Act, 1962.

18. Now, therefore, **M/s. Jaiman Metalloys LLP** having its office located at 1116, 11th Floor, CS1487, Prasad Chambers, Tata Road, No. 2 Roxy Cinema, Mumbai 400004 are hereby called upon to show cause within thirty days from the date of receipt of this notice to the Adjudicating Authority i.e. the Pr. Commissioner of Customs, Custom House Mundra having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 as to why:-

- (i) The assessment in respect of Bill of Entry No. 3817867 dated 20-12-2022 should not be rejected;
- (ii) Anti-Dumping Duty at applicable rate under Notification No. 31/2022-Customs (ADD) dated 20-12-2022 should not be applied on the goods imported by the said importer namely Stainless Steel Pipes & Tubes;
- (iii) Assessable Value for the purpose of calculation of IGST should not be recalculated so as to add the amount of Anti-Dumping Duty as discussed hereinabove;
- (iv) Differential Customs duties totally amounting to **Rs.1,05,89,346/- (Rupees One Crore Five Lakh Eighty-Nine Thousand Three Hundred Forty Six only)** (ADD Rs.89,74,022 + IGST Rs.16,15,324/-), as discussed hereinabove, should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;

- (v) The impugned goods of declared assessable value **Rs. 9585481/- (Rupees Ninety Five Lakh Eighty Five Thousand Four Hundred Eighty One Only)** should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- (vi) Penalty should not be imposed upon them under the provisions of Section 112(a) of the Customs Act, 1962, for rendering imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962;
- (vii) Penalty under Section 114A of the Customs Act, 1962 should not be imposed on them for having failed to pay/short paid the Anti-Dumping Duty applicable in terms of Notification No. 31/2022-Customs (ADD) dated 20-12-2022 and differential IGST;

DEFENCE SUBMISSION AND PERSONAL HEARING

19. *I observe that 'Audi alteram partem', is an important principle of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the noticees on 15.05.2025. Shri Bochu Timothy Satyanandam, Consultant, representing M/s Jaiman Metalloys LLP, appeared for personal hearing through virtual mode on 15.05.2025. During the personal hearing, he reiterated the submissions as made in the reply dated 06.02.2025 wherein he inter alia stated that:*

THE DEMAND IS TIME BARRED:

19.1 The demand of duty is clearly time barred in view of the legal provisions in the section 28 of the Customs Act, 1962 and the Explanation I under that section relating to limitation period for raising the demand of short paid duty. The said provisions of law are reproduced below for ease of reference:

"Section 28:

Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded - (1) Where any duty has not been levied or not paid or short levied or short paid or erroneously refunded or any interest payable has not been paid or short paid or erroneously refunded for any reason other than the reason of collusion or wilful mis-statement or suppression of facts, -

*"(a) The proper officer shall, **within two years** from the relevant date serve a notice on the person chargeable with duty or interest which has not been levied or not paid or short levied or short paid or erroneously refunded or any interest payable has not been paid or short paid or to whom refund has erroneously been made requiring him to show cause why he should not pay the amount specified in the notice"*

Explanation I to the Section 28 of the Customs Act, 1962 is reproduced below:

"Explanation I – For the purposes of this section the "relevant date" means, -

in a case where duty has not been levied or not paid or short levied or short paid or interest is not charged, the date on which the proper officer makes an order for the clearance of goods”

19.2 In order to demonstrate that that demand of duty is time barred, the relevant dates pertaining to the BE No: 3817867 dated 20.12.2022 as mentioned in the Para 3.1 of the SCN may be noted:

Event	Date
Vessel Inward Date	18-12-2022
Date of filing the BE electronically	20-12-2022
Date of Assessment	20-12-2022
Duty Payment Date	21-12-2022
Out of Charge Date (The Relevant Date for serving the notice demanding the duty)	21-12-2022

19.3 As can be seen from the provisions of Section 28 of the Act and the relevant dates in respect of the instant BE, the demand is clearly time barred in the instant case as the notice has been served on the importer after the expiry of two years from the relevant date. The order of clearance of goods i.e., the out of charge was obtained on 21.12.2022 and hence the notice demanding of duty short levied should have been served **“WITHIN TWO YEARS”** i.e. on or before 20.12.2024. However, the SCN is received by the importer on the 21.12.2024 at 16:46:11 Hrs. (The speed post tracker sheet of the consignment No:EG258653695IN containing the SCN is attached herewith as Annexure A).

19.4 Hence the demand of short levy is clearly beyond the period of limitation specified under the Section 28(1) of the Act read with Explanation I and therefore is liable to be dropped. As a consequence, proposals for recovery of interest under Section 28AA and confiscation under the Section 111(m) and imposition of penalty under the section 112 (a)/114A of the Customs Act,1962 also are liable to be dropped.

