



I/1309313/2023

 <p style="text-align: center;">OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS MUNDRA COMMISSIONERATE Custom House, Mundra (Kachhh) MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 PHONE No: 02838-271165/66/67/68, FAX No.02838-271169/62</p>  <p style="text-align: center;">सत्यमेव जयते</p>		
A	FILE NO.	GEN/ADJ/ADC/1221/2023-ADJN.
B	ORDER-IN-ORIGINAL NO	MCH/ADC/MK/118/2023-24
C	PASSED BY	MUKESH KUMARI, ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
D	DATE OF ORDER	21.07.2023
E	DATE OF ISSUE	21-07-2023
F	SCN NUMBER & DATE	GEN/ADJ/ADC/1221/2023-ADJN. DATED 23.06.2023
G	NOTICEE / PARTY / IMPORTER	<p>M/S BIGWINGS TRADING PRIVATE LIMITED (AASCA3100G) OFFICE NO-S/2, ADINATH ARCADE, PLOT NO-583, WARD-12/C, GANDHIDHAM, KUTCH-37020.</p> <p>SHRI BHARGAV THACKER, AUTHORIZED SIGNATORY M/S BIGWINGS TRADING PVT LTD. (AASCA3100G) OFFICE NO-S/2, ADINATH ARCADE, PLOT NO-583, WARD-12/C, GANDHIDHAM, KUTCH-370201</p> <p>M/S. GAURAV M JHAVERI, CUSTOM BROKER, OFFICE NO.115, FIRST FLOOR, SAINI ARCADE, OPP MERIDIAN HOUSE, B.M. PET, GANDHIDHAM, R/O- 137, RAMESHWAR NAGR, WARD-13, ANJAR, KUTCH-370110.</p>
H	DIN NUMBER	20230771MO0000222F3E

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1 to

The Commissioner of Customs (Appeal), MUNDRA
4th floor, HUDCO Building, IshwarBhuvan Road,
Navrangpura, Ahmedabad– 380009.

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the

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Customs Act, 1962 should be adhered to in all respect.

7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE :

A specific intelligence gathered by DRI that M/s Bigwings Trading Pvt Ltd (IEC: AASCA3100G), Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201 (hereinafter referred to as the "importer") was importing Stainless Steel Pipe TP310S, TP304L and TP316L illegally without BIS certification. As per existing rules, Stainless Steel grade TP310S, TP304L and TP316L pipes falls under BIS Certification/Regulation. Accordingly, the goods imported vide Bill of Entry No. 3681884 dated 10.12.2022, 3841144 dated 21.12.2022, 3716418 dated 13.12.2022, 3716112 dated 13.12.2022 and 3840117 dated 21.12.2022 filed by the Importer M/s Bigwings Trading Pvt. Ltd., the subject goods lying in M/s TG Terminal Pvt., Ltd, Mundra Port & SEZ Road, Mundra, and Saurashtra CFS Pvt Ltd. Gujarat were put on hold for examination by officers of DRI.

2. The details of the said Bills of Entry are as per Table-A below:

Table A

Sl. No.	BE No/Dt	Declared Goods	Shipper Name	Gross Weight Declared (MTS)	Assessable value as per Bill of Entry(Rs.)	Container No.
1	3681884 dated 10.12.2022	Stainless Steel SMLS Pipe Grade TP304L	WenzhouKaixin Metal Co, Ltd	22.052	5419134/-	WHLU5600523
2	3716418 dated 13.12.2022	Stainless Steel SMLS Pipe Grade TP304L	Wenzhou lingdow New Materials Tech C	28.596	7158530/-	TGCU5091471
3	3840117 dated 21.12.2022	Stainless Steel SMLS Pipe Grade TP310S, TP304L and TP316L	Wenzhou Xinzhe Tech Co. Ltd	27.814	13166942/-	TGBU6298623
4	3841144 dated 21.12.2022	Stainless Steel SMLS Pipe Grade TP316L	Wenzhou Xinzhe Tech Co. Ltd	28.483	9756994/-	FCIU8643174
5	3716112 dated 13.12.2022	Stainless Steel SMLS Pipe Grade TP316L	Wenzhou Xinzhe Tech Co. Ltd	27.644	9293912/-	JKLU7828532

For above Bills of Entry, the importer had not submitted any BIS certificate whereas he had only submitted certificate issued by Steel Import Monitoring System (SIMS) bearing below mentioned registration no. (Table-B) with respect to the import of aforementioned consignment and Mill test certificate issued by respective Shipper.

