



सीमा शुल्क आयुक्त का कार्यालय,  
नवीन सीमा शुल्क भवन, नया कांडला ।

OFFICE OF THE COMMISSIONER OF CUSTOMS,  
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)

Phone No: 02836-271468/469, Fax No. : 02836-271467.

A	फाइल संख्या/ File No.	S/10-209/ADJ/ADC/L& T/2016-17
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/PMR/11/2017-18
C	पारित कर्ता/ Passed by	SHRI PADALA MOHAN RAO, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	25/09/2017
E	जारी करने की दिनांक/Date of issue	25/09/2017
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	S/10-SIIB/SCN-01/Addl.Comm./2017 Dated 24.01.2017
G	नोटीसी/ पार्टी Noticee/Party	M/s. L& T Hydrocarbon Engineering Ltd., MFF, EPC Block, Hazira, Surat, Gujarat-394510

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

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

2. कोई भी व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क नियमावली के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 के धारा 128 A(1) के अंतर्गत प्रपत्र सीए में चार प्रतियों में निचे बताये गए पते पर अपील कर सकता है।

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

"सीमा शुल्क आयुक्त (अपील), कांडला

वीं मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़

अहमदाबाद 380 009"

"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA

7<sup>th</sup> 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 <sup>filed</sup> within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 2/- 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 सं.-6 में निर्धारित 2/- 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. 2/- (Rupees Two 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 नियम (अपील), और सीमा शुल्क अधिनियम 1982, 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, न्यायाधिकरण के समक्ष मांग शुल्क का %10 भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in disputed

## BRIEF FACTS OF THE CASE:-

Intelligence was gathered by the officers of Special Intelligence & Investigation Branch (SIIB - Import), New Custom House, Ballard Estate, Mumbai that M/s. Bombay Marine Enterprises, (hereinafter referred to as 'BME' ) having their office at 156, Masjid Chawl, LBS Marg, Kurla (W), Mumbai-400099 filed Bill of Entry No 4135188 dated 03.02.2016 at New Custom House, Ballard Estate, Mumbai for clearance of 539.19 MT (232.2 MT net weight ) of concrete coated M. S. Pipes by mis-declaring the same as "old, used and rusted concrete coated M.S. Pipes. The intelligence further indicated that BME had purchased the said pipes from M/s. L & T Hydrocarbon Engineering Ltd. ( hereinafter referred to as 'LTH') having their office at North Block-II, 7<sup>th</sup> floor, L&T Powai Campus, Saki Vihar Road, Mumbai-400072.

2. Further enquiries revealed that LTH vide their letter dated 28.01.2016 addressed to the DC(PG) sought permission for offloading and clearance that goods through BME and that the goods were unused and leftover lying at the Mumbai Port, pending for customs clearance. The subject goods, covered under Bill of Entry No. 4135188 dated 03.02.2016, filed by BME (authorized by LTH) were examined 100% under supervision of SIIB(Import) NCH, Mumbai in the presence of Proprietor of BME and a Chartered Engineer from M/s. Sai Sidhi Associates. During the examination, the goods were found to be in 3 sizes- (i) 65 pipes of 18" outer diameter, 18 mm wall and 12.500 metre length, (ii) 79 pipes of 8"outer diameter, 10mm wall and 12.500 metre length. (iii) 46 pipes of 6" outer diameter, 10 mm wall and 12.500 metre length. It was also observed in the examination that the said pipes were new and unused, as against the declared description of the goods as "old, used and rusted concrete coated M.S. Pipes" in the Bill of Entry No. 4135188 dated 03.02.2016. The Chartered Engineer from M/s. Sai Sidhi Associates, vide their certificate bearing No. SSA/CEC/SIB-BOMBAY MARINE/699r/2015-16 dated 05.02.2016 had opined that the goods are "unused".

3. During the course of investigation, the Proprietor of BME disclosed that LTH had imported the bare of steel pipes under Advance Authorisation Scheme and supplied the same to M/s. ONGC for their offshore project after getting the same concrete coated by their supporting manufacturer. SIIB (Import), New Custom House, Mumbai vide letter F. No. SG-Misc/51/AC/2013-14 SIIB(Imp) dated 08.02.2016 requested LTH to provide following documents;-

- (i) Bill of Entry under which the bare steel pipes were imported by LTH.
- (ii) Contract between LTH and BME in respect of sale/ purchase of the subject goods.
- (iii) Invoice for supply of the subject goods from LTH to BME.
- (iv) Contract between LTH and M/s. Jindal Saw Ltd. for coating of the subject pipes.

(v) Advance Authorisation under which the bare pipes were imported and supplied to M/s. ONGC Ltd.