19.5 Apart from being a time barred case, the demand is also untenable on the following grounds.

THE ANTI-DUMPING DUTY IMPOSED ON THE IMPUGNED GOODS VIDE NOTIFICATION No.31/2022-CUSTOMS (ADD) DATED 20.12.2022 IS NOT APPLICABLE TO THE IMPORTER:

19.6 The anti-dumping duty vide Notification No.31/2022-Customs (ADD) dated 20.12.2022, is not applicable to the impugned goods because the said notification though issued on 20.12.2022, was published late in the evening of 20.12.2022 after the assessment had been completed at 13:37 Hrs in view of the settled law laid down by the Supreme Court that a notification imposing a duty becomes enforceable only from time of the day, and not from the commencement of the day on which it gets published in the e-Gazette.

19.7 The above rule that enforceability of a notification begins only from that point of time of the day when it is published in the e-gazette and not from the midnight of the preceding day, is a settled law now as laid down by the Supreme Court in the case of Union of India Vs G.S. Chatha Rice Mills [2020 (374) ELT 289 (SC)] (bunched with 27 other Civil Appeals).

19.8 The Supreme Court, in the above referred case pertaining to imposition of 200% duty on goods imported from Pakistan vide Notification 5/2019 dated 16.02.2019, held that the “date of determination of duty” under the section 15 (1) of the Customs Act,1962 means not the whole of the day commencing from the midnight of the day preceding the day on which a notification has been issued but it is the fraction of the day i.e from the actual time of the publication in the e-Gazette on that day. The Honourable Supreme Court further clarified that the starting point for the enforceability of a notification is time of the day on which the notification was published in the e-Gazette and uploaded in the system.

19.9 The Apex Court while laying down this rule, held that the Notification No.5/1019 dated 16.02.2019 imposing 200% duty on goods imported from Pakistan would not apply to the Bills of Entry filed during the day on 16.02.2019 as the notification was published and uploaded in the Official gazette at 20:46:58 Hrs on 16.02.2019 after the Bills of Entry were already assessed before that time. (The Caselaw Union of India Vs G.S. Chatha Rice Mills [2020 (374) ELT 289 (SC)] is attached as Attachment B).

19.10 In the case of the Noticee too, though the Notification No.31/2022-Customs (ADD) was issued on 20.12.2022, it was published late in the evening of 20.12.2022 after the duty assessment had been completed in the morning of 20.12.2022 (at 13:37 Hrs.) under Section 46 read with Section 17 (1) of the Customs Act,1962. Therefore, the anti-dumping duty imposed vide Notification No.31/2022-Customs (ADD) dated 20.12.2022 is not demandable or recoverable from the Noticee - Importer.

19.11 In coming to the conclusion that the **‘time of publication’** is relevant for the enforcement of the a notification, the Hon’ble Supreme Court stated the grounds and reasons as under:

(a) The appellant (UOI) contended that the Parliament has employed the phrase “ on the date “ in the Section 15(1) without making a reference to “time” and hence irrespective of the time of publication or uploading of the notification in the e-Gazette the legislature has by a legal fiction that the rate of duty on imported goods will be the rate prevalent of the date of presentation of BE for home consumption. Two different rates cannot be applicable on the same day (Para 33)

— Addressing the above contention, the Supreme Court pointed out the new developments after the enactment of customs Act in 1962 such as introduction of Self assessment under the section 17(1), Electronic filing of BE under automated system under Regulation 4 of Electronic filing of BE Regulations, 2018 and requirement of citizens to know when the electronic record is uploaded , and held that,-

(i) “ Legislature does not always say everything on the subject. When enacts a law, every conceivable eventuality which may arise in future may not be present in the mind of the lawmaker. Between the spaces and silences the law is shaped by common sense. Second, regulatory governance is evolving in India as new technology replaces old and

outmoded ways of functioning. The virtual world of electronic filings was not on the horizon when Parliament enacted the Customs Act in 1962. Yet the Parliament has responded to the rapid changes which have been brought about by the adoption of technology in governance. In the provisions of Section 17 and Section 46, the impact of ICT-based governance has been recognized by the legislature in providing for the presentation of bills of entry in the electronic form on the customs automated EDI system. Precision, transparency and seamless administration are key features of a system which adopts technology in pursuit of efficiency. Technology has enabled both administrators and citizens to know precisely when an electronic record is uploaded. The considerations which Parliament had in its view in providing for crucial amendments to the statutory scheme by moving from manual to electronic forms of governance in the assessment of duties must not be ignored. Tax administration must leave behind the culture of an age in which the assessment of duty was wrought with delays, discretion, doubt and sometimes, the dubious. The interpretation of the court must aid in establishing a system which ensures certainty for citizens, ease of application and efficiency of administration. (Para 35).

(ii) It is with these principles of interpretation in mind that we must evaluate the submission which was urged by Mr Nataraj, on behalf of the Union, that upon the issuance of a notification enhancing the rate of duty under Section 8A of the Customs Tariff Act, the date on which the notification was issued will govern the rate applicable to all bills of entry, including those which were presented before the enhanced rate was notified. The submission cannot be accepted for several reasons. For one thing, it misses the significance of the expression "in force" which has been employed in the prefatory part of Section 15(1). A notification under Section 8A(1) of the Customs Tariff Act, even though it has the effect of amending the First Schedule, takes effect prospectively. Section 8A does not confer upon the notification an operation anterior to its making. In the language of the law, its operation is prospective. To accept the submission of the ASG would mean that the notification under Section 8A would have effect prior to its making, something which Parliament has not incorporated by language or intent. If, as we hold, the notification operates for the future beginning with the point of its adoption, it cannot operate to displace the rate of duty which is applicable when a bill of entry is presented for home consumption under Section 46.

