सीमा शुल्ककार्यालय का आयुक्त के (निवारक) , सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर) गुजरात – (361 001

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Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001
**Email:** commr-custjmr@nic.in; adj-custjmr@nic.in

DIN – 20250971MM000000A35A

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| 1. | फ़ाइल क्रमांक/ File Number | F. No. CUS/5638/2024-Adjn |
| 2. | मूल आदेश क्रमांक/ Order-in-Original No. | 13/Additional Commissioner/ 2025-26 |
| 3. | द्वारा पारित/ passed by | एन .सृजन कुमार/ N. Srujan Kumar अपर आयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar. |
| | Date of Order /आदेश दिनांक | 25.09.2025 |
| 4. | Date of issue / आदेश जारी किया | 25.09.2025 |
| 5. | कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date | ADC-6/2024-25 dated 18.11.2024 |
| 6. | नोटिसी का नाम/ Name of Noticee | **M/s. International Seaport Dredging Private Limited**, 1st Floor, Ocean Square, Thiruvika Industrial Estate, Ekkattuthangal, Guindy, Chennai- 600032. |

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| 01. | इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है। |
| | The original copy of this order is provided free of cost to the person concerned. |
| 02. | इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962 128A)(1)a सीमा शुल्क नियम (अपील), 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम) एक प्रमाणित प्रति हो |

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| आयुक्त (अपील)<br>वी मंजिल 7, मृदुल टावर,<br>टाइम्स ऑफ इंडिया के पीछे,<br>आश्रम रोड,<br>अहमदाबाद – 380 009 | |

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| | Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy). |
| 03. | अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये 0.50 )पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची –I, मद 6 के तहत निर्धारित किया गया है। |
| | The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this 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. |
| 04. | अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, ,1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है। |
| | Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962. |
| 05. | अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम, 1982 नियम (प्रोसीजर) और सिस्टेट प्रक्रिया,के सभी नियमो का पूरा पालन हुआ है। 1982 |
| | While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects. |
| 06. | इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है। |
| | An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute. |

## BRIEF FACTS OF THE CASE

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

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

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

**Table - A**

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

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

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

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

*TABLE*

| ***Description of goods*** | ***Limitations and conditions*** | ***Extent of exemption*** |
|---|---|---|
| *(1)* | *(2)* | *(3)* |
| *Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).* | *(1) the goods have been taken on lease by the importer for use after import;*<br><br>*(2) the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract;*<br><br>*(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;*<br><br>*(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* | *In the case of-*<br><br>*(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.;*<br><br>*(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.;*<br><br>*(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* |

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| | *Commissioner of Customs, as the case may be, may allow;*<br><br>*(5) where the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, grants extension of the aforesaid period for re-export, the importer shall pay the difference between the duty payable under the relevant clause in column (3) and the duty already paid at the time of their import;*<br><br>*(6) the importer executes a bond, with a bank guarantee, undertaking -*<br><br>*(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;*<br><br>*(b) to re-export the said goods within three months of the date of import or within the aforesaid extended period;*<br><br>*(c) to produce the goods before the Assistant Commissioner of Customs or the Deputy Commissioner of Customs for identification before re-export;*<br><br>*(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* | *of the amount calculated at the rate of twenty -five per cent.;*<br><br>*(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.;*<br><br>*(v) goods which are re-exported after twelve months, but within fifteen 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-five per cent.;*<br><br>*(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.,*<br><br>*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.* |

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| | *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*<br><br>*(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.* | |

*Note: The goods imported under this concession shall not be eligible for drawback under sub-section (2) of section 74 of the Customs Act, 1962.*

**4.1** Thus, the aforesaid Notification *inter alia* exempts from the payment of duty of customs, as is in excess of the amount calculated at certain prescribed rates (keeping in view the period between import and re-export of imported goods) of the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962 read with any notification for the time being in force in respect of the duty so chargeable. In other words, the exemption from duty of customs is in co-relation with the aggregate of the duties of customs. Further, the extent of such exemption is at the rate varied upon period between import and re-export of imported goods. It also appeared that the aggregate of the duties of customs includes all types of duties of customs chargeable on any goods (i.e. BCD+ SWS+IGST). As per the observation of CRA, Ahmedabad, it appeared that the Noticee while availing the benefit of the aforesaid exemption Notification has calculated the extent of exemption of duty of customs as "Basic Customs Duty (BCD)" instead of "Aggregate of the duties of Customs". Thus, by adopting incorrect methodology of calculation to the extent of exemption, it appeared that the Noticee had short paid the customs duty to the tune of Rs. 18,82,735/- (Rupees eighteen lakh, eighty two thousand, seven hundred and thirty five only) as detailed at Table – A above.

