

DIN: 20260271ML000000B432

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|  | <p>सीमाशुल्कआयुक्तकाकार्यालय, Office of the Commissioner of Customs, नयासीमाशुल्कसदन, New Custom House, Near Balaji Temple, नयाकांडला – ३७०२१०. New Kandla – 370 210. दूरभाष /Tel. 02836-271468-469, फ़ैक्स/Fax. 02836-271467</p> |
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F. No. GEN/ADJ/COMM/26/2026-Adjn-O/o Commr-Cus-Kandla**SHOW CAUSE NOTICE**

Whereas, **M/s Afcons Infrastructure Limited(IEC:0388053283)**, having their address at 16, Shah Industrial Estate, Afcons House, Azad Nagar, Veera Desai Road, Andheri West, Mumbai, Suburban, Maharashtra, 400053 (*hereinafter also referred to as “the unit” or “the said importer” or “the said noticee”*) are engaged in the supply of works contract services, construction services in respect of commercial or industrial buildings and civil structures etc.

Genesis of the case

2.1 Whereas, during the course of audit by officers of CERA (Central Excise Revenue Audit), an issue regarding non-payment of Integrated Tax (IGST) on re-imports made by the said importer was raised. During such audit by the CERA team, it was observed that the said importer had exported goods without payment of any duty (including IGST) under Letter of Undertaking (LuT) by wrongly availing the benefit of Serial No. 5 of Notification No. 45/2017-Customs dated 30.06.2017. Accordingly, CERA had raised the following **03 LARs** (Local Audit Reports) on the basis of the above audit observation (**Table-1**): -

Table-1

| Sr. No. | LAR No. | Date | Audit Para No. | Subject | Bill of Entry No. & Date |
|----------------|-----------------------------------|-------------|-----------------------|--|---|
| 1 | 24/2021-22/ OW/780 [RUD-01] | 23.02.2022 | Para 4 | Non-levy of Integrated Tax (IGST) in re-imported goods | (a) 2745984 dated 12.02.2021. (b) 2745973 dated 12.02.2021 (c) 2747485 dated |

| | | | | | |
|---|------------------------|------------|--|--|--|
| | | | | | 12.02.2021 (d) 3310311 dated 26.03.2021 |
| 2 | 04/2022-23 [RUD-02] | 20.06.2022 | Reference Number: OBS- 301686. Para 03 | Non-levy of Integrated Tax (IGST) in re- imported goods | (a) 6461731 dated 30.11.2021 (b) 5760612 dated 08.10.2021 |
| 3 | 05/2022-23 [RUD-03] | 15.07.2022 | Reference Number: OBS- 318707. Para 08 | Non-levy of Integrated Tax (IGST) in re- imported goods | 5172570 dated 24.08.2021 |

2.2 Whereas, for the sake of ease of reference and understanding the matter on hands, the scanned image of LAR No. 24/2021-22 dated 23.02.2022 is reproduced as under: -

Para 4: Non levy of Integrated Tax (IGST) in re-imported goods

Notification No 45/2017-customs dated 30 June 2017 exempted the goods falling under any chapter of the First Schedule to the Customs Tariff Act (CTA), 1975, when re-imported into India, from the duty of customs specified in the First Schedule of CTA, and the whole of the integrated tax, compensation cess leviable thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry of the said table in the notification. Further serial number 1(d) of this table stipulates that if goods were 'exported under bond without payment of Integrated Tax', then the amount of 'Integrated Tax not paid' is to be paid at the time of such re-import. Serial number 5 of this table prescribed 'Nil' duty on re-imports, if said goods were other than those falling under serial number 1, 2, 3 and 4 of the table.

For import of items having CTH 7301 valued at Rs.130.20 lakh made during January-March 2021 at Custom House (Kandla), through 1 Bill of entry, audit test checked this BE and pointed out non recovery of duty of Rs.23.43lakh in this BE.

During document audit of Custom House Kandla, it was noticed that M/s Afcons Infrastructure Limited, Mumbai had re-imported [vide (Department Assessed) Bill of entry No. 2745984 dated 12/02/2021) consignments of 'Sheet Piles' (COO- United Arab Emirates) of various lengths (CTH 73011000) involving total assessable value of `1,30,19,680. These goods were cleared without payment of any duty (including IGST) availing benefit of serial number 5 of notification 45/2017 above. However, scrutiny of its corresponding export documents (viz., 'shipping bill filed at new Custom House, Mumbai' and 'Export Invoice') revealed that the said goods had earlier been exported as 'Permanent export to a Project (erection of temporary jetty in Mauritius)' without payment of IGST under letter of undertaking (LUT). After completion of this project, this 'unused quantity' was re-exported to India.

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Since the goods had been exported without payment of IGST, benefit of serial number 5 of notification above was not admissible and the importer was liable to pay 18% IGST as provided under serial number 1(d) of the notification. This resulted in non-levy of integrated tax of ₹23,43,542 (18% of Assessable Value of re-imported goods) which was required to be recovered alongwith applicable interest.

During this audit period, the importer had effected similar re-imports, sample details of three BsE of which have been included in **Anexure IV** attached. It is requested that such imports may also be analyzed for recovery of IGST.

On this being pointed out in audit, it was stated that reply would be submitted on receipt of the same from the concerned departmental section.

All the above referred LARs as shown in **Table-1** above involve the same/identical issue i.e. Non-Levy of Integrated Tax (IGST) on re-imported goods by M/s Afcons Infrastructure Limited (IEC:0388053283).

2.3 Thus, vide the above referred LARs as shown in **Table-1** above, CERA had observed that: -

- (a) M/s Afcons Infrastructure Limited had re-imported goods vide Bills of Entries as shown against the respective LARs.
- (b) Such goods were cleared without payment of any duty (including IGST) by availing benefit of serial number 5 of Notification No. 45/2017-Customs dated 30.06.2017.
- (c) Scrutiny of the corresponding export documents viz. Shipping Bill filed and Export Invoice revealed that the said goods had earlier been exported as *“Permanent Export to a Project (erection of temporary jetty in Mauritius)” without payment of IGST under letter of undertaking (LUT)/ Permanent export for execution of development of infrastructure development at Agalega Island, Mauritius without payment of IGST under letter of undertaking (LUT)/ exported without payment of IGST under letter of undertaking (LUT) .*
- (d) After completion of the project, the “unused quantity” was re-exported to India.
- (e) Since the goods had been exported by M/s Afcons Infrastructure Limited without payment of IGST, benefit of Serial Number 5 of Notification No. 45/2017-Customs dated 30.06.2017 was not admissible and therefore, the

importer was liable to pay 18% IGST as provided under Serial Number 1(d) of the above notification dated 30.06.2017.

2.4 Thus, CERA vide the above referred 03 (three) LARs dated 23.02.2022, 20.06.2022 and 15.07.2022 had observed that the above had resulted into non-levy of integrated tax calculated @ 18% of the assessable value of the re-imported goods which was required to be recovered from M/s Afcons Infrastructure Limited along with applicable interest. The details of the integrated tax amount non-levied and required to be recovered from the said importer has been shown in **Table-2** below:

Table-2

| Sr. No. | LAR No. & Date | Bill of Entry No. & Date | Assessable Value | IGST not paid |
|----------------|---------------------------------------|-------------------------------------|-------------------------|----------------------|
| 1 | 24/2021-22/OW/780 dated 23.02.2022 | 2745984 dated 12.02.2021 | 13019680 | 2343542 |
| | | 2745973 dated 12.02.2021 | 3867510 | 696152 |
| | | 2747485 dated 12.02.2021 | 2888490 | 519928 |
| | | 3310311 dated 26.03.2021 | 2610602 | 469908 |
| 2 | 04/2022-23 dated 20.06.2022 | 6461731 dated 30.11.2021 | 36042788 | 6487702 |
| | | 5760612 dated 08.10.2021 | 987668 | 177780 |
| 3 | 05/2022-23 dated 15.07.2022 | 5172570 dated 24.08.2021 | 23416137 | 4214905 |
| Total | | | 8,28,32,875 | 1,49,09,917 |

2.5 Further, vide the above referred LARs wherein observation regarding non-payment of IGST on re-import of goods was raised by CERA, it was also directed to analyse such imports effected by M/s Afcons Infrastructure Limited for recovery of IGST. Accordingly, upon analysis by the Department, it was observed that apart from the above referred Bills of Entry as shown in **Table-2** above, there existed the following additional Bills of Entries wherein goods were re-imported by the said unit and exemption from payment of IGST was availed by them under Serial

number 5 of Notification No. 45/2017-Customs dated 30.06.2017 as shown in **Table-3** below: -

Table-3

| Sr.no. | BE NO. | BE date | Ass value | IGST not paid |
|---------------|---------------|----------------|--------------------|----------------------|
| 1 | 3615397 | 18.04.2021 | 25193467 | 4534824 |
| 2 | 3940203 | 13.05.2021 | 44204643 | 7956836 |
| 3 | 8278391 | 14.04.2022 | 20469534 | 3684516 |
| Total | | | 8,98,67,644 | 1,61,76,176 |

2.6 Thus, from **Para 2.3** and **Para 2.4** above, it is forthcoming that M/s Afcons Infrastructure Limited appear to have not paid integrated tax amounting to **Rs.3,10,86,093/-**(Rs. 1,49,09,917+ Rs. 1,61,76,176)on total assessable value of **Rs.17,27,00,519/-**(Rs. 8,28,32,875 + Rs. 8,98,67,644)involving **10 Bills of Entry** as shown in **Table-2 and Table-3 above.**

Bill of Entry wise details in respect of the goods showing total assessable value and IGST has been appended to this Show Cause Notice as **Annexure-1**.Further, the Bills of Entry as shown in Table-2 and Table-3 above have been collectively relied upon and annexed to this Show Cause Notice as **RUD-04**.

3. SUBMISSIONS MADE BY THE IMPORTER:

3.1 Whereas, in view of the above referred CERA observations, letters dated 26.04.2022,17.05.2022 and 03.06.2022 were issued tothe importer firm namely M/s Afcons Infrastructure Limited to pay the differential duty of integrated tax @ 18%. The above referred letters issued to M/s Afcons Infrastructure Limited have been collectively relied upon and annexed to this Show Cause Notice as **RUD-05**.

