



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH**

MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421

Phone No. 02838-271029/423 FAX No. 02838-271425

Email : importsectionmundra@gmail.com

A	File No.	CUS/APR/BE/SO/105/2023-Gr 4-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/40/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	15.05.2023
E	Date of Issue	15.05.2023
F	SCN No. & Date	-----
G	Noticee/Party/ Importer/ Exporter	M/s. Hitwa Metal, (IEC BFZFJ8923G), 1,101, Plot No. 20/22, Guru Krupa, 14th Lane Mumbai, Maharashtra-400008
H	DIN No.	20230571MO0000610221

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील),
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“**THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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 are in dispute, or penalty, where penalty alone is in dispute.

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BRIEF FACT OF THE CASE:

1. M/s. Hitwa Metal, having address as “1,101, Plot No. 20/22, Guru Krupa, 14th Lane Mumbai, Maharashtra-400008” (IEC BFZFJ8923G) (hereinafter referred to as ‘the Importer’ for the sake of brevity) has filed Warehouse Bills of Entry No. 4120312 dated 10.01.2023 & 4120238 dated 10.01.2023 for the import of Stainless-Steel Seamless Pipes (Grade 304L) from China PR having entry inward was 28.12.2022 & 21.12.2022 respectively.

Other details of Bills of Entry are as under:

Sl. No.	Bill of Entry No./Date	Vessel Inward Date	Quantity in Kgs	Assessable Value	Declared Duty(Including ADD)
1	4120312 dated 10.01.2023	28.12.2022	28400 Kgs	Rs. 66,55,824/-	Rs 1,27,23,605/-
2	4120238 dated 10.01.2023	22.12.2022	28524 Kgs	Rs. 68,45,287.47/-	Rs 1,28,28,853/-

1.1 On the basis of Intelligence received from the Chief Commissioner’s Office, Customs Gujarat Zone and further data gathered by the Special Intelligence and Investigation Branch (SIIB), Custom House Mundra regarding evasion of Anti-Dumping Duty on imports of Stainless-Steel Seamless Tubes and Pipes after issuance of Notification No. 31/2022-Customs (ADD) dated 20.12.2022 and non-compliance of BIS, goods imported vide subject Bills of Entry No. 4120312 dated 10.01.2023 and 4120238 dated 10.01.2023, were put on hold by SIIB, Custom House Mundra for examination and investigation of evasion of Anti-dumping Duty and non-compliance of BIS. The cargo was examined under Panchnama dated 24.01.2023 by the SIIB Officers in presence of independent Panchas, CHA representative and CFS representative.

1.2 During the examination, Goods ‘Stainless-Steel Seamless Pipes (Declared grade is 304L)’ were found packed in bundles covered with HDPE coverings. The sizes of the ‘Stainless-Steel Seamless Pipes (Grade 304L)’ found in the two Containers is mentioned as below-

i) Container no. IAAU1916986 were measuring 48.3 x 3.68, 60 x 3.91, 89 x 3, 89 x 5.5, 73 x 5, 73 x 5, 48 x 5, 114 x 6, 114 x 3, 141 x 9.5, 42 x 3.5, 60 x 5.5 (all in mm).

ii) Container no. WHSU6315090 were measuring 21.3 x 4.78, 26.7 x 2.87,

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33.4 x 2.77, 33.4 x 6.35, 42.2 x 2.77, 42.2 x 2.56, 48.3 x 2.77, 60.3 x 8.74, 73 x 9.53, 114.3 x 13.49, 168.3 x 7.11 (all in mm).

1.3 The samples of goods drawn at the time of examination were forwarded to CRCL, Kandla for testing. The Test Reports for both the consignments conveyed that the product contains chemical composition which agrees with SS 304. It appears that goods found as declared.

1.4 From the sizes of the pipe as found during the examination, it appears that diameter of pipes are lower than 6NPS or 168.3 cm and it appears that goods are well covered under the below mentioned notification and liable for payment of ADD.