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

**6.** The Finance Act, 2011 (Act No.08 of 2011) dated 08.04.2011 has introduced the concept "Self-Assessment of Customs duty with effect from 08.04.2011. The

Central Board of Indirect Taxes & Customs has issued Circular No.17/2011-Customs dated 08.04.2011 regarding implementation of Self-assessment in Customs. The relevant portions of the said circular are given below:

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

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

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

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

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

*(a) collusion; or*

*(b) any wilful mis-statement; or*

*(c) suppression of facts,*

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

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

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

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

> ***"Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -***
>
> *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*
>
> *Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

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

Noticee for evasion of duty of customs, therefore, it appears that they are liable to penalty under Section 114A of the Customs Act, 1962.

**13.** Accordingly, a Show Cause Notice No.: ADC-06/2024-25 dated 18.11.2024 was issued to the Noticee asking them as to why:

(i) Short paid duty of customs amounting to Rs.18,82,735/- (Rupees eighteen lakh, eighty two thousand, seven hundred and thirty five only) should not be recovered under the provisions of Section 28(4) of the Customs Act,1962;

(ii) Interest as applicable under the provisions of Section 28AA of the Customs Act, 1962 should not be recovered; and

(iii) Penalty should not be imposed under Section 114A of the Customs Act,1962.

## DEFENCE REPLY

**14.** The Importer vide his letter dated 30.12.2024 in his written defense reply submitted as under:

(i) The temporary import of the goods were taken place under the supervision of the Customs assessing authorities and on furnishing the bond and guarantee for complying with the conditions attached to the impugned Notification No. 72/2017-Customs dated 16.08.2017. The bond and guarantee were later cancelled and handed over to them after re-export of the goods imported thereby signaling due compliance with the condition imposed under the impugned notice making the very notice issued to them for demand for differential duty invoking the extended period not maintainable at all.

(ii) The CRA objection has failed to appreciate that the benefit of reduced rate of duty for temporary imports is alternative route to reduce the hassle of paying duty upfront at the time of import and claim drawback later. Prior to the introduction of the above beneficial scheme, one has to follow the drawback route only. Under the drawback route whenever the duty suffered imported goods are re-exported within a period of two years, draw back benefit is available vide Section 74 read with Re-Export of imported goods [Draw back] Rules 1995. Vide Notification No: 19-Cus dated 06.02.1965 as amended, the Government has prescribed a graded percentage of drawback based on usage of the imported goods. The Government mindful of the difficulty faced by the regular importers undertaking temporary imports and with a view to reduce the transaction cost and un-blocking huge funds necessary to fund the up-front payment of import duty has introduced notification No: 72/2017-Cus for such temporary imports collecting only the reduced duty at the same draw back rate subject to conditions. It has also been made clear in the notification that person availing the duty benefit is not eligible to claim drawback.

(iii) Under the drawback route, drawback is permissible for the duty paid under the head of BCD and IGST. However IGST paid is available as ITC and the importers making temporary import may avail ITC on the IGST paid and hence may claim only drawback of BCD. To reduce the transaction cost and unnecessary documentation, under Notification No. 72/2017-Cus, Government has exempted IGST fully and exempted BCD partially subject to conditions and limitation. Under col no 3 reduced effective rate of duty is prescribed which is at par with the rate of drawback. The Noticee herein at the time of imports has paid the reduced effective rate of duty prescribed and availed full IGST exemption. As undertaken by them at the time of imports they had re-exported the imported goods and got back their bond and guarantee discharged signifying the compliance of export obligations.

(iv) It is seen from the averments made in para 4 of the notice that the audit questioned the collection of 5% or 10 % or 15 % as the case may be of the effective BCD on the declared assessable value and observed that the department ought to have collected the effective reduced BCD on the aggregate of customs duties such as BCD/CESS/IGST put together and not only on the assessable value. Based on the work sheet attached, the notice contends that there was a short collection to the extent of Rs. 18,82,735/- and the same needs to be recovered from us invoking Section 28 [4] ibid.