3.2 In response, vide their reply letters bearing no. AIL/2022-23/5964 Demob/001, AIL/2022-23/IB-1810/5964 Demob/002 and AIL/2022-23/5964 Demob/003 all dated 18.06.2022, M/s Afcons Infrastructure Limited have submitted the following: -

- (i)** that, they are a construction and engineering company executing EPC Projects globally;
- (ii)** that, they had sent goods to their foreign branch for execution of the project approved by RBI under PEX No. PEM/ICICI/0393/2018-19/8694/0009169695 issued by ICICI Bank Limited;

(iii) that, they have submitted GR (Guaranteed Remittance) Waiver Certificate issued by ICICI Bank under above PEX Approval;

(iv) that, the goods have been exported on Temporary Export Basis;

(v) that, the export is not commercial export/sale and they have not received any sales proceeds out of it;

(vi) that, all Shipping Bills are filed under Scheme Code 99- NFEI (No Foreign Exchange Involved) category; and

(vii) that, goods sent to foreign branch does not constitute any supply and therefore payment of IGST is not required at the time of re-import.

3.3 Additionally, the said importer had relied upon Circular No. 21/2019-Cus. dated 24.07.2019 and had accordingly requested to withdraw the demand for payment of differential duty. The above referred replies submitted by M/s Afcons Infrastructure Limited have been collectively relied upon as **RUD-06**.

4. FINDINGS FROM SCRUTINY OF THE DOCUMENTS:

4.1 Scrutiny of the Shipping Bills and Export Invoices filed by the importer

(a) As stated at **Para 3** *supra*, M/s Afcons Infrastructure Limited have contended that in respect of the goods imported by them, all the Shipping Bills for exports made by them were filed under Scheme Code 99- NFEI and that no foreign exchange was involved. It has been further contended that all such exports were in the nature of "Temporary Exports".

(b) However, the above contention made by the said importer is not entirely correct in as much as scrutiny of a few shipping bills has revealed that **foreign remittance was involved** in such shipping bills. The details of such sample shipping bills are as under (**Table-4**): -

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Table-4

| Sr. No. | Shipping Bill No. | Shipping Bill Date | BRC Realisation Date | Corresponding Bill of Entry No. vide which re-import of goods made | Date of Bill of Entry |
|----------------|--------------------------|---------------------------|-----------------------------|---|------------------------------|
| 1 | 7262797 | 28.09.2019 | 30.06.2020 | 3940203 | 13.05.2021 |
| 2 | 1811157 | 01.03.2020 | 31.12.2020 | 5172570 | 08.04.2021 |
| 3 | 3050521 | 27.03.2019 | 30.12.2019 | | |
| 4 | 3719431 | 25.04.2019 | 31.01.2020 | | |
| 5 | 3866812 | 28.03.2019 | 31.01.2020 | | |
| 6 | 4024637 | 23.07.2020 | 30.04.2021 | | |
| 7 | 4886473 | 02.09.2020 | 30.06.2021 | | |
| 8 | 5326025 | 03.07.2019 | 30.04.2020 | | |
| 9 | 5537771 | 13.07.2019 | 30.04.2020 | | |
| 10 | 7394575 | 04.10.2019 | 31.07.2020 | | |
| 11 | 8510450 | 26.11.2019 | 31.08.2020 | | |
| 12 | 1088064 | 01.07.2020 | 30.11.2020 | 6461731 | 30.11.2021 |
| 13 | 3053575 | 27.03.2019 | 31.12.2019 | 8278391 | 14.04.2022 |
| 14 | 4886579 | 02.09.2020 | 30.06.2021 | | |
| 15 | 7112068 | 23.09.2019 | 30.06.2020 | | |
| 16 | 7127108 | 23.09.2019 | 30.06.2020 | | |
| 17 | 7264196 | 28.09.2019 | 30.06.2020 | | |
| 18 | 7440602 | 07.10.2019 | 31.07.2020 | | |
| 19 | 7776131 | 22.10.2019 | 31.07.2020 | | |

The above Shipping Bills for export of goods as shown in **Table-4** above wherein foreign remittance is involved and the goods have been subsequently re-imported without payment of IGST by availing the benefit of exemption as provided under Serial no. 5 of Notification No. 45/2017-Customs dated 30.06.2017 have been collectively relied upon as **RUD-07**. **Thus, the claim of the importer that all Shipping Bills filed by them are under Scheme Code-99 involving no foreign exchange is incorrect.**

(c) Similarly, the contention of the importer that all the exports made by them were in the nature of “**Temporary Exports**” is also incorrect in as much as scrutiny of some of the export invoices has revealed that these were in the nature of **Permanent Exports** which has been **clearly endorsed** on the face of such invoices. The above is also corroborated from the fact that the shipping bills filed by

the importer corresponding to the above export invoices involved foreign remittance. Moreover, the importer had subsequently claimed the benefit of exemption on re-import of the goods in the bills of entries corresponding to the above referred export invoices/shipping bills as provided under Serial No. 5 of Notification No. 45/2017-Cus dated 30.06.2017.

The list of such sample export invoices along with corresponding shipping bills and bills of entry filed for re-import have been shown in **Table-5** and have been collectively relied upon as **(RUD-08)**, details of such invoices as below:

Table-5

| Sr. No. | Export Invoice No. issued for permanent export | Date of export Invoice | Corresponding Shipping Bill involving foreign remittance | Date of Shipping Bill | Corresponding Bill of Entry for re-import on which IGST exemption availed | Date of Bill of Entry |
|----------------|---|-------------------------------|---|------------------------------|--|------------------------------|
| 1 | 5964/373 | 26.09.2019 | 7262797 | 28.09.2019 | 3940203 | 13.05.2021 |
| 2 | 5964/133 | 11.03.2019 | 3866812 | 28.03.2019 | 5172570 | 08.04.2021 |
| 3 | 5964/245 | 19.06.2019 | 5326025 | 03.07.2019 | 5172570 | 08.04.2021 |
| 4 | 5964/371 | 24.09.2019 | 7394575 | 04.10.2019 | 5172570 | 08.04.2021 |
| 5 | 5964/627 | 29.02.2020 | 1811157 | 01.03.2020 | 5172570 | 08.04.2021 |
| 6 | 5964/134 | 13.03.2019 | 3050521 | 27.03.2019 | 5172570 | 08.04.2021 |
| 7 | 5964/472 | 22.11.2019 | 8510450 | 26.11.2019 | 5172570 | 08.04.2021 |
| 8 | 5964/138 | 20.03.2019 | 3053575 | 27.03.2019 | 6461731 | 30.11.2021 |
| 9 | 5964/351 | 19.09.2019 | 7112068 | 23.09.2019 | 8278391 | 14.04.2022 |
| 10 | 5964/340 | 17.09.2019 | 7264196 | 28.09.2019 | 8278391 | 14.04.2022 |
| 11 | 5964/362 | 20.09.2019 | 7127108 | 23.09.2019 | 8278391 | 14.04.2022 |

| | | | | | | |
|--|--|---|--|--|--|---|
| | | 9 | | | | 2 |
|--|--|---|--|--|--|---|

(d) It is to be mentioned that as the copies of all the export invoices raised are not available/supplied by the party, scrutiny of the few available export invoices and corresponding shipping bills clearly indicate that the importer's contention that **all shipping bills** were filed under Scheme Code-99 (NFEI) and further that **all such exports** were in the nature of temporary exports appears to be incorrect in view of the foregoing discussions and analysis at **Para 4.1 (a), (b) and (c)** above.

4.2 Exports made under Letter of Undertaking (LUT):

Whereas, from scrutiny of the Shipping Bills filed by the importer firm, it is forthcoming that all the shipping bills have been filed by them under Letter of Undertaking and the LUT ARN (Acknowledgment Reference Number) has been clearly mentioned in the shipping bills. For the sake of ready reference, scanned image of Shipping Bill No.5326025 dated 03.07.2019 (Page 1) has been reproduced as under:

LED Date: 04/07/2019 EXPORTER COPY
 Indian Customs EDI System (ICES) LED No : 41/13

JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707
 Shipping Bill for Export

SB No : 5326025 / 03/07/2019 BRC Realisation Date : 30/04/2020
 CHA : AAAC00603JCH001 OM FREIGHT FORWARDERS PVT.LTD.
 Print Date : 04/07/2019 17:54
 This consignment was not opened for physical examination by Customs
 Port of BL : MUPLU
 Country of BL : MU
 Port Of Ldg-Code : INNSA1 State of Origin : MAHARASHTRA

| | |
|---|--|
| EXPORTER DETAILS 0300053203() AFCONS INFRASTRUCTURE LTD. Branch # 0 AFCONS HOUSE 16 SHAH INDUSTRIAL TATE VEERA DESAI RD AZAD NAGAR ANDHERI WEST, MAHARASHTRA | CONSIGNEE BIN No. : AAACA9007GFT001 AFCONS INFRASTRUCTURE LIMITED, 3rd floor Ebene Esplanade, PORT LOU IS, MAURITIUS CTC: Mr. Gurudatt N ayak, Project Manager Mail: ganay ak@afcons.com + 91 7060014031 MAURITIUS |
|---|--|

Port of Loading : JNCH, NHAVA SHEVA, T Total Pkgs. : 363
 Port of Discharge: PORT LOUIS Loose pkts : 0
 Gross Wt(KGS) : 14355.000 Net Wt(KGS) : 14351.000
 Country of Dest : MAURITIUS No. of Ctrs. : 0
 Rotation No. : 160996 Rotation Date : 11/11/2019
 Nature of Cargo : C
 Marks and Nos. : (AS FOR INVOICE) LUT(ARN):AD270319001877T DT: 11.03.2019 DC NO: 1002001302 & 130
 , DT:25.06.19 ; 1002001370,DT:25.06.19 ; 1002001369,DT:25.06.19 *I/We undertake t
 abide by the provisions of FEMA 1999, as amended from time to time, including r
 FOREX BANK ACC:11079526951
 RBI Waiver No/Date: /
 FOB VALUE (INR) : 1007572.75 F DBK+STR(INR):00.00 F
 Tot DBK(INR) 00.00 F STR(INR):00.00 F
 AD. Code : 0009995 DBK Bank a/c No :
 I. F. S. Code : ST / Excise Regn. :
 GSTN ID : 27AAACA9007G1ZL GSTN Type : GSN
 IGST Tax Value(INR) : 0.00 IGST Amt Paid(INR) : 0.00
INVOICE DETAILS Invoice 1/1
 Inv. val : 1057726.50 INR 15396.31 USD FOB Val : 1007572.75 INR
 Inv. no. : 5904/245 Inv Dt : 19/06/2019
 Nat of Con : ECIFFCurr(inv):USD Exp Contract :
 Exchange rate: 1.00 (USD) = 66.700 (INR)

| | | | | |
|--------------------|------|----------|--------------------|-----|
| Insurance | Rate | Currency | Amount | |
| | 0.00 | USD | 0.00 | |
| Freight: | | USD | 721.24 | |
| Discount: | 0.00 | | 0.00 | |
| Commission: | 0.00 | | 0.00 | |
| Other Deductions: | 0.00 | | 0.00 | |
| Packing Charges: | | USD | 0.00 | |
| Nature of payment: | DA | | Period of Payment: | 180 |