1.5 As per Notification No. 31/2022-Customs (ADD) dated 20.12.2022, Anti-dumping Duty is applicable on the import of 'Stainless-Steel Seamless Tubes and Pipes' under CTH 7304 with specifications of diameters up to and including 6 NPS, or comparable thereof in other unit of measurement, whether manufactured using hot extrusion process or hot piercing process and whether sold as hot finished or cold finished pipes and tubes, including subject goods imported in the form of defectives, non-prime or secondary grades (hereinafter referred to as the subject goods) falling under chapter heading 7304 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from China PR (hereinafter referred to as the subject country), and imported into India. It may be noteworthy to highlight that Millimetres is the Unit of Measurement being followed in import consignments. Thus, in order to refer the measurement in Millimetres, 6 NPS as specified in the Notification dated 20-12-2022 is equal to 168.3 mm as per available online literatures.

1.6 Goods Stainless Steel Seamless Pipe found during the examination comes under the purview of 'The Steel and Steel Products (Quality Control) Order, 2020'. As per "The Steel and Steel Products (Quality Control) Order, 2020" issued by the Government of India, Ministry of Steel, Goods Stainless Steel Pipes and Tubes falling under Chapter 73044100 shall be made from input material Stainless Steel conforming BIS Standard as prescribed by the BIS authority and accompanied by test certificate of the input material. In this Case, Importer failed to submit BIS conformed test report and BIS Certificates of the input material used in manufacturing of imported Hot Rolled Stainless-Steel Seamless Pipes. Therefore, it appears that the goods are liable for confiscation under Section 111(d) of Customs Act, 1962 and liable for penalty under section 112(a)(i) of the Customs Act, 1962.

1.7 Further, the importer vide letter dated 27.03.2023 submitted that while the goods under import were under transit, the Anti-Dumping Duty was made applicable on SS

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Seamless Pipe. This applicability of Anti-Dumping Duty on the imported goods being quite high, it became economically impossible for them to clear the goods and find an application of the same with the revised costs; that they were also not in a position to bear the additional Anti-Dumping Duty applicable on the reference imported goods. Moreover, with the import goods requiring BIS compliance for the raw materials involved in its making, the supplier of goods was requested to send the same; that they have tried to get the BIS certification from their supplier in respect of the raw materials of the goods under import but, the exporter (supplier) failed to produce the BIS certificate. Thus, due to infeasibility in clearing the goods for home consumption for the reasons of their inability to pay the hefty ADD and non-receipt of BIS compliance from the raw material supplier of our exporter, they had decided to re-export the goods from Public Bonded warehouse. Accordingly, the import was effected by filing Bill of Entry for warehouse with proper declaration of applicable ADD. The Importer has also requested to decide the case in merits in terms of the Customs Act, 1962 and they do not wish to be served a Show Cause Notice nor do they want any opportunity of Personal Hearing.

RELEVANT LEGAL PROVISIONS

2. Following provisions of law are applicable in the present case:

SECTION 11 (1) OF THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992

"No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the export and import policy (now termed as Foreign Trade Policy) for the time being in force".

SECTION 15 OF THE CUSTOMS ACT, 1962. Date for determination of rate of duty and tariff valuation of imported goods. –

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

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

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

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

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

SECTION 17 OF THE CUSTOMS ACT, 1962: Assessment of duty.–

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

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SECTION 46(4) OF THE CUSTOMS ACT, 1962:

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

SECTION 111 (d) OF THE CUSTOMS ACT, 1962 :**Confiscation of improperly imported goods etc.**

The following goods brought from the place outside India shall be liable to confiscation

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs water for the purpose of being imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force.

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an [arrival manifest or import manifest] or import report which are not so mentioned;

SECTION 112(a) OF THE CUSTOMS ACT, 1962:**Penalty for improper importation of goods, etc.**

Any person,—

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, shall be liable,—

*i. in the case of goods in respect of which **any prohibition is in force** under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;*

ii.