4. Statement of Shri Naveen Mishra, employee of BME was recorded on 09.02.2016, under the provisions of Section 108 of the Customs Act, 1962 wherein he *inter alia* stated that they had declared the subject goods as old, used and rusted concrete coated M.S. Pipes; that they had filed the Bill of Entry as per the LTH's letter F. No. LTHE/Scrap/MHNRD II/04/A dated 28.01.2016 wherein the subject goods were mentioned as "M S Scrap material"; that proprietor of BME, Shri Abdul Majeed Shaikh and Shri Deepak Kothiyal, employee of LTH would clarify the issue further.

5. Statement of Shri I N Raghuvanshi, Senior Manager- Logistics of LTH was recorded under the provisions of Section 108 of the Customs Act, 1962 on 10.02.2016 wherein he *inter alia* stated that the subject goods had arrived at Mumbai port from offshore Bassein field; that the subject goods were left over after laying the pipelines at ONGC offshore site; that it was nowhere mentioned that the subject goods were old and used pipes; that the subject goods were originally imported by them vide Bill of Entry No. 2978873 dated 19.10.2015 (Mundra Port) and 9968420 dated 21.07.2015 (Kandla port) against Advance Authorisation No. 3410041368 dated 10.07.2015; that bare pipes outer diameter 6" and 8" were imported at Kandla and Mundra port and pipes of OD 18" were indigenously procured by them from M/s. Welspun Corp. Ltd.; that he was unable to clarify whether the export obligation in respect of the Advance Authorisation were achieved or not.

6. During the course of investigation LTH vide their letter dated 12.02.2016, *inter-alia* submitted that the subject goods are left over concrete coated submarine pipe lines which remained unused after laying them at ONGC's offshore site; that the subject goods were coastal goods and not imported goods; that the subject goods were manufactured in India by their supporting manufacturer M/s. Jindal Saw Ltd. and the same were subsequently dispatched to M/s. ONGC Ltd. against their contract bearing No. MR/OW/MM/ADVEP/02/2014 dated 15.11.2014; that the material including some bare pipes used in the manufacturing of the subject goods were imported under valid Advance Authorisation Scheme in terms of Notification No 18/2015-Cus.; that the subject goods were supplied to M/s. ONGC Ltd. through Mundra Port under Bill of coastal Goods; that after laying the concrete coated submarine pipelines at the ONGC offshore site, a small quantity of above goods remained unused as leftovers; that these left over subject goods, they had appointed BME; that BME was not required to file Bill of Entry to clear these coastal goods, however the bill of Entry for the subject goods was inadvertently filed by BME and they advised BME to withdraw the said Bill of Entry.

7. Statement of Shri I N Raghuvanshi, Senior Manager - Logistic of LTH was recorded under Section 108 of the Customs Act, 1962 on 23.02.2016 wherein he *inter alia* stated that they had entered into an Engineering, procurement and Construction with M/s. ONGC Ltd. whereby they were required to construct / install two well Head