(v) The above proposition of short collection seems to be grossly erroneous. The preamble of the notification clearly declare that the "Central Government in public interest exempts from the payment of so much of the customs duty leviable thereon under First Schedule to the Customs Tariff Act of 1975 as specified in coloumn [3] of the Table and the col [3] states " so much of the duty of customs as is in excess of the amount calculated at the rate of five percent". From the above words it is clear that the customs duty leviable under the First Schedule represents the basic customs duty and the term rate refers to the rate of duty which is expressed in % and in terms of General Explanatory Notes No: 2 to General Rules for the interpretation of the schedule it is explained that " the abbreviation " % " in any coloumn in the schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods defined in Section 14 of CA 1962, the duty being equal to such percentage of the value as is indicated in that column."

(vi) The above legal provision clearly explains that whenever the rate of duty is expressed in a percentage it shall mean the rate of duty on the basis of advalorem or on the basis of value of the goods. In our case the notification clearly refers to the goods described in the 1st schedule and exemption refers to the rate of duty as a percentage which shall only mean that the said rate has to be applied to the value of the goods viz., declared value in the BE and the term 5 % or 10 % would only mean 5 % of 10 % of BCD on the declared value of the imported goods and not 5 % or 10 % of the aggregate duties of customs as being proposed.

(vii) The notice submits that the term aggregate duty of customs referred to in the bottom portion of the notification is meant to quantity the duty foregone but for the exemption and to collect the same in the case of failure of the importer

to comply with the conditions undertaken to fulfill to claim the benefit of exemption.

(viii) If the audit contention is acceptable then the notification must have been worded differently such as in excess of 5 % of the aggregate duty of customs or exempting 95 % of the aggregate duty of customs and so on. The noticee further submits that there is nothing called aggregate duty of customs to be applied since every duty leviable under Section 12 of CA, 1962 is independent and specific such as BCD, CVD, CESS and IGST etc. and the law does not permit collection of any amount representing aggregate duty of customs. Every type of duty of customs is required to be levied, collected and accounted for separately and not cumulatively.

(ix) In the circumstance explained above, it is felt that there is no scope or justification to accept the argument of the CRA based on which the notice has been issued and the proposed demand of demand of differential duty is merely imaginary. It is unfortunate that the audit had taken such a view which runs counter to the benefit conferred on the importers by the Government of India and the argument put forth has no legal basis and the audit seems to interpret the notification and its scope in an irrational manner.

(x) The Noticee most respectfully submits that the authorities have extended the benefit as it was intended and there was no loss of revenue as being alleged in their case. Since the objection raised has no legal basis and seems unreasonable and unworkable, the proceedings initiated deserve to be dropped in limine.

(xi) The proposal to impose equal penalty under Section 114 A on the noticee is erroneous since the very notice invoking the provisions of Section 28 [4] ibid is bad in law and not maintainable for the reason that the special reasons required under sub section [4] is absent in this case. In as much as the appellant is not guilty of any contumacious conduct or guilt of any wrongful act in the temporary import of goods, imposition of penalty is not warranted in this case.

## PERSONAL HEARING:

**15.** The personal hearing in the subject case was granted on 20.08.2025 in virtual mode as a natural justice, which was attended by Shri Narayanaswamy Viswanathan, duly authorized by the Noticee. During the personal hearing, he re-iterated submissions made vide their written reply dated 30.12.2024. He stated that the objection raised by CRA is not correct. They paid duty correctly as assessed by EDI system. Further, as there is no suppression, Section 28(4) of the Customs Act, 1962is not applicable and penalty is not imposable. Vide additional submissions dated 21.08.2025, the Noticee further submitted as under:

(i) The adjudication proceeding is being initiated On going through the assessed BEs impugned in the notice, it is seen that the importer/noticee had paid 5% of the aggregate of duties of customs namely BCD and Cess availing the benefit of Notification No 72/2017-Cus dated 16.08.2017. The Bills of Entry

were assessed through the system EDI maintained by the customs department working out the effective duty payable taking in to account the duty payable/leviable under BCD and CESS only since the above notification fully exempts IGST, whereas the BCD is only partially exempt in tune with the drawback scheme.