(iii) The submission of the Union cannot be accepted in view of the provisions contained in Section 46 for the presentation of a bill of entry for home consumption in an electronic form on the customs automated system. While making that provision, specifically by means of an amendment by Act 8 of 2011 and later by the Finance Act of 2018, Parliament used the expression "in such form and manner as may be prescribed." Regulation 4(2) of the Regulations of 2018 provides when the bill of entry shall be deemed to have been filed and self-assessment completed. The legal fiction which has been embodied in Regulation 4(2) emanates from the enabling provisions of Section 46. The provisions of Sections 15(1)(a), 17, 46(1) and 47(2)(a) constitute one composite scheme. As a result of the modalities prescribed for the electronic presentation of the bill of entry and self-assessment after

the entry of the electronic declaration on the customs automated system, a bill of entry number is generated by the EDI system for the declaration. Regulation 4(2) provides for a deeming fiction in regard to the filing of the bill of entry and the completion of self-assessment. In the context of these specific provisions, it would do violence to the overall scheme of the statute to interpret the language of Section 15(1)(a) in the manner in which it is sought to be interpreted by the ASG. The submission of the ASG, simply put, is that because notification 5/2019 was issued on 16 February 2019, the court must regardless of the time at which it was uploaded on the e-Gazette treat it as being in existence with effect from midnight or 0000 hours on 16 February 2019. The consequence of this interpretation would be to do violence to the language of Section 8A(1) of the Customs Tariff Act, and to disregard the meaning, intent and purpose underlying the adoption of provisions in the Customs Act in regard to the electronic filing of the bill of entry and the completion of self-assessment. " (Para 36)

(iv) Thus the Supreme Court held that " time" is an integral part of the " "date" of determination of duty under the section 15(1) and presentation of BE under Section 46 of the Customs Act,1962.

(b) The UOI in its appeal contended that under Section 5(3) of the General Clauses Act,1897, a Central Act or Regulation, unless contrary is expressed, comes into force immediately on the expiration of the day preceding its commencement and commencement can only from a day which takes in its fold entire period of 24 Hours from midnight of the day before the issuance of the notification and therefore the Notification 5/2019 dated 16.02.2019, though published at 20:46 Hrs would be deemed to have come into force starting from the midnight of the previous day.

— Answering the above contention, the supreme court held that the notification issued under the Section 8A of the Customs Tariff Act,1975 do not fall within the scope of an "Act" defined in Section 3 (5) or a "Regulation" as defined in the Section 3(50) of the General Clauses Act,1897 and hence the Section 5(3) of the general Clauses Act,1897 doen not apply to a notification. (Paras 40 to 46)

(c) The UOI further contended that the Bills of Entry could be re-assessed under Section 17(4) of the Customs Act in view of the expression "Otherwise would encompass the facts of the present case

— After careful consideration of the issue, the Supreme Court held that the expression "otherwise" in Section 17(4), will not come to the rescue of the appellants, in the facts of the instant case. While the word "otherwise" may be capable of taking care of situations which are not covered by the preceding expressions, viz., verification, examination, attesting of the goods, it cannot mean that it will empower the Officer to alter the rate of duty which is prevalent at the time of the self-assessment following the due presentation of the Bill of Entry. If it is otherwise, it will be open to the Department to reopen cases of concluded assessments by virtue of the deemed completion of assessment under Regulation 4(2) without any legal justification. That would be plainly impermissible being illegal. This is not a case where the assessment is assailed on any other ground except by insisting on a rate of duty which is in applicable. (Para 148)

(d) The Supreme Court further held that the case law relied upon by the Appellant (UOI) may not assist the appellants.

(i) The case of Bharat Surfactnts (P) Ltd. v. Union of India⁵⁷ involves a challenge to Section 15(1)(a) of the customs Act whereas in the present case, there is no challenge to that section.

(iii) The decision in Priyanka Overseas (P) Ltd. v. Union of India⁵⁸ also will not assist the appellant in persuading this Court to answer the question in favour of the appellant. No doubt, the court has reiterated the principle in Section 15 of the Customs Act but the question actually fell for decision under Section 15 (1)(b) whereas we are in this case concerned with Section 15(1)(a) . The actual question is the impact of the notification issued under Section 8A and what is the significance of the word “the date”.

(iv) In the decision of this Court in Dhiraj Lal H. Vohra v. Union of India, decision also does not assist the Court in deciding the question which squarely falls for decision. Therefore this caselaw would not assist the appellants.