Table B

Sl. No.	B.E. No and Date	SIMS No.	Shipper Name	Invoice No & date

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1	3681884 dated 10.12.2022	STL615749	Wenzhou Kaixin Metal Co, Ltd	JS20221102 dated 09.11.2022
2	3716418 dated 13.12.2022	STL623624	Wenzhou lingdow New Materials Tech C	WZLD20221116 dated 16.11.2022
3	3840117 dated 21.12.2022	STL623624	Wenzhou Xinzhe Tech Co. Ltd	HBO10579 dated 14.11.2022
4	3841144 dated 21.12.2022	STL623624	Wenzhou Xinzhe Tech Co. Ltd	HBO10581 dated 16.11.2022
5	3716112 dated 13.12.2022	STL623624	Wenzhou Xinzhe Tech Co. Ltd	HBO10580 dated 13.12.2022

3.1 Subsequently, the goods covered under Bill of Entry No.3716418 dated 13.12.2022 and 3840117 dated 21.12.2022 were examined under Panchnama dated 17.01.2023 drawn at M/s TG Terminals Pvt. Ltd, CFS, Mundra in presence of Shri Ketan Ruparel, G-Card holder of Custom Broker, CB of M/s Bigwings Trading Pvt Ltd. During the examination the container no. TGPU5091471 under bill of entry no. 3716418 dated 13.12.2022 was examined first and found stuffed bundles of metal pipes declared in PP sheets. The officer drawn representative samples of around 1ft length from goods declared as “Stainless Steel Seamless Pipe Grade TP 304”, thereafter in similar manner container no. TGBU6298623 under Bill of entry no.3840117 dated 21.12.2022 was examined. The officers drew three representative samples each of around 1ft length from the goods declared as “Stainless Steel Seamless Pipe Grade TP310S & TP304L and TP316L.

3 . 2 Thereafter, the goods covered under Bill of Entry no. 3681884 dated 10.12.2022 examined under Panchanama dated 18.01.2023 drawn at M/s TG Terminals Pvt Ltd, CFS, Mundra Port in presence of Shri Ketan Ruparel, G-card holder of Custom Broker M/s Gaurav M. Zaveri, CB of M/s Bigwings Trading Pvt Ltd. During the course of examination, the container no. WHLU5600523 covered under Bill of entry no.3681884 was found stuffed with one variety of Pipes appears to be Metallic in nature. To ascertain the exact description of the subject goods the officer with drew three representative samples randomly selected from subject goods by using metal cutter machine for lab testing. The withdrawn samples were having length of around 1ft each. The importer has declared the subject goods as “Stainless Steel Seamless Pipes Grade TP304”.

3.3 The goods covered under Bill of entry no.3841144 dated 21.12.2022 and 3716112 dated 13.12.2022 were examined under Panchanama dated 03.01.2023 drawn at M/s Saurashtra Freight Pvt. Ltd., CFS Mundrain presence of Shri Ketan Ruparel, G-card holder of Custom Broker M/s Gaurav M. Zaveri, CB of M/s Bigwings Trading Pvt Ltd. During the examination the container no. JXLU7828532 covered under bill of entry no. 3716112 dated 13.12.2022 was examined first and found stuffed bundles of metal pipes declared in red colour PP sheets. The officer drew 2 representative samples of around 1.5ft length from goods declared as “Stainless Steel SMLS Pipe Grade TP316L”, thereafter in similar manner container no. FCIU8643174 covered under Bill of entry no. 3841144 dated 21.12.2022 was examined. The officers drew four representative samples each of around 1.5ft length from the goods declared as “Stainless Steel SMLS Pipe Grade TP316L.

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4. The representative samples drawn during examination of the subject goods imported vide Bill of Entry No. 3681884 dated 10.12.2022, 3841144 dated 21.12.2022, 3716418 dated 13.12.2022, 3716112 dated 13.12.2022 and 3840117 dated 21.12.2022 were submitted to IIT Gandhinagar for testing vide below mentioned Test Memo to ascertain:-

- Whether the Sample (goods) is as per declaration ?.
- If the Sample(goods) is not as per declaration than identity thereof ?
- Nature & composition of the Sample(goods)?