(ii) The CRA audit on the other hand have raised objection of short payment of duty on the ground that the importer while self-assessing the duty under Notification no 72/2017-Cus did not take the aggregate duties namely by calculating the quantum of BCD, CESS and IGST payable on the goods but for the exemption and then to determine the 5% of the said quantum of duty arrived at by placing reliance on the expression used in the notification appearing in table 3 namely the aggregate of duties of customs which would be leviable under the Customs Act, 1962 to allege the short payment of duty to the extent of Rs.18,82,135/-, based on which the present notice had been issued to the importer. In other words, the contention of the audit as followed in the notice is that the duties under each of the above heads namely BCD, Cess and IGST payable on the goods is to be first quantified and aggregated and then the quantum of duty payable is to be determined at 5% of the said amount so aggregated and quantified.

(iii) The above objection of the CRA in the first place is grossly erroneous as it has been raised without properly understanding the true meaning of the expressions used in the said notification. The opening portion of the above notification clearly provides for the exemption from the payment of the IGST otherwise leviable under Section 3(7) of the Customs Tariff Act and the above clause relied upon by the CRA only speaks of aggregation 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 meaning that the 5% of the effective rate of duty otherwise chargeable on the goods under the Customs Act will only be levied. Since the IGST levied under Section 5 of the IGST Act has been granted the full exemption under the notification itself, the said duty was not required to be computed for the purpose of the exemption. That is the reason the EDI system while providing for the determining of the quantum of duty payable had taken into consideration only the effective rate of customs duty payable on the goods for assessment of the goods extending benefit of Notification No.72/2017-Cus and had excluded the tax otherwise leviable under Section 3(7) of the Customs Tariff Act read with Section 5 of the IGST Act taking into consideration the exemption provided on the goods from the payment of the IGST whereas the CRA had by wrongly assuming that IGST is payable on the goods had raised the objection by including the above tax which actually is exempted so as to contend short payment of the duty of customs which actually does not exist.

(iv) The fact that any IGST paid on any goods on import is available as Input tax credit and also could be claimed as drawback or as by way of refund as provided under Section 20 of the IGST Act read with Section 54 of the CGST Act and as the notification was issued as a substitute to the drawback

scheme by providing a bar to claim the benefit of the scheme, all the more the objection of the CRA is not factuallv and legally sustainable.

(v) Without prejudice to the above submission on fact law even otherwise the fact that the import of the subject dredging equipment/tools under the impugned Bills of Entries are otherwise fully exempted from the payment of the IGST in terms of SI.No: 557 B Notification No. 50/2017-Cus dated 28.06.2017 @ with condition no. 102 which the importer had fully complied with the inclusion of the said tax for the purpose of aggregation of the customs duty as provided under the impugned notification totally fails. Therefore, the payment of 5% of the duty by computing it on the aggregate of BCD and CESS by the importer is legally correct and the audit objection reflected in the notice is not tenable in law and is not supported.

(vi) Under Notification No. 72/2017-Cus what is required to be aggregated is the duties of customs leviable under the Customs Act 1962, and since the levy of IGST is only in terms of Section 5 of the IGST Act as approved for collection as such tax only under Section 3(7) of the Customs Tariff Act and therefore cannot be called duty of customs requiring its aggregation which is consciously expressed in terms of the clear words used in the impugned notification being fully aware of the policy decision of the government not to charge any IGST on such imports and therefore also the proposed demand for differential duty on a incorrect and misconceived interpretation of the notification raised by the CRA and accepted by the revenue cannot be legally sustained.

(vii) Further, manner of computation of duties as per CRA is as follows:
Suppose the value of the goods imported is Rs. 100/- and if 5% BCD is payable on the goods apart from IGST of 18 % the audit first requires the aggregation of such duties to arrive at total quantum of duty payable namely 5% of BCD + 10% of cess payable on the BCD + IGST @ 18%. After arriving at the said quantum the audit requires the determination of the duty payable @ 5% of the said quantum of aggregate duties payable whereas the noticee had only arrived at the quantum by taking the applicable BCD and Cess resulting in the difference being pointed claiming the same to be short paid duty.

(viii) In view of above, they pleaded to drop the proceedings initiated against the impugned notice.