Third Par:
 TP Add:
 Add(Cont):
 SD:
 Tax Value : 0.00 AEO Rol Tern
 INR IGST Amt. Paid: 0.00 INR

Buyer Name & Address
 Afcons Infrastructure Ltd. (Job No.
 Afcons Agalega A/C HCI Agalega Isla
 nd, Mauritius Contact Details: Mr.
 Pankaj Gajallewar Mobile: +91 98193

Export under
LUT

(Page 1 of 10)

From the above reproduced scanned image of Shipping Bill No.5326025 dated 03.07.2019, it is forthcoming that the export has been made by M/s Afcons Infrastructure Limited under LUT bearing no. **AD270319001877T** dated 11.03.2019. **Similar observation has been made in respect of all shipping bills scrutinised during the inquiry i.e. such exports have been made under LUT.**

4.3 Scrutiny of the Post Award Approval Letters issued by ICICI Bank:

4.3.1 Whereas during the course of inquiry, M/s Afcons Infrastructure have submitted a copy of document/letter bearing no. PEM/ICICI/0393/2018-19/8691/0009169696 [**RUD-09**] issued by the ICICI BANK dated 09.10.2018 regarding post award approval in terms of PEM (RBI) For A **New Job For-**

Development Of Infrastructure at Agalega island, Mauritius. For the sake of ready reference, scanned image of ICICI BANK letter dated 09.10.2018 has been reproduced as under: -

| | |
|---|---|
|  | |
| Date: October 09, 2018 PEM / ICICI / 0393 / 2018-19 / 8691/ 0009169695 | |
| Afcons Infrastructure Limited Afcons House 16, Shah Industrial Estate Off Veera Desai Road, Andheri (West) Mumbai - 400053 | |
| Sub: Post Award Approval in terms of PEM (RBI) for a new job for – Development of Infrastructure at Agalega Island, Mauritius | |
| Dear Sir/Madam, Greeting from ICICI Bank! | |
| We refer to your letter no. AFCONS/CM/ICICI/095 dated September 27, 2018 requesting us for awarding the post award approval for the captioned Proposal. We are glad to inform you that we hereby accord the post award approval for the same. | |
| In this connection please find enclosed the following : | |
| i. Terms of the Post award Approval and facilities .(Exhibit I) ii. Standard Conditions for availing specific facilities-Bank accounts, site offices, agency commission and overseas borrowing. (Exhibit II) iii. General Conditions of the approval (Exhibit III) iv. List of reports to be submitted | |
| Further we would like to bring the following to your kind attention: | |
| (*) We have waived off the requirement of the advance payment on receipt of the request letter from you. (*) We have been notified receipt of INR _____ as advance payment for project export. (*) We have received approval from Reserve Bank of India for reason for the delay in submission of APPLICATION FORM and approval from RBI. (*) We have waived off requirement of LC/BG on receipt of the request letter from you. | |
| No alterations, amendment, modifications or any other form of variation should be made in any of the said terms and conditions without the prior consent and approval of the ICICI Bank Ltd. | |
| Kindly acknowledge the receipt of this letter and keep the Authorised Dealer informed about further developments regarding your captioned proposal. | |
| Yours faithfully | |
|  For ICICI Bank limited Authorised Signatory Encl as above |  |
| ICICI Bank Limited 163, H.T. Parekh Marg Backbay Reclamation, Churchgate, Mumbai - 400020. | Regd. Office : ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara 390 007, India. Corp. Office : ICICI Bank Towers, Bandra-Kurla Complex, Mumbai 400051, India. |
| Website www.icicibank.com CIN :L65190GJ1994PLC021012 | |



EXHIBIT I

**i. Terms and Conditions of Post-award Approval
Salient Project Data**

| | | | | | | |
|-----|-------------------------|-------------------------|--|-------------------|----------------|------------|
| 1. | Name of Indian Exporter | | Afcons Infrastructure Limited | | | |
| 2. | Name of Foreign Buyer | | RITES Limited | | | |
| 3. | Type of Contract | | Construction Contract | | | |
| 4. | Nature of Work | | Development of Infrastructure at Agalega Island, Mauritius | | | |
| 5. | a) Contract Value | Foreign Currency | Amount | INR Equivalent | Exchange Rate | % of Total |
| | | USD | 265.833 Million | INR 1914 Crores | 1 USD = Rs. 76 | |
| 5. | b) Value Breakup | INR | Goods | Services | Total | % of Total |
| | | Indian | 101.650 | 105.585 | 207.235 | 77.96% |
| | | Third Country | 36.320 | 15.964 | 52.284 | 19.67% |
| | | Local | 0.900 | 5.414 | 6.314 | 2.37% |
| | | Total | 138.870 | 126.963 | 265.833 | 100% |
| | Profitability | INR | USD 25.121 million i.e INR 180.87 Crores | | | |
| | % of Contract Value | | 9.45% | | | |
| 6. | Sponsoring Bank | ICICI Bank | | | | |
| 7. | Payment Terms | Foreign Currency | Amount | INR Equivalent | | |
| (a) | Currency of Payment | USD | 265.833 Mln | INR 1914 Crores | | |
| | | Percentage | Amount in (Foreign Currency) | INR Equivalent | | |
| (b) | Advance Payment | 16.5% | USD 43.862 Million | INR 315.81 Crores | | |
| (c) | Down/Progress Payment | Monthly billing Process | USD 265.833 Mln | INR 1914 Crores | | |
| (d) | Deferred Credit | NA | | | | |
| (e) | Retention Money | 5% | USD 13.292 Million | INR 95.70 Crores | | |
| (f) | Security for payment | NA | | | | |

Name of the foreign Buyer



ICICI Bank Limited
163, H.T. Parekh Marg
Backbay Reclamation,
Churchgate,
Mumbai - 400020.



Website www.icicibank.com
CIN : L65190GJ1994PLC021012

Regd. Office : ICICI Bank Tower, Near Chakli Circle,
Old Padra Road, Vadodara 390 007,
India.
Corp. Office : ICICI Bank Towers, Bandra-Kurla
Complex, Mumbai 400051, India.



| | Manpower from India | Management | Supervisory | Skilled | Unskilled | Total |
|------|---|---|-----------------------------|------------------------|------------------------------------|--|
| | | 18 | 96 | 787 | 1158 | 2059 |
| 8. | Type of Credit | LC/BG/OD/PCFC and Other Capital Requirements | | | | |
| 9. | Penalty Terms | 1.5% of Tender Value per month of delay to be computed on per day basis. Provided always that the total compensation delay to be paid shall not exceed 10% of Tender value of work. — | | | | |
| 10. | Arbitration Terms | The arbitration shall be conducted in accordance with Arbitration and Conciliation Act, 1996 and as amended by Arbitration and Conciliation Act, 2015. | | | | |
| 11. | Force Majeure | As per GCC Clause | | | | |
| 12. | Escalation clause | No Escalation | | | | |
| 13. | Completion Period | 29 months (Including 5 months Mobilization period) | | | | |
| | Maintenance Period | 24 months | | | | |
| 14a. | Funding by Multilateral Agency | Project funded by Government of India | | | | |
| 14b. | Amount of overseas borrowing | USD 21.022 million | | | | |
| 15. | ECGC country rating | | | | | |
| 16. | Credit facilities sought by exporter | | | | | |
| | | Foreign Currency | Amount in Currency (USD Mn) | Equiv. Amount (Rs Cr.) | ICICI Bank's share % and (Rs Crs.) | Period (Months) |
| | Fund Based OD/PCFC | USD | 21.022 | 151.36 | As per pricing | Project Period |
| | Guarantee | | | | | |
| | Advance Payment Guarantee (16.5% of CV) | USD | 43.862 | 315.81 | ICICI Banks & Others | Project Period (29 months) |
| | Performance Guarantee (5% of CV) | USD | 13.292 | 95.70 | ICICI Banks & Others | Project Period (29 months) + Defect Liability period (24 months) |
| | Retention Guarantee (5% of CV) | USD | 13.292 | 95.70 | ICICI Banks & Others | Project Period (29 months) + Defect Liability period (24 months) |
| | Other Miscellaneous Bank Guarantees & Third Country Import LC's | USD | Upto 30% of CV | Rs 574.20 Crs | ICICI Banks & Others | Project Period |
| 17. | Other Facilities Required | | | | | |

ICICI Bank Limited
163, H.T. Parekh Marg
Backbay Reclamation,
Churchgate,
Mumbai - 400020.



Regd. Office : ICICI Bank Tower, Near Chakli Circle,
Old Padra Road, Vadodara 390 007,
India.
Corp. Office : ICICI Bank Towers, Bandra-Kurla
Complex, Mumbai 400051, India.

ICICI Bank


| | |
|--|---|
| Site Offices | Mauritius & Agalega |
| Liaison Offices | Mauritius |
| Overseas Bank Accounts | 1 A/c in MUR & 1 USD A/c in Mauritius and 1 USD A/c in India. 1 bank A/c in USD in Dubai for payments to material suppliers from third country. |
| Foreign currency loan and Overdrafts abroad | Upto USD 21.022 Min |
| Foreign L/C's for third country imports (% and Amount) | Other Miscellaneous Bank Guarantees & Third Country Import LC's required to the extent of 30% of Contract Value |
| LC Details | For Material & CAPEX |
| Agency Commission (% and Amount) | 5% of Contract Value USD 13.292 Min |
| Outward Remittance | 35% of Contract Value |
| Period of repatriation | Project Period (29 months) + Defect Liability period (24 months) |
| Buyers Credit | NA |
| Payment in foreign currency to Indian supplier of goods/services from the foreign currency account in India | NA |
| Whether machinery equipments etc. are required for execution of the contract, If so, a) whether these are to be procured on hire or lease basis b) to be purchased abroad c) to be exported from India on re- import basis d) to be transferred from other project abroad. | a) As and when required b) USD 2.36 Min c) USD 10.23 Min d) USD 2.17 Min |
| 18. ECGC Cover | NA |
| Type of cover from ECGC and % No Cover | |
| 19. Inter project transfer of funds | NA |

EXHIBIT II

Standard Conditions for availing specific facilities - Bank accounts, site offices, ag

Foreign remittance involved

ICICI Bank Limited
163, H.T. Parekh Marg
Backbay Reclamation,
Churchgate,



Website www.icicibank.com

Regd. Office : ICICI Bank Tower, Near Chakli Circle,
Old Padra Road, Vadodra 390 007,
India.
Corp. Office : ICICI Bank Towers, Bandra-Kurla

The above letter has been reproduced by the importer in support of their claim that the exports made by them were given GR (Guaranteed Remittance) Waiver Certificate.