(v) The decision of this Court in D.C.M.Ltd. and Another V. Union of India⁶⁰ involved a challenge to the validity of Section 15(1)(b) of the Customs Act. It does not have any effect qua the facts of the case before this Court except that what determines the date of the rate will be found from Section 15 of the Customs Act.

(vi) The decision of this Court in Raj Kumar Yadav v. Samir Kumar Mahaseth⁶¹, also will not assist the appellant as this case relates to period of limitation in an election petition that was presented on last day i.e, 27.8.2003 after the designated judge had retired to his chamber at 4.15 p.m. In that context the day was defined as commencing from the midnight to the next 24 Hours and that the High Court should not have allowed the period of limitation abridged by the rules.

19.12 The Hon'ble Supreme Court further stated the following reasons to rule that a notification comes into force from the 'time' of publishing the notification.

(a) With the enactment of Information Technology Act,2000, the provisions in the Customs Act for the electronic presentation of the bill of entry for home consumption and for self-assessment have to be read in the context of section 13 of the Information Technology Act which recognizes “the dispatch of an electronic record” and “the time of receipt of an electronic record”. The legal regime envisaging the electronic presentation of records, such as the presentation of a bill of entry, has been imparted precision as a result of the enabling framework of the Information Technology Act under which these records are maintained. The presentation of the bill of entry under Section 46 is made electronically and is captured with time stamps in terms of the requirements of the Information Technology Act read with Rule 5(1) of the Information Technology (Electronic Service Delivery) Rules 2011. (Para 50)

(b) With the change in the manner of publishing gazette notifications from analog to digital, the precise time when the gazette is published in the electronic mode assumes significance. Notification 5/2019, which is akin to the exercise of delegated legislative power, under the emergency power to

notify and revise tariff duty under Section 8A of the Customs Tariff Act, 1975, cannot operate retrospectively, unless authorized by statute. In the era of the electronic publication of gazette notifications and electronic filing of bills of entry, the revised rate of import duty under the Notification 5/2019 applies to bills of entry presented for home consumption after the notification was uploaded in the e-Gazette at 20:46:58 hours on 16 February 2019. (Para 58)

(c) The Supreme Court relied on the following precedents

(i) the dissenting opinion of justice Kumaraswami Shastri in *Re.Court Fees* [ILR (1923) 46 Mad 685] in which he held that enhanced court fees structure would not apply to the plaints filed on 5th May 1923 because though the gazette notification was issued on 5th May 1923, the notification reached the Court at 5.30 PM. (Para 32)

(ii) the Supreme Court, in a catena of decisions including *Harla v. State of Rajasthan* [1952 (1) SCR 110], *B.K. Srinivasan v. State of Karnataka* [AIR 1987 SC 1059] and *U.O.I. v. Param Industries* [(2016) 16 SCC 692] held that, notifications would come into force on their publication in the Official Gazette, i.e. in the present case, with effect from the date and time when they were electronically printed in the Gazette, which was at or after 10:47 p.m. on 28th August, 2017."

(iii) the decision of Andhra Pradesh High Court in *Ruchi Soya Industries vs. Union of India* where it was held that the time of publication as the relevant marker for determining the enforceability of the notifications. (Para 56)

19.13 The summary of judgment — emphasizing the relevance of Time of the publishing the Notification leading to the dismissal of the appeal of the UOI — is stated in Para 67 of the judgment as under:

" In the present case, the twin conditions of Section 15 stood determined prior to the issuance of Notification 5/2019 on 16 February 2019 at 20:46:58 hours —

The rate of duty was determined by the presentation of the bills of entry for home consumption in the electronic form under Section 46 and (b) Self-assessment was on the basis of rate of duty which was in force on the date and at the time of presentation of the bills of entry for home consumption.

This (the self assessment under section 17(1)) could not have been altered in the purported exercise of the power of re-assessment under Section 17 or at the time of the clearance of the goods for home consumption under Section 47.

The rate of duty which was applicable was crystallized at the time and on the date of the presentation of the bills of entry in terms of the provisions of Section 15 read with Regulation 4(2) of the Regulations of 2018.

The power of re- assessment under Section 17(4) could not have been exercised since this is not a case where there was an incorrect self-assessment of duty. The duty was correctly assessed at the time of self-assessment in terms of the duty which was in force on that date and at the time. The subsequent publication of the notification bearing 5/2019 did not furnish a valid basis for re-assessment. (Para 67)

19.14 Thus all the legal issues surrounding the sections 15(1), 46 and 17 of the Customs Act,1962 relating to 'date and time' of enforceability of notification have been exhaustively discussed and settled by the Apex Court .