## DISCUSSIONS AND FINDINGS:

**16.** I have carefully gone through the facts of the case, Show Cause Notice and written defense submissions and submission made during the personal hearing held on 20.08.2025 as well as available records on hand.

**17.** The core issue to be decided in the case in hand is as to whether the Noticee's method of computing concessional duty [5% or 15% of (BCD + cess)] under Notification No.72/2017-Customs dated 16.08.20217 was in consonance with the said Notification or the CRA's objection including IGST in the base amount in view

of the expression "aggregate of duties of customs", which ordinarily includes BCD, SWS and IGST leviable under Section 3 of the Customs Tariff Act, 1975, mentioned in the said Notification is correct or otherwise.

**18.1** I observe that the Noticee imported various dredging equipment under Notification No. 72/2017-Customs dated 16.08.2017 on a temporary import basis on lease/rental basis under a contract of "No-Sale & Nor-Transfer of Ownership of Cargo" for execution of dredging and reclamation works for an LNG port project in Gujarat. On audit scrutiny by CRA, Ahmedabad, it was noticed that in respect of 09 Bills of Entry, the Noticee calculated concessional duty liability with reference to Basic Customs Duty (BCD) alone, whereas the exemption under Notification No.72/2017-Customs dated 16.08.2017 is with respect to the "aggregate of duties of customs" leviable and accordingly, this resulted in a short-payment of duty amounting to Rs.18,82,735/-. Therefore, for better appreciation of expression "aggregate of duties of customs" mentioned in Notification No.72/2017-Customs dated 16.08.2017, the same is reproduced below:

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

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

*TABLE*

| ***Description of goods*** | ***Limitations and conditions*** | ***Extent of exemption*** |
|---|---|---|
| *(1)* | *(2)* | *(3)* |
| *Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).* | *(1) the goods have been taken on lease by the importer for use after import;*<br><br>*(2) the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract;*<br><br>*(3) the import of such machinery, equipment or tools is covered under item (b) of clause 1 or item (f) of clause* | *In the case of-*<br><br>*(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.****;* |

| | | |
|---|---|---|
| | *5 of Schedule II of the Central Goods and Services Act, 2017;*<br><br>*(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;*<br><br>*(5) where the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, grants extension of the aforesaid period for re-export, the importer shall pay the difference between the duty payable under the relevant clause in column (3) and the duty already paid at the time of their import;*<br><br>*(6) the importer executes a bond, with a bank guarantee, undertaking -*<br><br>*(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;*<br><br>*(b) to re-export the said goods within three months of the date of import or within the aforesaid extended period;*<br><br>*(c) to produce the goods before the Assistant Commissioner of Customs or the Deputy Commissioner of Customs for identification before re-export;*<br><br>*(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*<br><br>*(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.* | *(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.**;*<br><br>*(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.;*<br><br>*(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.;*<br><br>*(v) goods which are re-exported after twelve months, but within fifteen 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-five per cent.;*<br><br>*(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.,*<br><br>*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.* |

*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.".*

Upon a plain reading of Notification No.72/2017-Customs dated 16.08.2017, it is evident that the said Notification grants exemption to the imported goods in question, subject to the following stipulations:

(i) **Exemption from Customs Duty** – The goods are exempted from payment of such portion of the customs duty as is leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), to the extent specified in column (3) of the Table annexed to the Notification.

(ii) **Exemption from Integrated Tax** – The goods are exempted in entirety from the levy of integrated tax under sub-section (7) of section 3 of the Customs Tariff Act, 1975, as is evident from the first para preceding the Table, wherein it is mentioned that exemption from the whole of the integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975 is granted.

(iii) **Conditionality of Exemption** – The aforesaid exemptions shall operate only subject to compliance with the limitations and conditions prescribed in column (2) of the said Table.