4.3.2 However, from the above reproduced letter/certificate dated 09.10.2018, it is clearly forthcoming that: -

- (i) the exporter's name has been mentioned as "Afcons Infrastructure Limited";

- (ii) the name of the **foreign buyer** has been clearly mentioned as **“RITES LIMITED”**;
- (iii) the contract has been categorised as construction contract for development of infrastructure at Agalega Island, Mauritius;
- (iv) the site offices have been mentioned as Mauritius & Agalega;
- (v) that the machinery/equipment etc. required for execution of the contract to be **exported from India on re-import basis** has been assigned a value of USD 10.33 Mln.

4.3.3 Thus, from the above reproduced document dated 09.10.2018 issued by ICICI Bank, it is forthcoming that an award was contracted to M/s Afcons Infrastructure Limited for construction project wherein it has been clearly mentioned that the foreign buyer is “RITES Limited”, a Navratna and Schedule 'A' Central Public Sector Enterprise under the Ministry of Railways. Further, the award clearly stipulates that the machinery/equipment was to be exported by the said unit from India on re-import basis and the value of such machinery/equipment etc. required for execution of the contract to be **exported from India on re-import basis** has been assigned a value of USD 10.33 Mln.

4.3.4 The above is also corroborated from the fact that in some of the export invoices issued by M/s Afcons Infrastructure Private Limited in respect of the goods exported by them on re-import basis, it is observed that the consignee/importer has been shown as the **“High Commission of India”**. It is also observed that in respect of some of the export invoices, they have mentioned the name of the consignee/importer as “Afcons Infrastructure Limited” with the notified party as **“High Commission of India”**. For the sake of ease of reference, scanned images of both types of invoices have been reproduced below:-

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Scanned image of export invoice no. 5964/133 dated 11.03.2019 wherein the consignee/importer has been shown as "High Commission of India"



INVOICE

| Consignor / Shipper: AFCONS INFRASTRUCTURE LIMITED, Afcons House, 16, Shah Industrial Estate, Veera Desai Road, Andheri (W), Mumbai - 400 053, India GSTIN: 27AAACA9067G1ZL | | Invoice No.: 5964/133 | Date: 11.03.2019 | Exporter Code: 0388053283 | | | |
|---|----------|---|------------------------------------|-------------------------------------|-----------|--------------|---|
| Consignee / Importer: HIGH COMMISSION OF INDIA 6th Floor, LIC Building President John Kennedy Street, A/c. Afcons Infrastructure Ltd. PORT LOUIS, MAURITIUS | | Delivery Address: HIGH COMMISSION OF INDIA, A/c. Afcons Infrastructure Ltd. (Job No. 5964) Agalega Island, Mauritius | | | | | |
| CTG: Mr. Gurudatt Nayak, Project Manager Mail: ganayak@afcons.com +91 7069014031 | | Contact Details: Mr. Pankaj Gajallewar Mobile: +91 9819 39 0056, +230 5840 1174 | | | | | |
| Notify Party: Scott Shipping International Ltd Port Louis, Mauritius Mr. Jean Pierre Clyde Waterstone E-Mail: cw@scottship.com Mob: +230 2163042 | | Contract No.: RITES/CO/AP/MEA-2/2018 DATED 28th September 2018 Project 5964 : Development of Infrastructure at Agalega Island, Mauritius | | | | | |
| | | Company Registration No. 64003 VAT Registration No. 23002695 | | | | | |
| | | Packing List No | 5964/133 | | | | |
| | | Ref. No. / PO No. | OB/0770 Lot 2 /54-1507 | | | | |
| | | Delivery Terms | CIF | | | | |
| | | Country of Origin | India | | | | |
| | | Mode of Shipment | Sea | | | | |
| | | Port of Loading | Mumbai, India | | | | |
| | | Port of Discharge | Port Louis, Mauritius | | | | |
| | | Final Delivery | Agalega, Mauritius | | | | |
| | | Payment Term | 180 Days From the Date of Shipment | | | | |
| Sr. No | HS Code | Description | UOM | Qty. | Unit Rate | Amount (USD) | Remark |
| 1 | 85446090 | CABLE ALUMINIUM ARMD 3.5 C X 300 SQMM XLPE 1.1 KV IN | MTR | 304 | 12.67 | 3,852.97 | DC NO:1002000937 DT:04.03.2019 SIDDHARTH V. LAKHANI PREVENTIVE OFFICER INDIAN CUSTOMS, MUMBAI DC NO:1002000938 |
| 2 | 85446090 | CABLE ALUMINIUM COND. 3 1/2 CORE X 185 SQMM | MTR | 1004 | 8.05 | 8,083.41 | |
| 3 | 85446090 | CABLE ALUMINIUM COND. 3.5 CORE X 150 SQMM | MTR | 606 | 6.40 | 3,879.09 | |
| 4 | 85446090 | CABLE ALUMINIUM COND. 3 1/2 CORE X 120 SQMM | MTR | 1509 | 5.42 | 8,178.22 | |
| 5 | 85446090 | 3.5 CORE X 70 SQMM ALUMINIUM ARMOURD CABLE | MTR | 1529 | 3.51 | 5,372.16 | |
| 6 | 85446090 | CABLE ALUMINIUM COND. 3 1/2 CORE X 50 SQMM | MTR | 504 | 2.72 | 1,369.33 | |
| 7 | 85446090 | CABLE ALUMINIUM COND. 3 1/2 CORE X 35 SQMM | MTR | 1500 | 2.08 | 3,115.20 | |
| 8 | 85446090 | CABLE ALUMINIUM COND. 3 1/2 CORE X 25 SQMM | MTR | 506 | 1.64 | 827.74 | |
| 9 | 85446090 | CABLE, 4 CORE X 16MM2, ALUMINIUM ARMOURD | MTR | 1510 | 1.34 | 2,019.06 | |
| 10 | 85446090 | CABLE COPPER 1 CORE X 300 SQMM FLEXIBLE | MTR | 300 | 23.44 | 7,032.72 | |
| 11 | 85446090 | PVC COPPER EARTHING CABLE 1 CORE X 150 SQMM | MTR | 200 | 14.55 | 2,910.38 | |
| 12 | 85446090 | CABLE ELECTRICAL COPPER COND. 4 CORE X 6 SQMM | MTR | 5100 | 2.77 | 14,146.51 | |
| 13 | 85446090 | FLEXIBLE COPPER CABLE 4 SQMM X 4 CORE | MTR | 5100 | 1.45 | 7,380.13 | |
| 14 | 85446090 | FLEXIBLE COPPER CABLE 2.5 SQMM X 4 CORE | MTR | 5000 | 2.83 | 14,146.51 | |



| | | | | | | | |
|--|----------|--|-----|------|------|---|------------------|
| 15 | 85446090 | FLEXIBLE COPPER CABLE 1.5 MM2 X 3 CORE | MTR | 5000 | 0.44 | 2,180.65 | |
| | | | | | | Cost | 84,494.13 |
| PEX: PEM/ICICI/0393/2018-19/8691/0009169695 Under LUT - Without GST - LUT No. AA270318054390A | | | | | | Insurance | 50.70 |
| | | | | | | Freight | 1,727.07 |
| Declaration: | | | | | | Total CIF Value | 86,271.89 |
| 1) We declare that this invoice shows the actual price of goods described and that all Particulars are true and correct. | | | | | | For Afcons Infrastructure Ltd. | |
| | | | | | |   Authorised Signatory | |

OMBV

SIDDHANT V. LAKHANI
PREVENTIVE OFFICER
INDIAN CUSTOMS, MUMBAI

CBIC Internal

Scanned image of export invoice no. 5964/133 dated 11.03.2019 wherein the consignee/importer has been shown as "Afcons Infrastructure Limited" with Notify Party as "High Commission of India"



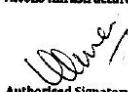
INVOICE

| Consignor / Shipper: | | Invoice No. | Date | Exporter Code | | | |
|--|----------|--|------------|---------------|-----------|--------------|---|
| AFCONS INFRASTRUCTURE LIMITED, Afcons House, 16, Shah Industrial Estate, Veera Desai Road, Andheri (W), Mumbai - 400 053, India GSTIN: 27AAACA0067G1ZL | | 5964/245 | 19.06.2019 | D388053283 | | | |
| Consignee / Importer: | | Delivery Address: | | | | | |
| AFCONS INFRASTRUCTURE LIMITED, 3rd floor Ebene Esplanade, Port Louis, Mauritius CTC: Mr. Gurudatt Nayak, Project Manager Mail: ganayak@afcons.com + 91 7069014031 | | Afcons Infrastructure Ltd. (Job No. 5964) Afcons Agalega A/C HCl Agalega Island, Mauritius Contact Details: Mr. Panisaj Gajallewar Mobile: +91 9819390056 | | | | | |
| Notify Party: | | Contract No.: RITES/CO/AP/MEA-2/2018 DATED 26th September 2018 | | | | | |
| HIGH COMMISSION OF INDIA 6th Floor, LIC Building President John Kennedy Street, A/c. Afcons Infrastructure Ltd. Port Louis, Mauritius | | Project 5964 : Development of Infrastructure at Agalega Island, Mauritius Company Registration No. 64003 VAT Registration No. 23002695 | | | | | |
| Scott Shipping International Ltd Port Louis, Mauritius Mr. Jean Pierre Clyde Waterstone E-Mail: cw@scottship.com / jp@scottship.com Mob: +230 2163042 | | Packing List No. 5964/245 Ref. No. / PO No. OB/0980, PO: 54-1932, 54-1956, 54-1862 & 54-1809 Delivery Terms CIF Country of Origin India Mode of Shipment Sea Port of Loading Nhava Sheva, India Port of Discharge Port Louis / Agalega Final Delivery Agalega, Mauritius Payment Term 180 Days From The Date Of Shipment | | | | | |
| Sr. No | HS Code | Description | UOM | Qty. | Unit Rate | Amount (USD) | Remark |
| 1 | 73061929 | MS SQUARE PIPE 30X30X 2MM HITECH | MTR | 304.500 | 1.54 | 467.61 | FC NO: 1002001383, DT: 25.06.2019 |
| 2 | 73061929 | MS SQUARE PIPE 50X50X 3MM HITECH | MTR | 304.500 | 3.84 | 1,170.13 | |
| 3 | 73061929 | MS PIPE 1.1/4" (32NB) B CLASS JINDAL | MTR | 625.000 | 2.40 | 1,501.09 | |
| 4 | 73061929 | MS PIPE 2.1/2 B CLASS JINDAL | MTR | 106.250 | 5.60 | 594.58 | |
| 5 | 73061929 | MS PIPE 2" B CLASS JINDAL | MTR | 312.500 | 4.20 | 1,312.32 | |
| 6 | 73061929 | MS PIPE 1.1/2" B CLASS JINDAL | MTR | 518.750 | 2.87 | 1,486.86 | |
| 7 | 73061929 | MS PIPE 16" DIA (1'.4") 12MM THICK MAKE TATA | MTR | 60.62 | 115.52 | 7,002.91 | DC NO: 1002001378, DT: 25.06.2019 |
| 8 | 39174000 | PVC BOTTLE TRAP | NOS | 70 | 5.33 | 372.93 | DC NO: 1002001369, DT: 25.06.2019 |
| 9 | 85365090 | Indicator Flasher 24V | NOS | 15 | 1.67 | 25.11 | AFCONS INFRASTRUCTURE LIMITED MUMBAI |
| 10 | 85123010 | Revers Horn | NOS | 15 | 5.09 | 76.42 | |
| 11 | 48119099 | Oil Paper | NOS | 3 | 1.09 | 3.28 | |
| 12 | 48119099 | Oil Paper | NOS | 3 | 1.09 | 3.28 | |
| 13 | 73079990 | Grease Nipple 12mm | NOS | 20 | 0.22 | 4.37 | |
| 14 | 73079990 | Grease Nipple 8mm | NOS | 20 | 0.17 | 3.49 | |
| 15 | 73079990 | Grease Nipple 6mm | NOS | 20 | 0.15 | 2.91 | |
| 16 | 73079990 | Grease Nipple U Type 10mm | NOS | 20 | 0.22 | 4.37 | |
| 17 | 73079990 | Grease Nipple 4MM | NOS | 20 | 0.15 | 2.91 | |
| 18 | 73079990 | Grease Nipple 14MM | NOS | 20 | 0.29 | 5.82 | |
| 19 | 96039000 | Paint Brush 12Mm (1/2") | NOS | 1 | 0.58 | 0.58 | |
| 20 | 96033090 | WRITING BRUSH NO.-10 | NOS | 1 | 0.66 | 0.66 | |
| 21 | 32089090 | SPRAY PAINT | NOS | 4 | 4.00 | 16.01 | |
| 22 | 32099090 | Black Enamel Paint | LTR | 1 | 4.00 | 4.00 | |
| 23 | 32089090 | SPRAY PAINT RED | NOS | 4 | 4.00 | 16.01 | |
| 24 | 32089090 | Spray Aluminium Paint | LTR | 4 | 4.00 | 16.01 | |