*(ii) in the case of **dutiable goods**, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;*

Steel Quality Control order.

Steel and Steel Products (Quality Control) Order, 2020 issued by Ministry of Steel's Order vide S.O. 4637(E) dated 22-12-2020:

In terms of the Order, every Steel and Steel Product specified therein shall conform to the corresponding Indian standard with effect from the dates specified therein. For reference sake, it is reproduced hereunder

Conformity to standards and essential requirements –

- 1. 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.*
- 2. 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) 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.*

Clause 2(3)

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

4.

TABLE - 2

Sl. No.	Goods and articles	Essential requirement(s)/ clause	ITC (HS) Code		Date of implementation
2.	Stainless Steel Pipes and Tubes	Clause 2(3)	73041110	73053990	With immediate effect
			73041120	73059029	
			73041190	73059099	
			73042200	73061100	
			73042400	73062100	
			73044100	73064000	
			73044900	73066100	
			73051129	73066900	
			73051229	73069090	
			73053190		

SUBMISSION MADE BY THE IMPORTER:

3. Personal Hearing was fixed on 06.04.2023 in the matter. The importer vide their submission dated 06.04.2023 have stated that anti-dumping duty came in to force when goods were on high seas and which was not calculated for the imported goods. Thus, the hefty antidumping duty made the imported goods unviable for clearance for home consumption. Importer has also stated that they were completely unaware about the policy changes through the new Anti-dumping Duty Notification and the applicability of the Anti-dumping Duty coming into force while goods were in transit. Due to applicability of very high Anti-dumping Duty, the imported goods economically unreasonable and unfeasible to clear for Home consumption that's why they have filed warehouse bills of entry for re-export purpose after imposing ADD. Importer has also submitted that they are constantly trying to contact shipper to provide BIS certified MTC, however shipper is not responding properly. Importer has requested to take a lenient view while deciding the case and to give permission for re-export of the goods.

DISCUSSION & FINDINGS:

4. I have carefully gone through the case records, Investigation Report dated

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30.03.2023 received from the Special Intelligence and Investigation Agency (SIIB), personal hearing dated and submissions of importer and applicable provisions of Law.

4.1 I find that the importer during their personal hearing dated 06.04.2023 and after that their written submission dated 06.04.2023, has stated that they don't require Personal Hearing and Show Cause Notice in the matter. I find that the condition of Principle of Natural Justice under Section 122A of the Customs Act, 1962 has been complied. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

4.2 The issues before me are to decide whether-

- a. ADD is leviable on the imported goods i.e., Stainless-Steel Seamless Pipes imported from China PR or otherwise.
- b. BIS Certification is required on the raw material of Stainless-Steel Seamless Pipes or otherwise.
- c. The Goods imported by importer are liable for confiscation under section 111(d) and 111(m) and penalty should be imposed under section 112(a) of the Customs Act, 1962 or otherwise.

4 . 3 I find that M/s. Hitwa Metal, (IEC BFZFJ8923G), "1,101, Plot No. 20/22, Guru Krupa, 14th Lane Mumbai, Maharashtra-400008" have imported consignments of Stainless-Steel Seamless Pipes (Grade 304L) from China PR under Bills of Entry No. 4120312 dated 10.01.2023 & 4120238 dated 10.01.2023 with total weight of 56,924 Kgs. During examination, it was found that the size of imported goods is much below 6 NPS.

4.4 I find that the Anti-Dumping Duty was effective from 20.12.2022 on Stainless-Steel Seamless Pipes imported from China or manufactured in China or originated from China but exported from some other country. In the instant case, importer has filed 2 warehouse bills of entry dated 10.01.2023. As per section 15 of the Customs act, relevant date for rate and tariff change in case of warehouse bill of entry is date on which ex bond bill of entry filed. In this case, till date no ex-bond bill of entry has been filed and importer is requesting for re-export of goods without clearing for home consumption. ADD has already been properly declared while filing warehouse Bill of entry. As the goods are found as per declaration and ADD is already applied at the time of filing warehouse bill of entries, I do not find any merit to make goods confiscate under section 111(m) of the Customs Act, 1981.

