

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY B.COM, B.L. (HONS.),

R.MANSOOR ILAHI, B.COM, B.L.

VINUPRIYA MUTHURAMALINGAM, B.A., L.L.B. (HONS.)

CONSULTANTS:

GST, CUSTOMS,

FOREIGN TRADE LAWS,

FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. Queriest :

M/s.SCL Services Pvt. Ltd., Chennai on behalf of M/s.L & T Construction Equipment Limited, Bangalore.

2. Facts :

2.1 M/s.L & T Construction Equipment Limited, Bangalore have imported several consignments of Seamless Steel Tubes through Nhava Sheva Port. The goods have been cleared upon payment of appropriate customs duty without any safeguard duty. These seamless steel tubes are intended for manufacture of Hydraulic Cylinder Components and these tubes are supplied by M/s.DALMINE, S.P.A., Italy.

2.2 In respect of import of such tubes made during 2016, Custom House, Nhava Sheva has issued a letter dated 17.8.2020 to L & T Construction Equipment Ltd. pointing out that in respect of these tubes, safeguard duty is payable in terms of Notification No.2/2014 (SG) dated 13.8.2014 at 10%. Accordingly, they have pointed out a short payment of Rs.39,31,371/-. The department has asked the importer to pay the duty with interest so that in terms of Section 28(2) of Customs Act 1962, any need to issue show cause notice will not come up and the matter can be closed.

2.3 The queriest has made available import documents relating to L & T Construction Equipment Ltd. It is also informed that in respect of two bills of entry covered by the subject letter, the importer has paid safeguard duty subsequently under challan on being pointed out by the department. In respect of one case relating to Bill of Entry No.5598222 dated 13.6.2016, it appears that a query has been raised by the customs asking the importer to justify safeguard and ADD duty applicability and then on 20.6.2016, the importer has paid the safeguard duty to the extent of Rs.9,43,162/-.

2.4 The present letter from customs is issued as a consultation letter in terms of Pre-Notice Consultation Regulations 2018 and the letter further states that the department reserves its right to proceed in terms of Section 28 of Customs Act 192 for issue of demand.

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3. Query :

In the above context, the querist would like to know the applicability of safeguard duty for the goods under reference.

4. Opinion :

4.1 A copy of the Customs Notification No.2/2014 (SG) dated 13.8.2014 is attached as Annexure to this opinion. A perusal of the above notification will show that various types of seamless steel tubes falling under different Tariff headings are covered by the notification and during the relevant period, the safeguard duty applicable was 10% advalorem. It also may be seen that there are four varieties of seamless pipes and tubes that are excluded from the scope of this notification and these appear under 'Note' to the above notification.

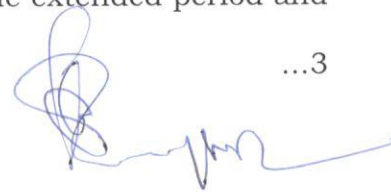
4.2 At the outset, the importer has to examine whether the tubes imported by them come under these excluded categories. If it can be established with evidence that these are under excluded categories as per the specifications mentioned in the Note then, there may not be any liability to pay safeguard duty.

4.3 In the absence of the same, depending upon the classification adopted in respect of these bills of entry, prima facie, it appears that the subject seamless tubes will attract safeguard duty under the said notification. Accordingly, the short payment pointed out by the department will be payable.


4.4 At the same time, it is noticed that the pre-consultation notice has been issued in the month of August 2020 whereas the imports referred to in the letter have taken place during 2016. As per Section 28 of Customs Act, the period available for issue of the demand notice is two years during the relevant period and only in cases of suppression of facts, mis-statement etc. the demand can be issued for five years by invoking the proviso. As such, in the present case, a demand within the normal period will be hit by limitation. However, if the customs authorities choose to allege suppression of facts or mis-statement etc. with intention to evade duty by the importer then, it can be issued for five years.

4.5 It is noticed that during 2016 itself the importer has paid safeguard duty in respect of one case and as such, all these cases being self-assessment cases, the department can invoke the extended period and issue a demand notice.

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- 4.6 Keeping the above in mind, in our view, it may be advisable to examine all these aspects and in case, the safeguard duty is payable for the reason that seamless pipes imported are covered by the said notification and do not figure under the excluded category, then such duty can be paid, to avoid any issue of show cause notice invoking penal provisions.
- 4.7 The importer may be enjoying the status of AEO and in such a case, any penalty imposed can have an impact on that status.
- 4.8 If duty is admitted and paid, the same is to be paid with interest and a letter is to be given to that effect with a declaration requesting the department to close the matter in terms of Section 28(2) of Customs Act without proceeding further. Such voluntary payment will ensure that the matter is closed without any further penal proceedings.



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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.