| | | | | | | |
|----|----------|------------------------------------|-----|-------|-------|--------|
| 25 | 84601900 | Valve Grinding Stick | NOS | 1 | 1.09 | 1.09 |
| 26 | 35069999 | Adhesive | KGS | 0.100 | 21.83 | 2.18 |
| 27 | 35069999 | Adhesive | KGS | 0.100 | 21.83 | 2.18 |
| 28 | 32089090 | SPRAY PAINT Black | NOS | 4 | 4.00 | 16.01 |
| 29 | 58063990 | Cotton Tape 1/2" | ROL | 20 | 6.11 | 122.27 |
| 30 | 59019020 | Empire Tape 1" | ROL | 20 | 0.22 | 4.37 |
| 31 | 85389000 | Flat Type Lugs 150A Alu | NOS | 100 | 0.36 | 36.39 |
| 32 | 85389000 | Flat Type Lugs 95/A Alu | NOS | 150 | 0.20 | 30.57 |
| 33 | 85389000 | Flat Type Lugs 70/A Alu | NOS | 150 | 0.15 | 22.40 |
| 34 | 85389000 | Flat Type Lugs 185/A Alu | NOS | 100 | 0.45 | 45.12 |
| 35 | 85389000 | Flat Type Lugs 120 Sq mm Alu | NOS | 150 | 0.23 | 34.50 |
| 36 | 85389000 | Flat Type Lugs 50 Sqmm Alu | NOS | 150 | 0.11 | 17.03 |
| 37 | 85389000 | Flat Type Lug 35 SQMM Aluminium | NOS | 150 | 0.09 | 13.10 |
| 38 | 40094100 | Pneumatic Hose 1/2" | MTR | 20 | 0.95 | 18.92 |
| 39 | 40094100 | Pneumatic Hose 3/8" | MTR | 20 | 0.87 | 17.47 |
| 40 | 40094100 | Pneumatic Hose 5/16" | MTR | 20 | 0.44 | 8.73 |
| 41 | 40094100 | Water Hose 1" - Nylone Braided | MTR | 20 | 0.71 | 14.17 |
| 42 | 40094100 | Water Hose 1" - Nylone Braided | MTR | 20 | 0.71 | 14.17 |
| 43 | 40094100 | Water Hose 1" - Nylone Braided | MTR | 20 | 0.71 | 14.17 |
| 44 | 40094100 | PNEUMATIC HOSE PVC-ID8MM,OD-10MM | MTR | 20 | 0.66 | 13.10 |
| 45 | 40092940 | Rubber Packing | NOS | 1 | 6.91 | 6.91 |
| 46 | 73269099 | Gt Stencil 4" Number 0-9 | NOS | 1 | 2.55 | 2.55 |
| 47 | 73269099 | Gt Stencil 4" Letters A - Z | NOS | 1 | 2.55 | 2.55 |
| 48 | 39173290 | Pvc Water Proof Tape | ROL | 100 | 0.51 | 50.95 |
| 49 | 39174000 | Pvc Fitting-Sink | SET | 10 | 1.14 | 11.40 |
| 50 | 39174000 | Pvc Fitting-Sink | SET | 10 | 1.14 | 11.40 |
| 51 | 39174000 | Pvc Fitting-Sink | SET | 10 | 1.14 | 11.40 |
| 52 | 73181500 | MS BOLT 10.9 G HALF THREAD M10x100 | NOS | 20 | 0.62 | 12.43 |
| 53 | 73181500 | MS BOLT 10.9 G HALF THREAD M12x100 | NOS | 20 | 0.75 | 15.09 |

DC NO:
1002001382, DT:
25.06.2019

| | | | |
|--|--|---|-----------|
| (DETAILS AS PER PACKING LIST) | | | |
| PEX: PEM/ICICI/0393/2018-19/8691/0009169695 | | Cost | 14,666.27 |
| Under LUT - Without GST - LUT (ARN) No. AD2703190018777 Dt: 11.03.2019 | | Insurance | 8.80 |
| Declaration: | | Freight | 721.24 |
| 1) We declare that this invoice shows the actual price of goods described & that all particulars are True and Correct. | | Total CIF Value | 15,396.31 |
| | | For Afcons Infrastructure Ltd. | |
| | |  Authorised Signatory | |



OMRC

Thus, from the above reproduced scanned images of the export invoices issued by M/s Afcons Infrastructure Limited, it appears that in both cases, the goods were exported in the course of supply of construction contract issued to them and the "High Commission of India" was either reported as the consignee of the goods or the notified party in respect of the exported goods.

5. APPLICABILITY OF SERIAL NO. 1(d) OF NOTIFICATION NO. 45/2017-CUSTOMS DATED 30.06.2017:

5.1 Whereas, it appears that, during the CERA Audit of the unit on the basis of above-referred LARs that the said importer while filing the Bill(s) of Entry, for certain imported goods had availed exemption of customs duties including Integrated Tax (IGST) by claiming benefit under **Serial No. 05 of Notification No. 45/2017-Customs dated 30 June 2017**. The said notification grants exemption to certain categories of re-imported goods as specified in its table. **Serial No. 05** relates to goods **other than those exported under bond/LUT**, subject to specified conditions. The relevant portion of notification are as under: -

| Notification No. 45/2017 – Customs | | |
|--|---|---|
| New Delhi, the 30 th June, 2017 | | |
| <p>G.S.R. (E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below when re- imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the whole of the, integrated tax , compensation cess leviable thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table.</p> | | |
| Table | | |
| Sl. No. | Description of goods | Conditions |
| (1) | (2) | (3) |
| 1 | Goods exported - (a) under claim for drawback of any customs or excise duties levied by the Union (b) under claim for drawback of any excise duty levied by a State (c) under claim for refund of integrated tax paid on export goods (d) under bond without payment of integrated tax (e) under duty exemption scheme (DEEC/ Advance Authorisation/ DFIA) or Export Promotion Capital Goods Scheme (EPCC) | amount of drawback of customs or excise duties allowed at the time of export; amount of excise duty leviable by State at the time and place of importation of the goods. allowed at the time of export; amount of refund of integrated tax, availed at the time of export; amount of integrated tax not paid; amount of integrated tax and compensation cess leviable at the time and place of importation of goods and subject to the following conditions applicable for such goods - (i) DEEC book has not been finally closed and export in question is de-logged from DEEC Book; Advance Authorisation/DFIA |

| | | |
|---|---|--|
| 2 | Goods, other than those falling under Sl. No. 1 exported for repairs abroad | Duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not), insurance and freight charges, both ways. |
| 3 | Cut and polished precious and semi-precious stones exported for treatment abroad as referred to in Paragraph 4A.20.1 of the Foreign Trade Policy, other than those falling under Sl. No. 1. | Duty of customs which would be leviable if the value of re-imported precious and semi-precious stones after treatment were made up of the fair cost of treatment carried out including cost of materials used in such treatment, whether such costs are actually incurred for not, insurance and freight charges, both ways. |
| 4 | Parts, components of aircraft replaced or removed during the course of maintenance, repair | Nil |

| | | |
|---|--|-------|
| | or overhaul of the aircraft in a Special Economic Zone and brought to any other place in India. Explanation. - For the purpose of this notification, "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005) | |
| 5 | Goods other than those falling under Sl. No. 1, 2, 3 and 4 | Nil : |

Provided that the Assistant Commissioner of Customs/ Deputy Commissioner of Customs is satisfied that-

.....

5.2 Thus, from the above referred Notification No. 45/2017-Customs dated 30.06.2017, it is clearly forthcoming that under **condition no. 1(d)**, it has been clearly stipulated that where the goods have been exported under bond without payment of integrated tax, at the time of re-import applicable integrated tax is required to be paid.

5.3 Further, from reading of Notification No. 37/2017-Central Tax dated 04.10.2017, all registered persons who intend to supply goods or services for export without payment of integrated tax have been made eligible to furnish a **Letter of Undertaking in place of a bond** except those who have been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. In the instant case, the said importer has made export of goods for execution of their projects in Agalega Island, Mauritius on re-import basis under **Letter of Undertaking** and therefore by virtue of condition no. 1(d) of Notification No. 45/2017-Customs dated 30.06.2017 read with Notification No. 37/2017-Central Tax dated 04.10.2017, they appear to be liable to pay the integrated tax on the re-import of such goods into India, which they have failed to pay.