Details of Samples Sent has been summarized below as Table C:

Table C

Sl. No.	BE No	Test Memo No	Sample marked	Declared Item
1	3716418 dated 13.12.2022	19/2023	B	Stainless Steel SMLS Pipe grade TP304L
2	3840117 dated 21.12.2022	20/2023	A-1	Stainless steel Seamless Pipe Grade TP310S & 304L & TP316L
3	3840117 dated 21.12.2022	21/2023	B-1	Stainless steel Seamless Pipe Grade TP310S & 304L & TP316L
4	3840117 dated 21.12.2022	22/2023	C-1	Stainless steel Seamless Pipe Grade TP310S & 304L & TP316L
5	3681884 dated 10.12.2022	23/2023	A	Stainless Steel SMLS Pipe Grade TP304
6	3716112 dated 13.12.2022	25/2023	JXLU7828532 and 3716112 dated 3.12.2022	Stainless Steel SMLS Pipe Grade TP316L
7	38411144 dated 21.12.2022	26/2023	FCIU8643174 and 3841144 dated 21.12.2022	Stainless Steel SMLS Pipe Grade TP316L

IIT Gandhinagar submitted their lab test report vide letter dated 23.05.2023 wherein it was informed that:

- a. Test memo no.19-

Declared Grade :- Stainless Steel SMLS Pipe Grade TP304

“Based on the composition obtained in ICP-OES analysis the alloy is found to be SS304 grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.

- b. Test memo no.20-

Declared Grade:- Stainless Steel Seamless Pipe Grade TP310S & 304L & TP316L

“Based on the composition obtained in ICP-OES analysis the alloy is found to be TP310S grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.

- c. Test memo no.21-

Declared Grade:- Stainless Steel Seamless Pipe Grade TP310S & 304L & TP316L

“Based on the composition obtained in ICP-OES analysis the alloy is found to be

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SS304L grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.

d. Test memo no.22 -

Declared Grade:- Stainless Steel Seamless Pipe Grade TP310S & 304L & TP316L

“Based on the composition obtained in ICP-OES analysis the alloy is found to be SS316L grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.

e. Test memo no.23-

Declared Grade:- Stainless Steel SMLS Pipe Grade TP304

“Based on the composition obtained in ICP-OES analysis the alloy is found to be SS304L grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.

f. Test memo no.25-

Declared Grade: Stainless Steel SMLS Pipe Grade TP316L

“Based on the composition obtained in ICP-OES analysis the alloy is found to be TP316L grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.

g. Test memo no.26-

Declared Grade: Stainless Steel SMLS Pipe Grade TP316L

“Based on the composition obtained in ICP-OES analysis the alloy is found to be TP316L grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.

On the basis of the lab test report issued by IIT Gandhinagar which declare that the subject goods were found to be in ambit of BIS certification, the goods were seized.

5.1 From report of IIT Gandhinagar it appeared that the goods being imported required valid BIS Certificate for import. However, no such BIS certificate had been presented to Customs/DRI Authorities in respect of above goods. Therefore, the subject goods lying at M/s. TG Terminal, CFS imported under Bill of Entry No.3716418 dated 13.12.2022, 3840117 dated 21.12.2022 and 3681884 dated 10.12.2022 dated 20.12.2022 filed at Custom House, Mundra by M/s Bigwings Trading Pvt Ltd., (IEC: AASCA3100G) having total declared quantity as 78.462 and having declared value as Rs. 2,57,44,606/-(Two crore Fifty Seven Lakhs Forty Four Thousands Six Hundred Six only) were seized vide Seizure Memo dated 05.06.2023 bearing Din-202306DDZ1000000AD94 with reasons to believe that the subject goods are liable for confiscation as per provisions of Section 111(d) and 111(f) of Customs Act, 1962. In view of the above facts, the subject goods, presently lying at M/s. TG Terminal, CFS, AP&SEZ, Mundra, under seizure under the provisions of Section 110(1) of the Customs Act, 1962.