19.15 The facts and circumstances of the instant case and the case decided by the Supreme Court in Union of India Versus G.S. Chatha Rice Mills [2020 (374) ELT 289 (SC)], in the Civil Appeal No.3249 of 2020 clubbed with 27 other Civil Appeals are identical as tabulated below:

Fact/Event	In the case decided by the Supreme Court in Union of India vs. G.S. Chatha Rice Mills [2020 (374) ELT 289 (SC)]	In the Instant Case of the Noticee
Date of Issuance of Notification	Notification No.5/2019 issued on 16.02.2019	Notification 31/2020 dated 20.12.202
Time of publishing of Notification/uploading in the e-Gazette	published at 20:46:58 Hours on that day.	published late in the evening on that day.
Presentation of BE Under Section 46 and self assessment u/s 17(1)	BEs were presented and assessed to duty before 20:46:58 Hrs on 16.02.2019	BEs were presented at 11.50 Hrs and assessed to duty at 13.37 Hrs before publishing in the evening on 20.12.22
Nature of the Notification	The notification No. 5/2019 dated 16.2.2019 was issued under the Section 8A of the Customs tariff Act,1975	The Notification No.31/2022 dated 20.12.2022 was issued under Section 9A of the Customs tariff Act,1975 .
Does Section 8A or 9A of CTA,1975 empower the author to issue it retrospectively	No	No
The Section of the Act and Regulation applicable for Rate of Duty	The rate of duty depends on date of presentation of BE under section 46 read with Regulation 4 of the Electronic filing of Bill of Entry Regulations,2018	The rate of duty depends on date of presentation of BE under section 46 read with Regulation 4 of the Electronic filing of Bill of Entry Regulations,2018
Possibility of and reassessment under Sec 17(4) of the Act after assessment or the date of out of charge under section 47 of the Act	The rate of duty once assessed on presentation of the BE could not have been altered even by the powers of re-assessment under section 17 or the date of out of charge under Section 47.	The rate of duty once assessed on presentation of the BE could not have been altered even by the powers of re-assessment under section 17 or the date of out of charge under Section 47.

19.16 In view of the submissions made above, the ratio of Union of India Vs G.S. Chatha Rice Mills [2020 (374) ELT 289 (SC)] is squarely applicable to the instant case of the Noticee and therefore the demanded of duty is untenable. As a consequence the goods are also not liable for confiscation under section 111(m) of Customs Act and importer is not liable for penalty under Section 112/114A of the Customs Act,1962 proposed in the Show Cause Notice.

19.17 In consideration of the foregoing submissions, it is requested to drop all the proceedings initiated against the Noticee vide the subject SCN.

DISCUSSION AND FINDINGS

20. I have gone through the facts of the case, records and documents placed before me. Personal hearing was attended by Authorized Representatives of the Noticee on the scheduled date i.e. 15.05.2025 and written submissions dated 06.02.2025 were made for the noticee.

21. After carefully considering the facts of the case, written submissions made by the Noticee and record of Personal Hearing, the issues to be decided before me are:-

- i. Whether the assessment in respect of Bill of Entry No. 3817867 dated 20-12-2022 be rejected;
- ii. Whether Anti-Dumping Duty at applicable rate under Notification No. 31/2022-Customs (ADD) dated 20-12-2022 be applied on the goods imported by the said importer namely Stainless Steel Pipes & Tubes;
- iii. Whether assessable value for the purpose of calculation of IGST be recalculated so as to add the amount of Anti-Dumping Duty as discussed hereinabove;
- iv. Whether differential Customs duties totally amounting to **Rs.1,05,89,346/-** (*Rupees One Crore Five Lakh Eighty-Nine Thousand Three Hundred Forty Six only*) (ADD Rs.89,74,022 + IGST Rs.16,15,324/-), as discussed hereinabove, be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;
- v. Whether the impugned goods of declared assessable value **Rs. 9585481/-** (*Rupees Ninety Five Lakh Eighty Five Thousand Four Hundred Eighty One Only*) be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- vi. Whether penalty be imposed upon them under the provisions of Section 112(a) of the Customs Act, 1962, for rendering imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962;
- vii. Whether penalty under Section 114A of the Customs Act, 1962 should not be imposed on them for having failed to pay/short paid the Anti-Dumping Duty

applicable in terms of Notification No. 31/2022-Customs (ADD) dated 20-12-2022 and differential IGST;

21.1 I have gone through the allegations in Show Cause Notice and submissions by the Noticee. I find that the Anti-Dumping Duty Notification No. 31/2022-Customs (ADD) was issued on 20.12.2022 and BE was filed as well as assessed on the same day i.e 20.12.2022. Now, the question to be decided is whether the said Notification is applicable to the goods covered under said BE dated 20.12.2022 and thereby anti-Dumping Duty is leviable on said goods?

22. SCN alleged that Anti-Dumping Duty Notification No. 31/2022-Customs (ADD) was effective from 20.12.2022 as the same was published in the Official Gazette vide G.S.R. No. 890(E) on 20-12-2022 and as per Section 15 of the Customs Act, 1962, the date for determination of rate of duty and tariff valuation of imported goods shall be the rate and valuation in force, in the case of goods entered for home consumption under Section 46 of the Customs Act, 1962 i.e. on the date of which a Bill of Entry in respect of the imported goods has been presented. In the instant case, the date of presentation of BE is 20-12-2022. Therefore, Anti-Dumping Duty is leviable on the impugned goods imported vide BE no. 3817867 dated 20-12-2022.