Bare perusal of above makes it amply clear that if the Noticee complies with the limitations and conditions prescribed in column (2) of the Table annexed to the said Notification, they shall be eligible for exemption from Customs duty to the extent specified therein and from entire Integrated Tax. From the case file, I observe that there is nothing on record nor any allegation in the Show Cause Notice with regard to non-compliance of the limitations and conditions prescribed in column (2) of the Table annexed to the said Notification against the Noticee. Thus, though the expression "aggregate of the duties of customs" ordinarily includes BCD, SWS and IGST leviable under Section 3 of the Customs Tariff Act, 1975, I am of the opinion that once the said Notification itself grants full exemption from IGST, the same stands fully exempt and would not form part of the leviable duty for the purpose of calculating the base for concessional percentage. My this view draws support from Notification No. 27/2002-Customs dated 01.03.2002 which has been superseded by the Notification No. 72/2017-Customs dated 16.08.2017 and the same is reproduced below:

***Notification : 27/2002-Cus., dated 1-Mar-2002***

***Leased machinery, temporary import of - Scheme of exemption***

*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), 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 as is specified in column (3) of the said Table, subject to the limitations and conditions specified in column (2) thereof****, namely :-*

***TABLE***

| ***Description of goods*** | ***Limitations and conditions*** | ***Extent of exemption*** |
|---|---|---|
| *(1)* | *(2)* | *(3)* |
| *Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).* | *(1) the goods have been taken on lease by the importer for use after importation;*<br><br>*(2) the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract;*<br><br>*(3) the said goods are re-exported within six months of the date of importation or within such extended period not exceeding one year from the date of importation, as the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may allow;*<br><br>*(4) where the Assistant Commissioner of Customs or 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 clause (ii) in column (3) and the duty already paid at the time of importation; and*<br><br>*(5) the importer executes a bond, with a bank guarantee, undertaking -*<br><br>*(a) to re-export the said goods within six months of the date of importation or within the aforesaid extended period;*<br><br>*(b) to produce the goods before the Assistant Commissioner of Customs or Deputy Commissioner of Customs for identification before re-export;*<br><br>*(c) to pay the balance of duty, along with interest, at the rate fixed by notification issued under section 28AB of the said Customs Act, 1962, for the period starting from the date of importation 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.* | *(i) in the case of goods which are re-exported within six months of the date of importation, so much of the duty of customs as is in excess of the amount calculated at the rate of fifteen per cent of the aggregate of the duties of customs, which would be leviable under the said Customs Act, 1962 or under any other law for the time being in force, read with any notification for the time being in force in respect of the duty so chargeable;*<br><br>*(ii) in the case of goods which are re-exported after six months, but within one year, of the date of importation, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty per cent. of the aggregate of the duties of customs, which would be leviable under the said Customs Act, 1962 or under any other law for the time being in force, read with any notification for the time being in force in respect of the duty so chargeable.* |

**18.2** On comparing Notification No. 27/2002-Customs dated 01.03.2002 and Notification No. 72/2017-Customs dated 16.08.2017, I observe that while the former

exempts goods ***from the payment of so much of the customs duty leviable thereon as is specified in column (3) of the said Table***, the latter exempts goods ***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***. The wordings "***whole of the integrated tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975***" do not reflect in the Notification No. 27/2002-Customs dated 01.03.2002 whereas in the Notification No. 72/2017-Customs dated 16.08.2017, these wordings have been included which clearly show intention of the legislature not to levy IGST on temporarily importation of the goods specified in the said Notification. The interpretation observed by the CRA that IGST, though exempt, should be notionally included in the "aggregate of duties" for determining the concessional rate, runs contrary to the explicit exemption of IGST in the same Notification. Hence, the audit objection is misplaced and not sustainable. I therefore hold that the demand of differential Customs duty is required to be dropped. I further find that since no duty demand survives, question of interest under Section 28AA or penalty under Section 114A does not arise.

**19.** In view of the aforesaid discussions and findings, I pass the following order:

## ORDER

I drop the proceedings initiated by the Show Cause Notice No. ADC-6/2024-25 dated 18.11.2024 *in toto*.

**20.** This order is issued without prejudice to any other action which may be contemplated against the Importer or any other person in terms of any of the provisions of the Customs Act, 1962 and/or any other law for the time being in force.

**21.** This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.

**(N. Srujan Kumar)**
**Additional Commissioner**
Date: 25.09.2025

DIN - 20250971MM000000A35A
BY Speed Post A.D

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

Copy to:-

i. The Commissioner, Customs (Preventive), Jamnagar [Kind Attention: the Superintendent (Review-HQ), Customs (Preventive), Jamnagar]
ii. The Deputy Commissioner of Customs, HQ, Preventive/IAD Section, Customs (P) Commissionerate, Jamnagar.
iii. The Assistant Commissioner of Custom House, Pipavav for information and further necessary action.
iv. Guard File.