5.2 Similarly the subject goods lying at M/s. Saurashtra Freight Pvt., Ltd., CFS imported under Bill of Entry No.3841144 dated 21.12.2022 and 3716112 dated 13.12.2022 filed at Custom House, Mundra by M/s Bigwings Trading Pvt Ltd., (IEC: AASCA3100G) having total declared quantity 56.127 MTS and declared value Rs.1,90,50,906/- (Rs. One Crore Ninety Lakhs Fifty Thousand Nine Hundred Six Only) were seized vide Seizure Memo dated 05.06.2023

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bearing Din-202306DDZ10000313197 with reason to believe that the subject goods are liable for confiscation as per provisions of Section 111(d) and 111(f) of Customs Act, 1962. In view of the above facts, the subjected goods were seized under the provisions of Section 110(1) of the Customs Act, 1962.

5.3. During investigation search was carried out by the officers of DRI, GRU at the premise of importer M/s Bigwings Trading Private Limited (IEC:3494000549), Bigwings Trading Pvt Ltd (IEC: AASCA3100G), Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201 under Panchanama dated 30.12.2022 where 26 original blank letter heads of overseas supplier M/s Wenzhou Huachao Tech Co. Ltd were found alongwith purchase file and sale file of M/s Bigwings Trading Pvt Ltd. The documents were resumed by the officers of DRI Gandhidham for further investigation under Panchnama dated 30.12.2022.

6. Requirement of BIS Standard for importation of Steel Products:

Vide S.O. 4637 (E) Dt 17.07.2020, Ministry of Steel has mandated the requirement of BIS standard for import of various steel products. Conformity to standards and essential requirements:-

(a) Every steel and steel product specified in column (3) of Table 1 shall conform to the corresponding Indian standards specified in column (2) of the said Table with effect from the dates specified in column (5) thereof.

(b) Goods and articles specified in column (2) of Table 2 at Sl. No. 1 shall conform to the corresponding essential requirement(s) specified in column (3) at Sl. No. 1 of the said Table under a Certificate of Conformity from the Bureau as per Scheme-IV of Schedule-II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018.

(c) Goods and articles specified in column (2) of Table 2 at Sl. No. 2 shall be made from the stainless steel as input material, as specified in column (3) of Table 1, conforming to Indian Standards specified in column (2) of Table 1, bearing Standard Mark under a license from the Bureau of Indian Standards as per Scheme – I of Schedule – II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018. Additionally, the goods and articles specified in Column (2) of Table 2 at Sl. No. 2 shall be accompanied with the test certificate carrying BIS license number of the input material.

(d) Goods and articles specified in column (2) of Table 2 at Sl. Nos. 3, 4, 5, 6 and 7 shall be made from Tin plate and Tin Free Steel as input material, as specified at Sl. Nos. 112 and 113 in column (3) of Table 1, conforming to Indian Standards specified in corresponding column (2) of Table 1, bearing Standard Mark under a license from the Bureau as per Scheme – I of Schedule – II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018. Additionally, goods and articles specified in column (2) of Table 2 at Sl. Nos. 3, 4, 5, 6 and 7 shall be accompanied with the test certificate carrying BIS license number of the input material.

Sl No.2 of Table 2 containing relevant requirements for “Stainless Steel Pipes and Tubes”, is reproduced below:

Table 2 □

The importer has imported goods falling under Sl No. 2 of Table 2 of above S.O. and has not produced BIS Certificate for the input material. Hence the product is prohibited to be imported in India in terms of S.O.4637(E) Dt 22.12.2020, Ministry of Steel.

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7. As discussed in forgoing paras M/s Bigwings Trading Private Limited (AASCA3100G) Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-37020 had illegally imported goods Stainless Steel Pipe TP310S, TP304L, SS316L under Bill of Entry No. 3841144 dated 21.12.2022, 3176112 dated 13.12.2022, 3681884 dated 10.12.2022, 3716418 dated 13.12.2022, 3840117 dated 21.12.2022. Stainless Steel Pipe grade 310S, 304L, SS316L requires mandatory BIS compliance under IS17875:2022 dated 01.08.2022 issued by Bureau of Indian Standard and per Ministry of Steel Order dated 22.12.2020 (S.O. 4637(E)) published in Gazette of India under Section 3, Sub-section (ii), dated 13th November, 2020 for import of the same into India. During investigation it is revealed that the importer does not have necessary BIS certification/registration and does not fulfill compliance under the Customs Act, 1962 and other allied Acts. Therefore the importer has rendered the import goods liable for confiscation under Section 111(d) of the Customs Act, 1962.