22.1 However, importer in his reply dated 06.02.2025 submitted that the anti-dumping duty vide Notification No.31/2022-Customs (ADD) dated 20.12.2022, is not applicable to the impugned goods because the said notification though issued on 20.12.2022, was published late in the evening of 20.12.2022 after the assessment had been completed in the afternoon at 13:37 Hrs. They submitted that Hon'ble Supreme Court has settled the law in the case of Union of India Vs G.S. Chatha Rice Mills [2020 (374) ELT 289 (SC) that a notification imposing a duty becomes enforceable only from time of the day when it gets published in the e-Gazette and not from the commencement of the day. The relevant para is produced below:

"36...The submission of the Union cannot be accepted in view of the provisions contained in Section 46 for the presentation of a bill of entry for home consumption in an electronic form on the customs automated system. While making that provision, specifically by means of an amendment by Act 8 of 2011 and later by the Finance Act of 2018, Parliament used the expression "in such form and manner as may be prescribed." Regulation 4(2) of the Regulations of 2018 provides when the bill of entry shall be deemed to have been filed and self-assessment completed. The legal fiction which has been embodied in Regulation 4(2) emanates from the enabling provisions of Section 46. The provisions of Sections 15(1)(a), 17, 46(1) and 47(2)(a) constitute one composite scheme. As a result of the modalities prescribed for the electronic presentation of the bill of entry and self-assessment after the entry of the electronic declaration on the customs automated system, a bill of entry number is generated by the EDI system for the declaration. Regulation 4(2) provides for a deeming fiction in regard to the filing of the bill of entry and the completion of self-assessment. In the context of these specific provisions, it would do violence to the overall scheme of the statute to interpret the language of Section 15(1)(a) in the manner in which it is sought to be interpreted by the ASG. The submission of the ASG, simply put, is that because

notification 5/2019 was issued on 16 February 2019, the court must regardless of the time at which it was uploaded on the e-Gazette treat it as being in existence with effect from midnight or 0000 hours on 16 February 2019. The consequence of this interpretation would be to do violence to the language of Section 8A(1) of the Customs Tariff Act, and to disregard the meaning, intent and purpose underlying the adoption of provisions in the Customs Act in regard to the electronic filing of the bill of entry and the completion of self-assessment..

....

....

53. Thus far, this Court has not had to confront the question as to whether the shift from the analog to the digital for Gazette notifications has any bearing for ascertaining when they come into force. The judgments which dealt with the starting point for the enforceability of notifications were all concerned with circumstances in which such publication took place in the physical gazette. We are now required to determine if the shift to electronic gazettes has brought about a change in this position.

54. The High Courts have begun offering guidance on this score. The Delhi High Court in *M.D. Overseas Industries v. Union of India* [W.P. (C) 7838/2017 decided on 15 October, 2019 (Delhi High Court)] [2020 (371) E.L.T. 319 (Del.)], dealt with a situation where the Director General of Foreign Trade issued two notifications dated 25 August, 2017 restricting the importation of gold, including gold coins. Gold coins could no longer be imported freely and had to be imported in accordance with a public notice issued in that behalf. The petitioners urged that the restrictive regime created by these notifications was inapplicable to them because the notifications, they contended, came into force only on 28 August, 2017, when they were published in the official gazette. The gold coins imported by the petitioners, however, were dispatched on 25 August, 2017. Since the notifications came into force three days later, they contended that these were inapplicable to them. The notifications were electronically notified in the gazette.

55. The High Court upheld the Petitioner's view that the notifications were inapplicable to the petitioners after considering Section 8 of the Information Technology Act, 2000 along with the Office Memorandum dated 30-9-2015. It held :

"32. The endorsement on the electronic copy of the Gazette, whereby the impugned Notification Nos. 24 and 25, dated 25th August, 2017, were notified, seen in juxtaposition with Section 8 of the IT Act, and of the OM dated 30th September, 2015 *supra*, of the Ministry of Urban Development, makes it clear that the impugned Notification Nos. 24 and 25, dated 25th August, 2017 were, in fact, electronically published in the Official Gazette only at or after 10:47 p.m. on 28th August, 2017.

33. It has been conclusively held, by the Supreme Court, in a *catena of decisions* - including *Harla v. State of Rajasthan* [1952 (1) SCR 110], *B.K. Srinivasan v. State of Karnataka* [AIR 1987 SC 1059] and *U.O.I. v. Param Industries* [(2016) 16 SCC 692]

that, notifications would come into force on their publication in the Official Gazette, i.e. in the present case, with effect from the date and time when they were electronically printed in the Gazette, which was at or after 10:47 p.m. on 28th August, 2017."