4.5 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 manufactured

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from input material (in this case Stainless Steel bar or rod or billets) conforming BIS Standard as prescribed by the BIS authority and accompanied by test certificate of the same. In this Case, Importer has imported goods from suppliers M/s. Wenzhou Qinglang International & Leo Ronaldo (UK) Hi Tech Metals Limited, China. However, importer failed to submit BIS conformed test report and BIS Certificates of the input material used in manufacturing of imported Stainless-Steel Seamless Pipes. Therefore, the goods are liable for confiscation under Section 111(d) of Customs Act, 1962 and liable for penalty under section 112(a)(i) of the Customs Act, 1962.

4.6 In view of the above, I find that as per Section 17 of the Customs Act, 1962, which 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 the 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 commissions on their part, the importer is liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

4.7 I find that impugned goods are liable for confiscation under section 111(d) and of the Customs Act, 1962. Hence penalty under section 112(a)(i) of the Customs Act, 1962 is imposable. Importer has submitted that they are in constant touch with shipper for BIS certified MTC. However, Shipper is not responding. That's not in their control. They have already filed the warehouse Bill of Entry for re-export purpose and didn't file BE for home consumption and has requested to take a lenient view while deciding the case and has requested to allow re-export the goods. In view of this I find that importer cannot be exonerated and exempted from imposition of redemption fine and penalty for the reason discussed as above though circumstances narrated above with the re-export of the goods, a lenient view is warranted.

4.8 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 provides that whenever confiscation of any goods is authorised by 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

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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.

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ORDER

5. In view of foregoing discussion and findings, I pass the following order:

- i. I order for confiscation of the goods covered under Bill of Entry No. 4120312 dated 10.01.2023 and 4120238 dated 10.01.2023 as goods declared are 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. 3,00,000/- (Rupees Three Lac Only) for re-export purpose only. However, as per section 125(3), if, the importer doesn't pay the fine within a period of one hundred and twenty days from the date of the order, such option to redeem the goods shall become void, unless an appeal against such order is pending and impugned goods i.e., Seamless Stainless Pipe would be liable for Disposal as per instruction and guidelines in CBIC disposal manual, 2019. Destruction charges shall be borne by importer only.
- ii. I impose a penalty of Rs. 5,00,000/- (Rs. Five Lac Only) on the Importer M/s. Hitwa Metal, (IEC BFZFJ8923G), having address "1,101, Plot No. 20/22, Guru Krupa, 14th Lane Mumbai, Maharashtra-400008" under section 112(a)(i) of Customs Act, 1962.
- iii. I also permit to re-export of the goods on payment of Redemption Fine, Penalty and other charges as applicable as ordered above.

6. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

7. The investigation Report vide F. No. S/43-270/Hitva Metal/SIIB-E/CHM/22-23 dated 30.03.2023 issued by the Deputy Commissioner (SIIB), Custom House Mundra is hereby disposed of.

Signed by

Mukesh Kumari

(Mukesh Kumari)

Date: 15-05-2023 16:11:20
Additional Commissioner of Customs

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Custom House, Mundra

Dated: .05.2023

To,

M/s. Hitwa Metal, (IEC BFZFJ8923G),
1,101, Plot No. 20/22, Guru Krupa,
14th Lane Mumbai, Maharashtra-400008.

Copy to:

1. The Dy. Commissioner of Customs, RRA, CH, Mundra
2. The Dy. Commissioner of Customs, TRC, CH, Mundra
3. The Dy. Commissioner of Customs, SIIB, CH, Mundra
4. Guard file