6. NON-APPLICABILITY OF CONDITION AT SERIAL NO. 5 OF NOTIFICATION NO. 45/2017-CUSTOMS DATED 30.06.2017:

6.1 Whereas, from the audit objections raised by CERA and the corresponding LARs, it is forthcoming that M/s Afcons Infrastructure Limited have availed the benefit of exemption from payment of IGST on the imports made by them in respect of the goods earlier exported to Mauritius for construction project at Agalega Island by referring to Serial No. 5 of the Notification No. 45/2017-Customs dated 30.06.2017. Vide their replies, as discussed *supra*, they have maintained their stand that the exemption from payment of integrated tax as provided under Serial No. 5 of the said Notification is available to them. In their support, they appear to have relied upon Circular No. 21/2019-Customs dated 24.07.2019 and have quoted in their replies that

“ as in the case of re-import of specified goods, no integrated tax was required to be paid for specified goods at the time of taking these out of India, the activity being not a supply, hence the said condition requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable. It is clarified that such re-import cannot be taken to be falling under situation at Sl. No. 1(d) of the said Notification. Such cases will fall more appropriately under residual entry at Sl. No. 5 of the said Notification even though those specified goods were exported under LUT, in view of the fact that the activity of sending/taking specified goods out of India is neither a supply nor a zero rated supply”.

6.2 For the ease of reference, Circular No.21/2019-Customs dated 24.07.2019 is reproduced as under:-

Circular No. 21/2019 -Customs

F. No. 450/131/2017-CusIV
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)

Room No.227B, North Block, New Delhi.

Dated the 24th July, 2019

To,

All Principal Chief Commissioners/ Chief Commissioners of Customs/ Customs
(Preventive.)

All Principal Chief Commissioners/ Chief Commissioners of Customs & Central Tax

All Principal Commissioners/ Commissioners of Customs/ Customs (Prev.)

All Principal Commissioners/ Commissioners of Customs and Central Tax

Madam/ Sir,

SUB: Clarification regarding applicability of Notification No. 45/2017-Customs dated 30.06.2017 on goods which were exported earlier for exhibition purpose/consignment basis - reg.

Representations have been received for clarifying the issue of applicability of Notification no. 45/2017-Customs on the re-import of goods which had been earlier exported either for participation in exhibition or on consignment basis.

2. Matter has been examined. [Circular No. 108/27/2019-GST dated 18.07.2019](#) has clarified that the activity of sending / taking the specified goods (i.e. goods sent / taken out of India for exhibition or on consignment basis for export promotion except the activities satisfying the tests laid down in Schedule I of the CGST Act, 2017) out of India do not constitute supply within the scope of Section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as 'Zero rated supply' as per the provisions contained in Section 16 of the IGST Act, 2017. Also that there is no requirement of filing any LUT/bond as required under section 16 of IGST Act, 2017 for such activity of taking specified goods out of India.

3. Situation mentioned at Sl. No. 1(d) of the Notification no. 45/2017-Customs dated 30.06.2017 require payment at the time of re-import of integrated tax not paid initially at the time of export, for availing exemption under the said notification. As in the case of re-import of specified goods, no integrated tax was required to be paid for specified goods at the time of

taking these out of India, the activity being not a supply, hence the said condition requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable. It is clarified that such re-import cannot be taken to be falling under situation at Sl. No. 1(d) of the said Notification. Such cases will fall more appropriately under residuary entry at Sl. No. 5 of the said Notification even though those specified goods were exported under LUT, in view of the fact that the activity of sending / taking specified goods out of India is neither a supply nor a zero rated supply.

4. It is also clarified that, even in cases where exports have been made to related or distinct persons or to principals or agents, as the case may be, for participation in exhibition or on consignment basis, but, such goods exported are returned after participation in exhibition or the goods are returned by such consignees without approval or acceptance, as the case may be, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the consignees. Hence, re import of such goods after return from such exhibition or from such consignees will be covered by entry at Serial no. 5 of the Notification No. 45/2017 dated 30.06.2017, provided re-import happens before six months from the date of delivery challan.

5. The above clarification shall apply to all pending matters involving similarly placed exporters and importers, as the case may be.

6. Difficulties, if any, may be brought to the notice of the Board.

Yours faithfully



(Zubair Riaz)
Director (Customs)

6.3 Whereas, from a plain reading of Circular No. 21/2019-Customs dated 24.07.2019, it appears that the same is in the nature of clarification regarding applicability of Notification No. 45/2017-Customs dated 30.06.2017 on **goods which were exported earlier for exhibition purpose/consignment**. Further, the said Circular dated 24.07.2019 refers to another **Circular No. 108/27/2019-GST dated 18.07.2019** wherein it has been clarified that the activity of sending/taking goods (i.e. goods sent/taken out of India for exhibition or on consignment basis for export promotion except the activities satisfying the test laid down in Schedule-I of the CGST Act, 2017) out of India do not constitute supply within the scope of Section 7 of the CGST Act, 2017 as there is **no consideration** at that point of time. The said Circular dated 18.07.2019 mentions that since such activity is not a supply, the same cannot be considered as “Zero rated supply” as per the provisions contained in Section 16 of the IGST Act, 2017.

6.4 The Circular No. 21/2019-Customs dated 24.07.2019 further mentions that the situation mentioned at Sl No. 1(d) of Notification No. 45/2017-Customs dated 30.06.2017 requires payment at the time of re-import of integrated tax not paid initially at the time of export, for availing exemption under the said Notification. Further, it states that as in the case of re-import of specified goods, no integrated tax was required to be paid for specified goods at the time of taking these out of India, the **activity being not a supply**, hence the said condition requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable. It has been clarified that such re-import cannot be taken to be falling under situation at Sl. No. 1(d) of the said Notification and that such cases will fall more appropriately under residual entry at Sl. No. 5 of the said Notification even though those specified goods were exported under LUT, in view of the fact that the activity of sending/taking specified goods out of India is neither a supply nor a zero-rated supply.

6.5 Whereas, Circular No. 108/27/2019-GST dated 18.07.2019 whose reference has been made in the Circular No. 21/2019-Customs dated 24.07.2019 provides **clarification on the activity of sending/taking out goods out of India being supply in terms of Section 7 of the CGST Act, 2017 read with sub-section (21) of section 2 of the Integrated Goods and Services Tax Act, 2017** or otherwise. The relevant text of the said Circular is reproduced as under: -

“3. As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-

(i) it should be for a consideration by a person; and

(ii) it should be in the course or furtherance of business.

4. The exceptions to the above are the activities enumerated in Schedule I of the CGST Act which are treated as supply even if made without consideration. Further, sub-section (21) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the “IGST Act”) defines “supply”, wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the CGST Act.

5. Section 16 of the IGST Act deals with “Zero rated supply”. The provisions contained in the said section read as under:

16. (1) “zero rated supply” means any of the following supplies of goods or services or both, namely: —

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Therefore, it can be concluded that only such „supplies” which are either „export” or are „supply to SEZ unit / developer” would qualify as zero-rated supply.

6. It is, accordingly, clarified that the activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act (hereinafter referred to as the “specified goods”), do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as „Zero rated supply” as per the provisions contained in section 16 of the IGST Act.

7. Since the activity of sending / taking specified goods out of India is not a supply, doubts have been raised by the trade and industry on issues relating to maintenance of records, issuance of delivery challan / tax invoice etc. These issues have been examined and the clarification on each of these points is as under: -

Circular No. 108/27/2019-GST

| Sl.No. | Issue | Clarification |
|--------|---|--|
| 1. | Whether any records are required to be maintained by registered person for sending / taking specified goods out of India? | The registered person dealing in specified goods shall maintain a record of such goods as per the format at Annexure to this Circular. |
| 2. | What is the documentation required for sending / taking the specified goods out of India? | <p>a) As clarified above, the activity of sending / taking specified goods out of India is not a supply.</p> <p>b) The said activity is in the nature of "sale on approval basis" wherein the goods are sent / taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. The activity of sending / taking specified goods is covered under the provisions of sub-section (7) of section 31 of the CGST Act read with rule 55 of Central Goods & Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules").</p> <p>c) The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.</p> <p>d) As clarified in paragraph 6 above, the activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.</p> |
| 3. | When is the supply of specified goods sent / taken out of India said to take place? | a) The specified goods sent / taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in sub- |

Circular No. 108/27/2019-GST

| | | |
|----|--|---|
| | | <p>section (7) of section 31 of the CGST Act.</p> <p>b) The supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.</p> <p>c) If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale.</p> |
| 4. | Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period? | <p>a) When the specified goods sent / taken out of India have been sold fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the CGST Act, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.</p> <p>b) When the specified goods sent / taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the CGST Act, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.</p> |
| 5. | Whether the refund claims can be preferred in respect of specified goods sent / taken out of | <p>a) As clarified in para 5 above, the activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim</p> |

6.6.1 Whereas, from the above reproduced Circular No. 108/27/2019-GST dated 18.07.2019, it has been clarified that “supply” under Section 7 of the CGST Act, 2017 shall have to satisfy the twin tests of “consideration” and “furtherance of business”, the exception being enumerated in Schedule-I of the CGST Act, 2017 wherein activities would be treated as supply even when made without a consideration and further that by virtue of sub-section (21) of section 2 of the IGST Act, 2017 “supply” has the same meaning as assigned to it in Section 7 of the CGST Act, 2017.

6.6.2 Scrutiny of the export invoices available on record and Post Award Documents dated 09.10.2018 issued by ICICI Bank have shown that the export of goods has been made in connection to “Construction Project” at Agalega Island, Mauritius. The contract has been assigned by “RITES Limited” which has been reported as “Foreign Buyer”. Further, in the export invoices, the consignee/importer has been shown both as “High Commission of India” and “M/s Afcons Infrastructure Limited, Mauritius”. Thus, from the above, it appears that the activity of exporting goods from India for construction project at Agalega Island Mauritius by M/s Afcons Infrastructure Limited awarded by RITES Limited for **USD 265.833 Mln (INR: 1914 Crores)** is in furtherance of business.