(emphasis supplied)

56. Thus, the High Court regarded the time of publication as the relevant marker for determining the enforceability of the notifications. The issue of determining the starting point for the enforceability of a notification in the electronic gazette was considered by the Andhra Pradesh High Court in *Ruchi Soya Industries v. Union of India*. [W.P. No. 4533 and 4534 of 2019 decided on 28 September, 2019 (Andhra Pradesh High Court)]. The petitioner entered into a contract with its foreign supplier on 18 January, 2008 for the import of 9,500 Metric Tons of crude oil. The first consignment of 4000 metric tons was shipped by the supplier on 6 February, 2018 from Dubai. The petitioner filed two bills of entry for 2000 metric tons of crude oil on 1 March, 2018. They were assessed that day and levied with 30% customs duty and 10% social welfare surcharge. On the same date, a notification raised the basic customs duty from 30 to 44%. The petitioner filed four bills of entry for the remaining 2000 tons on 2 March, 2018 and argued that the revised rate was not applicable to it because the notification was published in the electronic gazette only on 6 March, 2018. The High Court agreed with the petitioner and held that the revised notification would come into force only after it was digitally signed by the competent official and uploaded and published in the official gazette. The relevant excerpt from page 41 of the High Court's judgment is quoted below :

"....The notification was ...published electronically on 6-3-2018. In view of the decision taken by the Government of India in terms of Section 8 of the...Information Technology Act, to avoid physical printing of Gazette notification to publish the same exclusively by electronic mode, so as to attribute knowledge to the public at large. The notification was signed by Rakesh Sukul on 6-3-2018 at 19:15:13 + 05'30'. When notification needs to be signed digitally and only when the notification was uploaded and published in the Official Gazette, the same is made available for public."

57. The Madras High Court dealt with a similar situation in *Ruchi Soya Industries v. Union of India* [W.P. No. 21207 of 2018, decided on 14 July, 2020 (Madras High Court)] and held that the decision of the A.P. High Court noted above was applicable to the case before it. As a result, it allowed the writ petition on the same terms and directed the Respondent to refund the enhanced duty collected from the petitioner, along with IGST.

67.....The duty was correctly assessed at the time of self-assessment in terms of the duty which was in force on that date and at the time. The subsequent publication of the notification bearing No. 5/2019 did not furnish a valid basis for re-assessment."

23. Since the rate of duty and tariff valuation of imported goods is determined with respect to the date on which a Bill of Entry has been presented, it is necessary to ascertain when the Bill of Entry was presented in the current case. As per Regulation 4 of Bill of Entry (Electronic Integrated Declaration) Regulations, 2011, Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when Bill of Entry No. was generated by ICES system. The relevant portion is produced below:

"4. The bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration."

The movement of BE No. 3817867 dated 20.12.2022 was retrieved from ICES system and the same is produced below:

From above, it is seen that after the declaration was submitted by importer in ICEGATE, BE number was generated or, for our purposes, presented on 20.12.2022 at 12.00 pm and assessment was completed same day by 1:37 PM.

24. I find that the said Anti-Dumping Notification No. 31/2022-Customs (ADD) dated 20-12-2022 was published in Official Gazette via uploading by Department of Printing at Government of India Press on official website www.egazette.gov.in The said ADD Notification was e-Gazetted, having been digitally signed on 20th Dec, 2022 at 22:52:05 hours. The last page of the notification containing date and time of digital signature is produced below for ready reference:

S. No.	Heading	Description of subject goods	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
7.	7304	Stainless-Steel Seamless Tubes and Pipes**	China PR	Any country including China PR	Huadi Steel Group Co., Ltd.	Nil	MT	USD
8.	7304	Stainless-Steel Seamless Tubes and Pipes**	China PR	Any country including China PR	Jiangsu Wujin Stainless Steel Pipe Group Co., Ltd.	Nil	MT	USD
9.	7304	Stainless-Steel Seamless Tubes and Pipes**	China PR	Any country including China PR	Zhejiang Tsingshan Steel Pipe Co., Ltd.	Nil	MT	USD
10.	7304	Stainless-Steel Seamless Tubes and Pipes**	China PR	Any	Any producer other than serial number 1 to 9	3,801	MT	USD
11.	7304	Stainless-Steel Seamless Tubes and Pipes**	Any country Other than China PR	China PR	Any	3,801	MT	USD

** Stainless-Steel Seamless Tubes and Pipes with diameter up to and including 6 NPS, or comparable thereof in other unit of measurement, whether manufactured using hot extrusion process or hot piercing process and whether sold as hot finished or cold finished pipes and tubes, including subject goods imported in the form of defectives, non-prime or secondary grades.

2. The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette, and shall be payable in Indian currency.

Explanation. - For the purposes of this notification, rate of exchange applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Act.

[F. No. CBIC-190354/243/2022-TO(TRU-I)-CBEC]

RAJEEV RANJAN, Under Secy.