During investigation it was revealed that the importer did not disclose before the Custom Authorities that they do not have BIS certificate, which is mandatory for import of Stainless Steel Seamless Grade 310S, 304L and 316L. Rather, they have done such acts of omission and commission deliberately with fraud, collusion, suppressions of facts and wilful misstatement with an intention to avoid mandatory compliance for the import goods. Such act of commission and omission on the part of the importer, rendered the goods liable for confiscation under Section 111(f) of the Customs Act, 1962 read with the Ministry of Steel Order dated 22.12.2020 (S.O. 4637(E)) published in Gazette of India under Section 3, Sub-section (ii), dated 13th November, 2020.

In absence of the BIS compliance as per the Ministry of Steel Order dated 22.12.2020 (S.O. 4637(E)), the goods not complied with the necessary BIS requirement under IS17875:2022, the goods falls under the category of smuggled goods within the meaning of Section 2(39) of Customs Act, 1962 read with the provisions of Section 2(33) of the Customs Act, 1962.

In view of the above, the import goods covered under B/Es No. 3841144 dated 21.12.2022, 3176112 dated 13.12.2022, 3681884 dated 10.12.2022, 3716418 dated 13.12.2022, 3840117 dated 21.12.2022 having total quantity 134.51 MTs and declared assessable value of Rs. 4,47,95,512/-. Imported by M/s. Bigwings Trading Pvt. Ltd is liable for confiscation under Section 111(d) and 111(f) of the Customs Act, 1962 read with Ministry of Steel Order dated 22.12.2020 (S.O. 4637(E)) published in Gazette of India under Section 3, Sub-section (ii), dated 13th November, 2020.

8. On concluding the investigation, notice was issued to Now therefore, in the light of the aforesaid facts, **M/s Bigwings Trading Private Limited (AASCA3100G) Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201** is hereby called upon to Show cause in writing to the Additional/Joint Commissioner of Customs, Mundra Custom House, Mundra, Gujarat within 30 days from the date of issue of this notice as to why:-

(a) The imported goods declared as Stainless Steel Seamless Pipes Grade TP304L, TP310S and TP316L having declared value Rs. 4,47,95,512/- weighing quantity 134.51 MTs/- as per Bill of Entry No. 3681884 dated 10.12.2022, 3841144 dated 21.12.2022, 3716418 dated

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13.12.2022, 3716112 dated 13.12.2022 and 3840117 dated 21.12.2022 should not be confiscated under Section 111 (d) and 111 (m) of Customs Act, 1962.

(b) Penalty under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962 should not be imposed on M/s Bigwings Trading Pvt Ltd. (AASCA3100G) Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201.

(c) Penalty under Section 112 (a), 112(b) and 114AA of the Indian Customs Act, 1962, should not be imposed on Shri Bhargav Thacker, Authorized Signatory M/s Bigwings Trading Pvt Ltd. (AASCA3100G) Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201

(d) Penalty under Section 112 (a), 112(b) and 114AA of the Indian Customs Act, 1962, should not be imposed on M/s. Gaurav M Jhaveri, Custom Broker, Office No.115, First Floor, Saini Arcade, Opp Meridian House, B.M. Pet, Gandhidham, R/o- 137, Rameshwar Nagar, Ward-13, Anjar, Kutch-370110.

9. WRITTEN SUBMISSION

9.1 M/s Bigwings Trading Private Limited, vide their letter Dated 12.07.2023, interalia acknowledge receipt of the Show Cause Notice and mentioned that the do not need any Personal Hearing or any other Show Cause Notice about this consignments and have to RE_EXPORT this consignment and sought permission for the same.

9.2 M/s Gaurav M. Jhaveri, also vide their letter Dated 12.07.2023, interalia requested that the do not need any Personal Hearing.

10. PERSONAL HEARING

Importer and CB vide their letter Dated 12.07.2023, requested for waiver of Personal Hearing.