6.6.3 Proceeding further, as far as “consideration” is concerned, as shown in **Table-4** above, it is forthcoming that scrutiny of the Shipping Bills has revealed that there existed a few shipping bills wherein foreign remittance has been involved and BRC (Bank Realization Certificates) have been issued. Furthermore, the goods exported under such Shipping Bills have been re-imported into India without payment of IGST. For the sake of ready reference, Table-4 is reproduced as under:

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Table-4

| Sr. No. | Shipping Bill No. | Shipping Bill Date | BRC Realisation Date | Corresponding Bill of Entry No. vide which re-import of goods made | Date of Bill of Entry |
|----------------|--------------------------|---------------------------|-----------------------------|---|------------------------------|
| 1 | 7262797 | 28.09.2019 | 30.06.2020 | 3940203 | 13.05.2021 |
| 2 | 1811157 | 01.03.2020 | 31.12.2020 | | |
| 3 | 3050521 | 27.03.2019 | 30.12.2019 | | |

| | | | | | | |
|----|--|---------|------------|------------|---------|------------|
| 4 | | 3719431 | 25.04.2019 | 31.01.2020 | 5172570 | 08.04.2021 |
| 5 | | 3866812 | 28.03.2019 | 31.01.2020 | | |
| 6 | | 4024637 | 23.07.2020 | 30.04.2021 | | |
| 7 | | 4886473 | 02.09.2020 | 30.06.2021 | | |
| 8 | | 5326025 | 03.07.2019 | 30.04.2020 | | |
| 9 | | 5537771 | 13.07.2019 | 30.04.2020 | | |
| 10 | | 7394575 | 04.10.2019 | 31.07.2020 | | |
| 11 | | 8510450 | 26.11.2019 | 31.08.2020 | | |
| 12 | | 1088064 | 01.07.2020 | 30.11.2020 | 6461731 | 30.11.2021 |
| 13 | | 3053575 | 27.03.2019 | 31.12.2019 | | |
| 14 | | 4886579 | 02.09.2020 | 30/06/2021 | 8278391 | 14.04.2022 |
| 15 | | 7112068 | 23.09.2019 | 30.06.2020 | | |
| 16 | | 7127108 | 23.09.209 | 30.06.2020 | | |
| 17 | | 7264196 | 28.09.2019 | 30.06.2020 | | |
| 18 | | 7440602 | 07.10.2019 | 31.07.2020 | | |
| 19 | | 7776131 | 22.10.2019 | 31.07.2020 | | |

Thus, the claim of the importer that all Shipping Bills filed by them are under Scheme Code-99 involving no foreign exchange is incorrect and there exists clear evidence of consideration.

6.6.4 Further, even in respect of the Shipping Bills for exports where no consideration was involved, by virtue of Schedule-I of the CGST Act, 2017 read with the IGST Act, 2017. As per entry made at Sr. No. 2 of Schedule-I of the CGST Act, 2017:

“Supply of goods or services or both between related persons or between distinct persons as specified in Section 25 when made in the course of furtherance of business constitutes a supply even when made without consideration”.

Therefore, by virtue of Schedule-I of the CGST Act, 2017 read with the IGST Act, 2017 such exports appear to qualify as “supply” as they have been made in the course of furtherance of business in as much as the primary reason for export of

the goods appears to be their utilization in the construction project awarded to M/s Afcons Infrastructure Limited for **USD 265.833 Mln (INR: 1914 Crores)** by RITES Limited.

For the sake of ease of reference, Schedule-I of the CGST Act, 2017 is reproduced as under:-

| Schedule I-Activities to be treated as supply even if made without consideration |
|---|
| <p>SCHEDULE I. [See section 7]</p> <p>ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION</p> <p>(1) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.</p> <p>(2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:</p> <p>Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.</p> <p>(3) Supply of goods-</p> <p style="padding-left: 40px;">(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or</p> <p style="padding-left: 40px;">(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.</p> <p>(4) Import of services by a ¹[person] from a related person or from any of his other establishments outside India, in the course or furtherance of business.</p> |

6.6.5 (a) It is also observed from the clarification provided by Circular No.108/27/2019-GST dated 18.07.2019 at **Sr. No. 2 on the issue of “Documentation required for sending/taking the specified goods out of India”**, it has been stated that such activity is in the nature of **“sale on approval basis wherein the goods are sent/taken out of India for approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. And further that such activity of sending the specified/taking specified goods out of India is not a zero-rated supply and hence execution of a bond or LUT as required under Section 16 of the IGST Act, 2017 is not required”**.

(b) In context of the above, the instant case on hands is differently placed in as much as the **goods have not been taken out of India on approval basis** rather the same have been sent under the cover of Shipping Bills on reimport basis in the course of **furtherance of business** in respect of a Construction Project awarded to M/s Afcons Infrastructure Limited for a contract value of **USD 265.833 Mln (INR:**

1914 Crores) by RITES Limited. Thus, as explained above at **Para 6.6.4**, the same appears to **qualify as supply** in terms of Section 7 of the CGST Act, 2017 read with Schedule-I of the CGST Act, 2017 and further read with sub-section (21) of section 2 of the IGST Act, 2017.

6.6.6(a) Further, the Shipping Bills for export of goods have been filed under Letter of Undertaking and as such no integrated tax has been paid at the time of export by M/s Afcons Infrastructure Limited. Further, Circular No. 21/2019-Customs dated 24.07.2019 (Para 4) clarifies that reimport of such **goods after return from exhibition/consignees will be covered under Serial Number 5 of Notification No. 45/2017-Customs dated 30.06.2017, provided that the re-import happens before six months from the date of delivery challan.**

(b) Similarly, Circular No. 108/27/2019-GST dated 18.07.2019 (**Sr. No. 3 of Table of Para 7**) which has been relied upon in Circular No. 21/2019-Customs dated 24.07.2019 expressly states that “ **the specified goods sent / taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in sub-section (7) of section 31 of the CGST Act and that the supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period**”

(c) In the instant case, the goods have been exported by M/s Afcons Infrastructure Limited under Letter of Undertaking without payment of integrated tax and such goods have been re-imported into India by claiming benefit of exemption as available under Serial Number 5 of Notification No. 45/2017-Customs dated 30.06.2017 in the Bills of Entries filed by them. However, from scrutiny of the Bills of Entry, it is observed that the goods have been re-imported after lapse of the stipulated period of six months as provided under Circular No. 21/2019-Customs dated 24.07.2019 (Para 4) read with Circular No. 108/27/2019-GST dated 18.07.2019 (Sr. No. 3 of Table of Para 7. The list of such shipping bills in respect of which the Bills of Entry have been filed, for re-import of exported goods after lapse of the stipulated period of six months has been enclosed to this show cause notice as **Annexure-II**. Thus, the benefit of IGST exemption available under Serial Number 5 of Notification No. 45/2017-Customs dated 30.06.2017 does not appear to be admissible to them and they further appear to have wrongly availed the benefit of such exemption.

Thus, in view of the discussions made at Para 6.1 to 6.6 above, it appears that M/s Afcons Infrastructure Limited have wrongly availed the benefit of IGST exemption on the goods re-imported by them vide Bills of Entry as shown in Table-2 and Table-3 above under Serial Number 5 of Notification No. 45/2017-Customs dated 30.06.2017. It further appears that as the exports appear to constitute supply in terms of Section of the CGST Act, 2017 read with Schedule-I of the CGST Act, 2017 and further read with sub-section (21) of section 2 of the IGST Act, 2017 and the exports were made under Letter of Undertaking, the correct entry applicable on re-imported goods was Serial Number 1(d) of the Notification *ibid* which mandates the requirement of payment of IGST at the time of re-import not paid initially at the time of export.

Accordingly, it appears that the duty of integrated tax not paid by them amounting to Rs.3,10,86,093/- (Rupees Three Crores Ten Lakhs Eighty Six Thousand and Ninety Three) on total assessable value of Rs.17,27,00,519/- (Rupees Seventeen Crores Twenty Seven Lakhs Five Hundred Nineteen) involving 10 Bills of Entry for re-import of goods as shown in Table-2 and Table-3 above appears to be recoverable from them along with applicable interest and penalty.

7. INVOCATION OF EXTENDED PERIOD

7.1 Whereas, in context of the above, it is pertinent to mention here that the provisions pertaining to **Self-Assessment** under the Customs Act 1962 which were implemented w.e.f. 08.04.2011 under the Finance Act 2011, ushers in a trust-based Customs-Trade partnership leading to greater facilitation of complaint trade. Board's Circular no. 17/2011 dated 08.04.2011 specifies that the responsibility for assessment has been shifted to the importer/exporter; that Section 17 of the Customs Act 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form (Section 46 or 50); that the importer or exporter at the time of self-assessment will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported/export goods while presenting Bill of Entry or Shipping Bill. However, it is viewed that non-compliant importers/exporters could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications,

Foreign Trade policy or any other provision under the Customs Act, 1962 or the Allied Acts. From the above-mentioned facts, it is clearly evident that the importer has not exercised due diligence in respect of self-assessing the subject goods on their importation and has thus violated the provisions of the Self-Assessment procedures.

7.2 Whereas, as per sub-section (4) of Section 46 of 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 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. In the subject case, the importer has violated the provisions of the Customs Act 1962 in as much as the applicable duty of integrated tax required to be paid on re-import of the exported goods under LUT has not been mentioned and paid resulting in non-payment of integrated tax required to be paid at the time of import under Sr. No. 1(d) Notification No. 45/2017-Customs dated 30.06.2017.

7.3 Whereas, as the importer appears to have wrongly availed the benefits of **Sr. No. 5 of notification 45/2017** dt. 30.06.2017, which was not admissible to them, they appear to have contravened the provisions of **Section 46** of the Customs Act, 1962 and evaded payment of duties of customs/IGST amounting to **Rs.3,10,86,093/-**, as discussed above by way of improper self-assessment in the Bills of entries filed under Section 46 of the Customs Act, 1962, thus resorting to wilful mis-statement and suppression of facts and rendered themselves liable for action as envisaged under **Section 28(4)** of the Customs Act, 1962 for recovery of duties short-paid amounting to **Rs.3,10,86,093/-**, along with interest as stipulated under **section 28AA** of the Customs Act, 1962 and the importer has rendered themselves liable to penalty under **Section 114A** of the Customs Act, 1962.

7.2 As discussed in the foregoing paragraphs, inquiry has revealed that the said importer despite being well aware of the unambiguous provisions of the Customs Act, 1962 appear to have resorted to wrongful claim of benefit of exemption as available under Serial Number 5 of Notification No. 45/2017-Customs dated 30.06.2017 on re-import of the exported goods which has led to non-payment of IGST amounting to Rs. **Rs.3,10,86,093/- (Rupees Three Crores Ten Lakhs Eighty Six Thousand and Ninety Three)** corresponding to 10 (ten) Bills of Entry as shown in **Table-2** and **Table-3** above. As the goods were exported under letter of undertaking, the correct entry for re-import of the said goods appears to Serial

number 1(d) of the Notification *ibid* which mandates payment of IGST at the time of re-import of the goods. Thus, they appear to have wrongly availed the benefit of exemption by quoting Serial number 5 of Notification No. 45/2017-Customs dated 30.06.2017 which has resulted into non-payment of IGST.

7.3 Whereas, it is further observed that the said facts were never disclosed to the Department and it is only after that during the course of CERA Audit wherein the above was observed and an inquiry was conducted by this office that the instance of non-payment of IGST by way of wrongly claiming the benefit of exemption under Serial number 5 of Notification No. 45/2017-Customs dated 30.06.2017 and consequent non-payment of applicable IGST at the time of re-import as mandated under Serial number 1(d) of Notification No. 45/2017-Customs dated 30.06.2017 has come to fore.

