



कार्यालय प्रधान आयुक्त, सीमा शुल्क, सीमा शुल्क सदन, मुन्द्रा, कच्छ, गुजरात
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A	फाइल संख्या/ File No.	VIII/48-87/WH/MCH/16-17
B	आदेश में मूल सं./ Order-in-Original No.	MCH/DC/SR/BOND/543/2017-18
C	पारितकर्ता/Passed by	Sharavan Ram Deputy Commissioner of Customs, Custom House- Mundra
D	आदेश की दिनांक/Date of order	26.03.2018
E	जारी करने की दिनांक/Date of issue	29.03.2018
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	VIII/48-87/WH/MCH/16-17 dated 11.08.2017
G	नोटीसी/ पार्टी/ निर्यातक /आयातक Noticee/Party/Exporter/Importer	M/s. Swiber Offshore Construction Pte. Ltd, Unit No. 3 & 4A, The Centrium, Phoenix Market City, L.B.S. Marg, Kurla (West), Mumbai-400070

1. This Order-in-Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order-in-Original may file an appeal under Section 128 of the 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 (APPEALS), MUNDRA ”

having his office at 7th floor, Mridul Tower, Near Times of India Building, Ashram Road, Ahmedabad – 380 009.

3. Appeal shall be filed within sixty days from the date of communication of this order.
4. The appeal should bear Court Fee Stamp of Rs.5/- (Rupees five only) under Court Fee Act and it must be accompanied by –
 - i. A copy of the appeal , and
 - 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 Court Fees Act, 1870.
5. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.
6. Proof payment of duty/interest/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

Sub – Non-clearance of the bonded goods (i.e. Seamless Line Pipes for Oil & Gas Pipelines), within the stipulated warehousing period, warehoused vide Into Bond B/E No. 5870407 dated 04.07.2016 and Bond No. 2001063889 dated 08.07.2016 executed by M/s. Swiber Offshore Construction Pte. Ltd, Unit No. 3 & 4A, The Centrium, Phoenix Market City, L.B.S. Marg, Kurla (West), Mumbai-400070.

(SCN: F. NO. VIII/48-87/WH/MCH/16-17 dated 11.08.2017)

BRIEF FACTS OF THE CASE:

1. Whereas M/s. Swiber Offshore Construction Pte. Ltd, Unit No. 3 & 4A, The Centrum, Phoenix Market City, L.B.S. Marg, Kurla (West), Mumbai-400070 (IEC No. 0310042003) (hereinafter referred to as 'the importer' for the sake of brevity) had imported various consignment of goods and filed warehouse IN BOND Bill of Entry No. 5870407 dated. 04.07.2016, executed triple duty bond No 2001063889 dated 08.07.2016 under Section 59 of Customs Act, 1962. The said goods were warehoused in the bonded warehouse of M/s Seabird Marine Services Pvt. Ltd., Mundra – Kutch – 370421, Gujarat as declared under Chapter IX of the Customs Act, 1962.

2. Whereas under the provision of Section 72(1)(b) & (d) of the Customs Act, 1962, where any warehoused goods have not been removed from a warehouse at the expiration of warehousing period during which such goods were permitted under Section 61 to remain in a bonded warehouse and not been cleared for home consumption or exportation and/ or have not been duly accounted for to the satisfaction of the proper officer, the proper officer may demand and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods.

3. The importer had neither removed the entire/ balance un-cleared quantity of the warehoused goods from the bonded warehouse within stipulated time limit nor applied for further extension well before the expiry of the initial period of warehousing provided under Section 61 of the Customs Act, 1962. However, this office has requested vide letters of even F.No. dated 22.06.2017, 29.06.2017 and 24.07.2017, all letters were returned from Postal Authorities with remarks "Left/Not Known" to pay duty along with interest and produce Bank Guarantee for further extension of warehousing period, no response has been received from them. The Importer failed to remove the entire quantity of the goods, warehoused by them from the bonded warehouse within the stipulated period and therefore, duty along with interest as per the provisions of Section 72 (1)(b), section 72(1)(d) and Section 61 (2)(ii) of Customs Act, 1962 is leviable. Details of which are as under:

Bond No. & date	W/H Bill of Entry No. & date	Description of goods	W/H quantity/Ass. Value & duty involved	Quantity cleared/ exported	Balance quantity, Ass. Value & duty involved
Bond No. 2001063 889 dated 08.07.20 16	Into Bond B/E No. 5870407 dated 04.07.201 6	Seamless Line Pipes for Oil & Gas Pipelines (CTH: 73041990)	711.59 MTS Total AV: 4,57,33,063/- Duty: Rs.1,80,37,577/-	NIL	711.59 MTS Total AV: Rs. 4,57,33,063/- Duty: Rs.1,80,37,577/-

4. A Show Cause Notice dated 11.08.2017 was issued to the importer as to:

(a) Why the duty at the appropriate rate should not be demanded under the provisions of Section 72(1) (b) & 72(1) (d) of the Customs Act, 1962.

(b) Why the interest payable at the applicable rate for the period i.e. from the expiry of the interest free period till the date of payment of Customs duty, should not be recovered from them under Section 61(2) (ii) of the Customs Act, 1962 in respect of the said balance warehoused goods.

(c) Why penalty should not be imposed upon them under Section 117 read with Section 72 of the Customs Act, 1962 for the contravention of the provisions of Section 61 of the Customs Act, 1962.

The said Show Cause Notice dated 11.08.2017 was returned undelivered with Postal Authority's remark "Left" on 12.09.2017; however copy of the said Show Cause Notice was duly delivered through CHA M/s Cargo Clearing Agency on behalf of the Importer & CHA on 18.08.2017 and also delivered to warehouse keeper M/s Seabird Marine Services Pvt. Ltd. on 18.08.2017. The copy of the said Show Cause Notice was also displayed at the Notice Board of Customs House, Mundra.