11. DISCUSSION & FINDING

I gone through the Show Cause Notice, wherein alleged that,

1. The imported goods declared as Stainless Steel Seamless Pipes Grade TP304L, TP310S and TP316L having declared value Rs. 4,47,95,512/- weighing quantity 134.51 MTs/- as per Bill of Entry No. 3681884 dated 10.12.2022, 3841144 dated 21.12.2022, 3716418 dated 13.12.2022, 3716112 dated 13.12.2022 and 3840117 dated 21.12.2022 should not be confiscated under Section 111 (d) and 111 (m) of Customs Act, 1962.
2. Penalty under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962 should not be imposed on M/s Bigwings Trading Pvt Ltd. (AASCA3100G) Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201.
3. Penalty under Section 112 (a), 112(b) and 114AA of the Indian Customs Act, 1962, should not be imposed on Shri Bhargav Thacker, Authorized Signatory M/s Bigwings Trading Pvt Ltd. (AASCA3100G) Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201
4. Penalty under Section 112 (a), 112(b) and 114AA of the Indian Customs Act, 1962, should not be imposed on M/s. Gaurav M Jhaveri, Custom Broker, Office No.115, First Floor, Saini Arcade, Opp Meridian House, B.M. Pet, Gandhidham, R/o- 137, Rameshwar Nagar, Ward-13, Anjar, Kutch-370110

12. I find that an opportunity to the noticees were given as per Para 13 of the Show Cause Notice to show cause in writing; also gone through the letters Dated 12.07.2023 received from Noticees, wherein they requested for waiver of Personal Hearing in respect of the Show Cause Notice. Therefore, I am satisfied that, the principle of natural justice as provided in

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Section 122A of the Customs Act, 1962 have been complied with.

13. I find that, the case booked based on Intelligence by the Directorate of Revenue Intelligence that, M/s Bigwings Trading Pvt Ltd (IEC: AASCA3100G), Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201 (hereinafter referred to as the "importer") was importing Stainless Steel Pipe TP310S, TP304L and TP316L illegally without BIS certification. As per existing rules, Stainless Steel grade TP310S, TP304L and TP316L pipes falls under BIS Certification / Regulation. Accordingly, the goods imported vide Bill of Entry No. 3681884 dated 10.12.2022, 3841144 dated 21.12.2022, 3716418 dated 13.12.2022, 3716112 dated 13.12.2022 and 3840117 dated 21.12.2022 filed by the Importer M/s Bigwings Trading Pvt. Ltd., the subject goods lying in M/s TG Terminal Pvt., Ltd, Mundra Port & SEZ Road, Mundra, and Saurashtra CFS Pvt Ltd. Gujarat were put on hold for examination by officers of DRI.

14. I also find that, the provisions issued vide S.O. 4637 (E) Dt 17.07.2020, Ministry of Steel has mandated the requirement of BIS standard for import of various steel products. Conformity to standards and essential requirements :-

(a) Every steel and steel product specified in column (3) of Table 1 shall conform to the corresponding Indian standards specified in column (2) of the said Table with effect from the dates specified in column (5) thereof.

(b) Goods and articles specified in column (2) of Table 2 at Sl. No. 1 shall conform to the corresponding essential requirement(s) specified in column (3) at Sl. No. 1 of the said Table under a Certificate of Conformity from the Bureau as per Scheme-IV of Schedule-II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018.

(c) Goods and articles specified in column (2) of Table 2 at Sl. No. 2 shall be made from the stainless steel as input material, as specified in column (3) of Table 1, conforming to Indian Standards specified in column (2) of Table 1, bearing Standard Mark under a license from the Bureau of Indian Standards as per Scheme – I of Schedule – II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018. Additionally, the goods and articles specified in Column (2) of Table 2 at Sl. No. 2 shall be accompanied with the test certificate carrying BIS license number of the input material.

(d) Goods and articles specified in column (2) of Table 2 at Sl. Nos. 3, 4, 5, 6 and 7 shall be made from Tin plate and Tin Free Steel as input material, as specified at Sl. Nos. 112 and 113 in column (3) of Table 1, conforming to Indian Standards specified in corresponding column (2) of Table 1, bearing Standard Mark under a license from the Bureau as per Scheme – I of Schedule – II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018. Additionally, goods and articles specified in column (2) of Table 2 at Sl. Nos. 3, 4, 5, 6 and 7 shall be accompanied with the test certificate carrying BIS license number of the input material.