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110065
and Published by the Controller of Publications, Delhi-110054. ALOK KUMAR

Digitally signed by ALOK KUMAR
Date: 2022.12.20 22:52:05 +05'30'

Digitally signed by ALOK KUMAR
Date: 2022.12.20 22:52:05 +05'30'

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25. Thus, the Anti-dumping Duty Notification No. 31/2022-Customs (ADD) dated 20-12-2022 was published in Official Gazette through official website www.egazette.gov.in on 20.12.2022 at 22:52:05 whereas BE No. 3817867 dated 20.12.2022 was presented same day at 12.00 pm and assessment was completed by 1:37 PM i.e. approximately 9 hours prior to the ADD Notification came into effect. Besides the judgment of Hon'ble Supreme Court in the case of G.S. Chatha Rice Mills 2020 (374) ELT 289 (SC), I find that this identical issue was decided by Hon'ble Bombay High Court in case of PATANJALI FOODS LTD. Versus UNION OF INDIA 2024 (390) E.L.T. 418 (Bom.) wherein it has been held that the rate in force would

be the rate that was in force *at the time* of presentation of BE. The relevant portion is produced below: -

14.....*Mr. Mishra fairly accepts the proposition of law laid down by the Apex Court in M/s. G. S. Chatha Rice Mills (supra), which simplifies our task. The Apex Court as submitted by Mr. Rawal, has held that in terms of provisions of Section 15(1)(a) which would be the same as regards Section 15(1)(b), time and date of presentation of the bill of entry shall determine the rate and duty of tariff value. The court held that once the bill of entry is deemed to have been presented in terms of Regulation 4(2) of Electronic Integrated Declaration and paperless Processing, Regulations, 2018 (the said Regulations), the rate and value in force stands crystallised under Section 15(1)(b) of the Act. In the present case, the customs authorities have sought to exercise power of reassessment on the grounds of the subsequent Notification enhancing the rate of duty. The fact is that self assessment was carried out on the basis of the rate of duty which prevailed at the time of presentation of the bill of entry. It is rather strange that in the affidavit in reply the stand taken is that Section 15 does not make any reference to time and hence, irrespective of the point of time when the Notification has been published in the e-gazette, the rate of the duty leviable on imported goods cleared is the rate prevailing on the date of presentation of bills of entry. This is notwithstanding the fact that this very same argument has been rejected by the Apex Court in M/s. G.S. Chatha Rice Mills (supra).*

Admittedly, in this case four Ex-Bond Bills of Entry have been presented before the said Notification came into force. One bill of entry was self assessed on 13th May 2021 at 20:17:07 hours, the second was self assessed at 20:56:11 hours, the third was self assessed at 20:15:09 hours and the fourth was self assessed at 20:59:08 hours, whereas, the Notification was e-gazetted on 13th May 2021 at 21:24:11 hours. Therefore, the rate of duty that will be applicable will be USD 1163 PMT, which was in force when the four Ex-Bond Bills of Entry were presented.

Reassessment orders referred to in paragraph 9 above are hereby quashed and set aside.

26. If the ratio of above Judgement is applied to our case, the Bill of Entry No. 3817867 dated 20.12.2022 was assessed at 1:37 PM whereas the anti-dumping duty Notification was e-Gazetted in the night at 10:52 PM and thus the assessment was carried out on the basis of the rate of duty which prevailed at the time of presentation of the bill of entry; the notification simply did not exist at the time in the eyes of law. Therefore, I hold that the importer is not liable to pay anti-dumping duty in terms of aforesaid notification for Bill of Entry No. 3817867 assessed at 1:37 PM.

27. In view of above discussions and findings supra, I pass the following order.

Order

- i. I accept the assessment in respect of Bill of Entry No. 3817867 dated 20-12-2022;
- ii. The Anti-Dumping Duty under Notification No. 31/2022-Customs (ADD) dated 20-12-2022 not to be applied on the goods imported by the said importer;

- iii. The Assessable Value for the purpose of calculation of IGST not to be recalculated;
- iv. The Differential Customs duties totally amounting to **Rs.1,05,89,346/-** (*Rupees One Crore Five Lakh Eighty-Nine Thousand Three Hundred Forty Six only*) (ADD Rs.89,74,022 + IGST Rs.16,15,324/-), as discussed hereinabove, not to be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;
- v. The impugned goods of declared assessable value **Rs. 95,85,481/-** (*Rupees Ninety Five Lakh Eighty Five Thousand Four Hundred and Eighty One Only*) not to be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- vi. The penalty not to be imposed upon them under the provisions of Section 112(a) of the Customs Act, 1962,
- vii. The penalty not to be imposed upon them under Section 114A of the Customs Act, 1962.

28. The O-i-O is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or any other law for the time being in force.



(Nitin Saini)
Commissioner of Customs,
Custom House, Mundra

Date: 09.06.2024

F. No. GEN/ADJ/COMM/616/2023-Adjn-O/o Pr. Commr- Cus-Mundra.

By RPAD/Email/ By Hand Delivery

To,

**M/s. Jaiman Metalloys LLP,
1116, 11th Floor, CS1487,
Prasad Chambers, Tata Road, No. 2,
Roxy Cinema, Mumbai 400004**

Copy to :-

1. The Assistant/Deputy Commissioner (RRA), CCO, Ahmedabad for information please
2. The Assistant/Deputy Commissioner (Import Gr. IV), Custom House, Mundra for information please

3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra for necessary action please.
4. The Assistant/Deputy Commissioner (SIIB), Custom House, Mundra for information please.
5. The Assistant/Deputy Commissioner (TRC), Custom House, Mundra for information please
6. Guard file.