5. Submissions made by the Importer:-

The importer has not submitted any reply to the Show Cause Notice so far.

6. Personal Hearing

Personal hearing was fixed on 14.11.2017, 28.11.2017 & 07.12.2017 at 11.30 hours, but the importer has failed to appear on any date. Further, Shri Keshav Rao Bondi and Shri Sudeep Nirmal on behalf of M/s. Seabird Marine Services Pvt. Ltd. appeared for the Personal hearing on 28.11.2017 and submitted that they did not receive any payment for the warehoused goods and neither any communication is entertained by the importer. They further submitted that they generally communicate with the CB, but the importer did not respond to the CB. They have received the copy of above mentioned Show Cause Notice, the copy is affixed on Notice Board of Warehouse. Also, Shri Raju Maila palli on behalf of M/s. Cargo Clearing Agency (CHA) appeared on 28.11.2017 and stated that they have received copy of the SCN on behalf of Importer and CHA on 18.08.2017 (total 2 set of SCNs) and they have not received any communication from the Importer.

DISCUSSION & FINDINGS:

6.1 I have gone through the records/ documents available with this office and find that the importer has filed IN BOND Bill of Entry No. 5870407 dated. 04.07.2016, for warehousing of 711.59 MTS of Seamless Line Pipes for Oil & Gas Pipelines (CTH: 73041990). They have executed triple duty bond No 2001063889 dated 08.07.2016 under Section 59 of the Customs Act, 1962 and warehoused the said imported goods. On going through the entry for said bond I find that the entire quantity of the goods mentioned at para 3 of the Bill of Entry, i.e. 711.59 MTS of Seamless Line Pipes for Oil & Gas Pipelines bonded goods are left un-cleared beyond the warehouse period as provided under Section 61 of the Customs Act, 1962. A reference has also been made with ONGC, Mumbai vide letter dated 27.02.2018 about ownership of the goods but returned with remark "Refused" through Postal Authority.

6.2 In this case the importer has received bonded goods totally 711.59 MTS of Seamless Line Pipes for Oil & Gas Pipelines under in-to Bond B/E No. 5870407 dated 04.07.2016 to warehouse the full quantity of the bonded goods. The said bonded goods were examined by the proper officer and thereafter the same was allowed for warehousing by the proper officer of Customs. The importer has also executed bond under Section 59 of the Customs Act, 1962 binding themselves to clear the said bonded goods within permissible time limit as provided under Section 61. The importer has neither removed the entire quantity of bonded goods within stipulated time limit nor applied for extension of warehousing period well before expiry of warehousing period. No communication between Importer and CB/Warehouse Keeper noticed during Personal Hearing.

6.3 I find that in terms of provisions of Section 72 (1) (b) of Customs Act, 1962, "where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse, the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty

chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods as per Circular No. 31/97-Cus dated 14.08.1997, the relevant date applicable on calculation of Customs Duty in cases where warehoused goods are cleared after the expiry of warehousing period is the date of expiry of the warehousing period or such other extended period as the case may be and not the date of payment of duty. Further, the duty would be chargeable at the rate applicable on the date on which the permitted or extended period expired. Therefore, the importer, is required to pay appropriate duty on the entire un-cleared quantity under Section 72(1) (b) & 72(1) (d) of the Customs Act, 1962 and to pay appropriate interest on it under Section 61 (2) (ii) of the Customs Act, 1962, and rendered themselves for penal action under Section 117 read with Section 72 of the Customs Act, 1962.

7. After examination of the facts as discussed supra, I pass the following order:

ORDER

- (i) I confirm the Customs Duty of Rs.1,80,37,577/- (One Crore Eighty Lakh Thirty Seven Thousand Five Hundred and Seventy Seven) leviable on the above said un-cleared Bonded warehoused goods under Section 72(1)(b) & 72(1)(d) of the Customs Act, 1962.
- (ii) I also order to pay the interest at the rate applicable leviable on the duty of above said un-cleared Bonded warehoused goods under Section 61 (2) (ii) of the Customs Act, 1962 .
- (iii) I impose penalty of Rs. 1,00,000/- (One Lakhs) under Section 117 read with Section 72 of the Customs Act, 1962, on the importer M/s. Swiber Offshore Construction Pte. Ltd, Unit No. 3 & 4A, The Centrium, Phoenix Market City, L.B.S. Marg, Kurla (West), Mumbai-400070.


(श्रवणराम)

उपायुक्त (बांड अनुभाग)
सीमा शुल्क सदन, मुंद्रा

F. No. VIII/48-87/WH/MCH/16-17

Mundra, dated: 29 .03.2018

BY RPAD.

To,
M/s. Swiber Offshore Construction Pte. Ltd,
Unit No. 3 & 4A, The Centrium, Phoenix Market City,
L.B.S. Marg, Kurla (West), Mumbai-400070

Copy to:-

1. The Assistant/ Deputy Commissioner (RRA) Custom House, Mundra.
2. The Assistant/ Deputy Commissioner (Recovery) Custom House, Mundra.
3. CHA: M/s. Cargo Clearing agency, Plot No 271, Ward 12B, Gandhidham, Kutch Gujarat.
4. Bonded Warehouse: M/s. Seabird Marine Services Pvt. Ltd. Public Bonded Warehouse Plot No. 83-84-85, Dhrub Industrial Estate, Near AP&SEZ Entry Gate, Mundra – Kutch – 370421, Gujarat.
5. Notice Board.