Sl No.2 of Table 2 containing relevant requirements for “Stainless Steel Pipes and Tubes”, is reproduced below:

Table 2

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2.	Stainless Steel Pipes and Tubes	Clause 2(b)	73041110 73041120 73041190 73042200 73042400 73044100 73044900 73051129 73051229 73053190 73053990 73059029 73059099 73061100 73062100 73064000 73066100 73066900 73069090	With immediate effect
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1 5 . Test conducted by the IIT Gandhinagar and submitted their lab test report vide letter dated 23.05.2023 wherein it was informed that:

- a. Test memo no.19-
Declared Grade :- Stainless Steel SMLS Pipe Grade TP304
“Based on the composition obtained in ICP-OES analysis the alloy is found to be SS304 grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.
- b. Test memo no.20-
Declared Grade:- Stainless Steel Seamless Pipe Grade TP310S & 304L & TP316L
“Based on the composition obtained in ICP-OES analysis the alloy is found to be TP310S grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.
- c. Test memo no.21-
Declared Grade:- Stainless Steel Seamless Pipe Grade TP310S & 304L & TP316L
“Based on the composition obtained in ICP-OES analysis the alloy is found to be SS304L grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.
- d. Test memo no.22-
Declared Grade:- Stainless Steel Seamless Pipe Grade TP310S & 304L & TP316L
“Based on the composition obtained in ICP-OES analysis the alloy is found to be SS316L grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.
- e. Test memo no.23-
Declared Grade:- Stainless Steel SMLS Pipe Grade TP304
“Based on the composition obtained in ICP-OES analysis the alloy is found to be SS304L grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.
- f. Test memo no.25-
Declared Grade: Stainless Steel SMLS Pipe Grade TP316L
“Based on the composition obtained in ICP-OES analysis the alloy is found to be TP316L

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grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.

g. Test memo no.26-

Declared Grade: Stainless Steel SMLS Pipe Grade TP316L

“Based on the composition obtained in ICP-OES analysis the alloy is found to be TP316L grade stainless Steel. The Microstructural observation after electrochemical etching confirms the same”.

On the basis of the lab test report issued by IIT Gandhinagar which declare that the subject goods were found to be in ambit of BIS certification.

16. I find that the goods under Import covered under impugned Bills of Entry, the importer had not submitted any BIS certificate whereas he had only submitted certificate issued by Steel Import Monitoring System (SIMS) bearing Registration Number mentioned supra.

17. I find that, as per provisions contained in the Order Dated 22.12.2020 issued by the Ministry of Steel, Government of India, the goods under import have to be confirming BIS standards as prescribed by the BIS authority. In this case, Importer has failed to submit BIS certificates. Therefore the goods are liable for confiscation under Section 111 (d) of the Customs Act, 1962 and liable for Penalty under Section 112 (a) (i) of the Customs Act, 1962.

18. I find that as per Section 17 of the Customs Act, 1962, provides for self-assessment by the importer and 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 such Bill of Entry, and shall in support of such declaration, produce to the proper officer the Invoice, if any, and such other documents relating to the imported goods, as may be prescribed. Therefore, the responsibility is upon the Importer to make a true declaration in Bill of Entry in respect of CTH, description, weight of goods etc. However, in the present case, the importer has violated Section 17 & 46(4) of the Customs Act, 1962 by not having the necessary compliances of the BIS registration for the same, hence, the impugned goods are liable for confiscation under Section 111 (d) of the Customs Act, 1962. Further, for this act of Commission on their part, the importer is liable for penalty under Section 112 (a) (i) of the Customs Act, 1962.

19. Further, gone through the Request made by the importer to allow Re-Export of the Goods covered under the impugned Bills of Entry and the same requested by the CB / CHA also vide his letter. I find that importer cannot be exonerated and exempted from imposition of redemption fine and penalty for the reason discussed above with the re-export of the Goods, a lenient view is warranted.

20. As discussed above, since the subject goods have been found to be prohibited and liable for confiscation. I find it appropriate to allow Re-Export of the subject goods subject to redemption under Section 125 of the Customs Act, 1962, Section 125 of the Customs Act, 1962 the officer adjudicating it may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit. However, in this case redemption is being allowed only for Re-Export and thus, there will be no margin of profit, quantum of redemption fine is being decided considering this fact.