7.4 It is further observed that the said importer has consistently changed the pattern of invoicing in as much as they have changed the consignee's/importer's name in the Export Invoices issued by them by showing themselves as the consignee/importer and at some instances "High Commission of India" as the consignee/importer. It is also observed that on such invoices, they have mentioned the exports being "**Permanent**" in nature while at other instances they have mentioned the exports to be "**Temporary**" in nature. Further, the importer's contention that no foreign exchange was involved and that all the exports were under Scheme Code 99- NFEI (No Foreign Exchange Involved) does not appear to be correct in as much as scrutiny of few shipping bills has revealed that these shipping bills involved foreign remittances and BRC realization dated have been mentioned in them.

7.5 It also appears that the importer has made a valiant effort that the re-imported goods did not attract any payment of integrated tax as mandated under Sr. No. 1(d) of Notification No. 45/2017-Customs dated 30.06.2017 by wrongly taking recourse to Sr. No. 5 of the Notification *ibid* which covers case other than those falling under Sr. No. 1. However, it remains a fact that the exports were made under Letter of Undertaking, were not in the nature of sale on approval basis, goods were not re-imported under six months of delivery challan and the activity of export of goods was an act of furtherance of business in as much as they were meant to be utilized for construction project awarded to them by RITES Limited. All such facts were suppressed by the said importer and therefore such acts of omission and commission on their part appears to have led to wilful and intentional non-payment of integrated tax on the re-imported goods under sr. no.

1(d) of Notification No. 45/2017-Customs dated 30.06.2017. **Thus, the extended period as envisaged under Section 28(4) of the Customs Act, 1962 for recovery of the integrated tax not paid by M/s Afcons Infrastructure Limited by resorting to wilful mis-statement and suppression of facts appears to be invokable in the instant case.**

7.6 Further, as discussed in the foregoing paragraphs, the acts of omission and commission on part of M/s Afcons Infrastructure Limited wherein the applicable integrated tax has not been paid on the re-imported goods has led the goods to be liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 in as much as the exemption of IGST on the re-imported goods was wrongly availed by the said importer as explained in details at Para 6 *supra*. Further, such contravention also appears to have rendered M/s Afcons Infrastructure Limited liable for penalty u/s 112 of the Customs Act, 1962. It further appears that penalty as provided under section 114A of the Customs Act is also leviable on the said importer in as much as they appear to have not paid the integrated tax leviable on the goods re-imported by them owing to mis-statement/suppression of facts.

8. ROLE AND CUPABILITY OF SHRI RAJESH AGARWAL, SENIOR MANAGER LOGISTICS, M/S AFCONS INFRASTRUCTURE LIMITED

Whereas, it appears that Shri Rajesh Agarwal, Senior Manager (Logistics) of M/s Afcons Infrastructure Limited was looking after the day-to-day operations of the firm including the assignments related to re-importation of the exported goods and further he appears to be very well aware regarding non-payment of IGST on the re-imported goods as discussed in the foregoing paragraphs. It is also observed that the reply sought by the Department in respect of such non-payment of integrated tax has come under his signatures wherein he has relied upon the provisions stipulated Sr. no. 5 of Notification No. 45/2017-Customs dated 30.06.2017 and has request to drop the demand of differential duty. Thus, it appears that he had a role to play in the non-payment of integrated tax as he appears to be aware of the fact that the correct applicable entry was Serial number 1(d) of Notification No. 45/2017-Customs dated 30.06.2017 as the goods were exported under Letter of Undertaking and were in course of furtherance of business for construction project at Agalega Island, Mauritius awarded to them by RITES Limited. It is further observed that no evidence is on record to suggest that the wrongful availment of benefit of exemption were inadvertent or beyond his knowledge.

Accordingly, it appears from the investigation that the wrongful availment of benefit of exemption occurred with the knowledge and consent of Shri Rajesh Agarwal,

Senior Manager (Logistics) who, being the keyfunctionary of the firm, was responsible for ensuring compliance with theprovisions of the Customs Act, 1962. Therefore, the acts and omissions onthe part of Shri Rajesh Agarwal appear to have directly contributed to thefiling of an incorrect Bill of Entry, wrongful availment of exemption from IGST and clearance ofgoods without payment of integrated tax, rendering the goods liable to confiscation under111(m) and 111(o) of the Customs Act, 1962, and rendering himliable to penal action under Sections 112of the *Actibid*.

9. Now therefore, in view of the discussions made in the foregoing paragraphs of this Show Cause Notice, **M/s AFCONS INFRASTRUCTURE LIMITED** (IEC: 0388053283), having their address at 16, Shah Industrial Estate, Afcons House, Azad Nagar,, Veera Desai Road, Andheri West, Mumbai, Suburban, Maharashtra, 400053are hereby called upon to show cause in writing to the Commissioner of Customs, Customs House Kandla, Kutch, having his office at First Floor, New Custom House, Near Balaji Temple, New Kandla, within thirty days from the receipt of this notice, as to why:-

- (i) The assessment in respect of Bills of entry mentioned in **Annexure-I appended to this Show Cause Notice** should not be rejected;
- (ii) The duty amounting to **Rs.3,10,86,093/-** (Rupees Three Crore Ten Lakhs Eighty-Six Thousand & Ninety-Three Only) not paid on the re-import of the exported goods having total assessable value of **Rs.17,27,00,519/-** should not be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;
- (iii) The impugned goods with the total declared assessable value of Rs. **17,27,00,519/-** as detailed in Annexure-I to this notice, should not be held liable to confiscation under Section 111(m) and 111(o) of the Customs Act, 1962;
- (iv) Penalty should not be imposed upon them under the provision of Section 112 of the Customs Act, 1962 for rendering imported goods liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962;

- (v) Penalty should not be imposed upon them under the provision of Section 114A of the Customs Act, 1962;.

9.2. Shri Rajesh Agarwal, Senior Manager (Logistics) of M/s Afcons Infrastructure Limited is also hereby called upon are hereby called upon to show cause in writing to the Commissioner of Customs, Customs House Kandla, Kutch, having his office at First Floor, New Custom House, Near Balaji Temple, New Kandla, within thirty days from the receipt of this notice, as to why penalty should not be imposed upon him under the provision of **Section 112** of the Customs Act, 1962.

10. M/s AFCONS INFRASTRUCTURE LIMITED, should state in their written replies to this notice whether they desire to be heard in person. If no reply to this notice is received from them or any of them within 30 days from the date of receipt of this notice or if they fail to appear for the personal hearing on the date and time intimated to them, the case is liable to be decided on the basis of evidence available and merits, without any further reference to them.

11. Shri Rajesh Agarwal, Senior Manager Logistics of M/s AFCONS INFRASTRUCTURE LIMITED, should state in their written replies to this notice whether they desire to be heard in person. If no reply to this notice is received from them or any of them within 30 days from the date of receipt of this notice or if they fail to appear for the personal hearing on the date and time intimated to them, the case is liable to be decided on the basis of evidence available and merits, without any further reference to them.

12. The Department reserves its right to amend, modify or supplement this notice. This notice has been issued under the provisions of the Customs Act, 1962 without prejudice to any other action if any that may be initiated against them under any statute for the time being in force.

13. The documents relied upon in this Show Cause Notice are listed in **Annexure- III** to this Notice.

Nitin Saini
Commissioner
Kandla Customs.

Encl:- Annexure-I,II & III.

By Speed Post/ email DIN: 20260271ML000000B432

F. No. GEN/ADJ/COMM/26/2026-Adjn-O/o Commr-Cus-Kandla

DIN: 20260271ML000000B432

By Speed Post/ email**To,**

1. **M/s AFCONS INFRASTRUCTURE LIMITED** (IEC code 0388053283), 6, SHAH INDUSTRIAL ESTATE, AFCONS HOUSE, AZADNAGAR,, VEERA DESAI ROAD,ANDHERI WEST, Mumbai, Suburban,Maharashtra, 400053.
2. **Shri Rajesh Agarwal, Senior Manager Logistics** ofM/s AFCONS INFRASTRUCTURE LIMITED, 6, SHAH INDUSTRIAL ESTATE, AFCONS HOUSE, AZADNAGAR,, VEERA DESAI ROAD,ANDHERI WEST, Mumbai, Suburban,Maharashtra, 400053.

Copy to:-

1. The Deputy/Assistant Commissioner (Gr-IV) House Kandla, Custom House, Kandla for information.
2. The Deputy/Assistant Commissioner (PCA) House Kandla, Custom House, Kandla for information.
3. The Supdt. (EDI) for necessary action at their end.
4. Guard File.

ANNEXURE – III**LIST OF RELIED UPON DOCUMENTS (RUD's)****SCN File No.: GEN/ADJ/COMM/26/2026-Adjn-O/o Commr-Cus-Kandla****issued to M/s AFCONS INFRASTRUCTURE LIMITED**

| Sr. No: / RUD no. | Description of document | Remark |
|--------------------------|---|-------------------------|
| 1 | LAR No.24/2021-22 dated 23.02.2022, Para 4 | Available with Importer |
| 2 | LAR No.05/2022-23 dated 15.07.2022, Reference Number: OBS-318707(Para 08) | Available with Importer |
| 3 | LAR 04/2022-23 dt. 20.06.2022 Reference Number: OBS-301686 (HM-04) (Para No. 03). | Available with Importer |
| 4 | Copy of 10(Ten) Bills ofEntries (BE) as shown in Table-2 and Table-3, Part of SCN's. | Available with Importer |
| 5 | Department letter regarding payment of IGST, letter dated 26/04/2022, 17/05/2022 & 03/06/2022 to M/s AFCONS | Available with Importer |

| | | | |
|---|---|--------------------|------|
| | INFRASTRUCTURE LIMITED. | | |
| 6 | Importer reply letter f.No, AIL/2022-23/5964 Demob/001, AIL/2022-23/IB-1810/5964 Demob/002 & AIL/2022-23/5964 Demob/003 all dated 18/06/2022. along with copy of Shipping Bills & Export invoice. | Available Importer | with |
| 7 | Copy of some Shipping Bills for export of goods as shown in Table-4 of SCN, abovewherein foreign remittance is involved. | Available Importer | with |
| 8 | Copy of sample export invoices being "permanent Export" Invoices as shown in Table-5. | Available Importer | with |
| 9 | Letter bearing no. PEM/ICICI/0393/2018-19/8691/0009169696 issued by the ICICI BANK dated `09.10.2018 regarding post award approval in terms of PEM (RBI) For A New Job For- Development Of Infrastructure at Agalega island, Mauritius. | Available Importer | with |