21. Further, considering the same facts as discussed above, I find that, it is the duty

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and responsibility of the CB to assist to the Importer or Exporter in order to adhere to the Provisions of the Customs Act, 1962 and any other law for the time being in force. In the impugned case, I find that, in the statement they interalia, mentioned that, they asked to the Importer for the BIS and after assurance from the Importer filed the Bills of Entry, further they got the checklist approved from the representative of the Importer and without asking for copy at relevant time, as stated that, they are normally not uploading the same through Icegate but present the same before the Examining Officer. In consideration to the said facts, I refrain from imposing any penalty on CB.

22. After going through all the facts mentioned above. I pass the following order.

ORDER

- i. I order for confiscation of the Imported goods declared as Stainless Steel Seamless Pipes Grade TP304L, TP310S and TP316L having declared value Rs. 4,47,95,512/- weighing quantity 134.51 MTs/- as per Bill of Entry No. 3681884 dated 10.12.2022, 3841144 dated 21.12.2022, 3716418 dated 13.12.2022, 3716112 dated 13.12.2022 and 3840117 dated 21.12.2022 as declared in contravention of Section 46 of the Act and are therefore liable for confiscation under Section 111 (d) of the Customs Act, 1962. However, I give an option to redeem the goods in lieu of confiscation under provisions of Section 125 of the Customs Act, 1962 on payment of Redemption Fine of Rs. 12,00,000/- (Rupees Twelve Lacs Only) for Re-Export purpose only. However, as per Section 125 (3), if the importer doesn't pay the with in stipulated time as per the provisions of the Customs Act, 1962, such option to redeem the goods shall become void, unless an appeal against such order is pending and impugned Goods would be liable for disposal as per instruction and guidelines in CBIC disposal manual, 2019. The cost of Destruction shall be borne by Importer.
 - ii. I impose Penalty of Rs. 8,00,000/- (Rupees Eight Lacs Only) on the Importer M/s Bigwings Trading Pvt Ltd. (AASCA3100G) Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201 under Section 112(a) (i) of the Customs Act, 1962.
 - iii. I refrain from imposing any other Penalty on the Importer M/s Bigwings Trading Pvt Ltd. (AASCA3100G) Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201
 - iv. I refrain from imposing penalty on Shri Bhargav Thacker, Authorized Signatory M/s Bigwings Trading Pvt Ltd. (AASCA3100G) Office No-S/2, Adinath Arcade, Plot No-583, Ward-12/C, Gandhidham, Kutch-370201
 - v. I refrain from imposing penalty on M/s. Gaurav M Jhaveri, Custom Broker, Office No.115, First Floor, Saini Arcade, Opp Meridian House, B.M. Pet, Gandhidham, R/o- 137, Rameshwar Nagar, Ward-13, Anjar, Kutch-370110
- 23.** This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

Additional Commissioner

Customs House, Mundra

To,

**M/S BIGWINGS TRADING PRIVATE LIMITED (AASCA3100G)
OFFICE NO-S/2, ADINATH ARCADE, PLOT NO-583, WARD-12/C,
GANDHIDHAM, KUTCH-37020.
SHRI BHARGAV THACKER, AUTHORIZED SIGNATORY**

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**M/S BIGWINGS TRADING PVT LTD. (AASCA3100G)
OFFICE NO-S/2, ADINATH ARCADE, PLOT NO-583,
WARD-12/C, GANDHIDHAM, KUTCH-370201
M/S. GAURAV M JHAVERI, CUSTOM BROKER,
OFFICE NO.115, FIRST FLOOR, SAINI ARCADE,
OPP MERIDIAN HOUSE, B.M. PET, GANDHIDHAM,
R/O- 137, RAMESHWAR NAGR, WARD-13,
ANJAR, KUTCH-370110.**

Copy to :-

1. The Additional Director, DRI, Plot No. 193, Sector – IV, OSLO, Gandhidham – 370201
(driganru@nic.in)
2. The Deputy Commissioner of Customs (RRA), Custom House, Mundra
3. The Deputy Commissioner of Customs (TRC/EDI), Custom House, Mundra
4. The Deputy Commissioner of Customs (Gr. IV), Custom House, Mundra.
5. Guard File.