Platforms and sub-sea pipeline at Bassien Oil Field, located at west coast of India; that the above mentioned project was awarded to them in the international competition bidding process; that to execute the above contract, they obtained Advance Authorisation bearing No 3410041368 dated 10.07.2015 and 3410041280 dated 09.06.2015 from Regional Authority of DGFT at Vadodara; that they imported steel pipes of 6" and 8" at Mundra and Kandla and cleared the same vide Bill of Entry No. 2978873 dated 19.10.2015 and 9968420 dated 21.07.2015, availing exemption from duties of Customs, in terms of Notification No. 21/2015-Cus dated 01.04.2015; that they also procured steel pipes (18") from M/s. Welspun Corporation Ltd., availing exemption from Central Excise duties; that they availed benefit of Advance Authorisation Scheme in respect of procurement of steel pipes from two different sources i.e. imported and indigenous; that they had a supporting manufacturer M/s. Jindal Saw Ltd. whose works were located at Mundra Gujarat; that they used to pay them job work charges for carrying out the concrete coating on the steel pipes; that as per the contract between them and the M/s. Jindal Saw Ltd. they dispatched all the above three sizes of steel pipes to M/s. Jindal Saw Ltd. and they were required to apply a concrete coating on the steel pipes so that these pipes could be laid down on the sea bed; that M/s. Jindal Saw Ltd. carried out the concrete coating process on the said steel pipes as per their requirement; that such concrete coating on the steel pipes amounts to manufacture, in terms of Chapter Notes to Chapter 72 of First Schedule to the Central Excise Tariff Act, 1985; that such concrete coated steel pipes intended to be used in laying sub-sea pipe line at Bassien Oil Field, located at west coast of India; that the said concrete coated steel pipes were cleared from M/s. Jindal Saw Ltd, without payment of Central Excise duty, availing benefit of Notification No.12/2012(CE) dated 17.03.2013 ; that upon clearance of the said concrete coated steel pipes from the premises of the supporting manufacturer the same were dispatched to Bassien Oil Field vide coastal Shipping Bills No. 40/10.12.2015 (1288 pcs) and 51/29.12.2015 (1745 pcs) through Mundra port; that as per EPC contract with M/s. ONGC Ltd., they laid the sub-sea pipeline at the specified place; that while laying the sub-sea pipeline, they utilized around 2846 concrete coated pipes; that the said pipeline laying was already over, however, hydro testing and handing over to M/s. ONGC Ltd was yet to take place; that since the pipeline laying was over, 187 nos of said concrete coated pipes had no use for them, they entered into a contract with BME to sell the said 187 nos of concrete coated steel pipes; that BME used to deal in steel and other metallic scrap ; that as per the contract with BME they would remove the concrete coating from the pipes and recover the steel; that as per the contract with the BME, prices of the steel scrap was fixed at Rs. 15000/-per MT, if the disposal of concrete coated pipe occurs alongside jetty; that final value for sale the said 187 pipes would be arrived only after the steel was recovered and thereafter they would raise an invoice to BME for sale of said 187 steel pipes; that BME was yet to recover the steel from the said concrete coated steel pipes; that they have inadvertently mentioned in para D 5 of the contract entered between them and BME would be responsible for payment of Customs duty considering the material is "foreign", in fact they should have mentioned that all the taxes and

duties applicable on the said steel pipes were to be paid and borne by BME. Nonetheless, mention of Para D 5 of the contract did not change of origin of the goods since all these concrete coated pipes were manufactured in India; that they were informed by BME that Customs had a doubt whether these goods were old and used pipes or new and unused ones, they discussed the issue in their company and realized that they had wrongly advised BME to file Bill of Entry to clear these goods from Customs; that they communicated to BME that they were not required to file Bill of Entry to clear these goods from Customs; that he was not sure whether they fully filled the export obligation in respect of the above two Advance Authorisations.

8. Further, LTH vide their letter dated 24.02.2016 requested to release the subject goods pending investigation and they undertook to pay any duty, interest in respect of the subject goods. Such request of LTH was considered favourable by the competent authority, subject to the condition that LTH and BME would submit an undertaking wherein they would severely undertake that they would not dispute the quantity, weight, origin and identity of the subject goods in any further proceeding and they would pay Customs duty and / or Central Excise duty, if any, in respect of the subject goods and /or the raw material utilized in the manufacture of the subject goods. LTH and BME complied to the above condition. In the due course, the subject goods were assessed and cleared to BME.

9. A further Statement of Shri I N Raghuvanshi, DGM of LTH was recorded under Section 108 of the Customs Act, 1962 on 18.10.2016 wherein he *inter alia* stated that they had imported 1592 pieces of M S pipes at Kandla Port vide Bill of Entry No. 9968420 dated 21.07.2015 and details of the same was as per Invoice and Packing list No. AQRE-15-EMOO-1EO11CO dated 10.06.2015 : that after importation of the same they had sent the goods to M/s. Jindal Saw Ltd., Mundra for further processing / manufacturing i.e. concrete coating process ; that they have not discharge export obligation against Advance Authorisation No. 3410041368/3/03/00 dated 10.07.2015 and amended sheet dated 15.07.2015 issued by the DGFT, Vadodara due to awaiting of the payment certificate from ONGC, Mumbai ; that they have not informed Kandla / Mundra Customs but they have informed Mumbai Customs vide manifest No. LTHE / SCRAP / MHNDR 111 / 04 / A dated 28.01.2016 and accordingly BME filed Bill of Entry No. 4135188 dated 03.02.2016 and cleared the goods on payment of the Customs duty ; that in manifest no. LTHE/ADVEP/LTS3000/Manifest/03 dated 28.01.2016 they had declared the goods as concrete coated line pipes left over after laying of pipeline at ONGC's off shore site and would be of no use and will be scrapped. Bill of Entry was filed by BME declaring goods as old, used and rusted concrete coated M S pipes; that out of 190 pcs of concrete coated pipes cleared by BME, they had imported 125 M S Pipes of OD 6" and 8" at Kandla and Mundra port ; at currently, they are not in a position to inform exact quantity of goods imported at Kandla port; that they will once again check and inform in 10 days. They submitted copy of Bill of Entry No. 9968420 dated 1.07.2015 along with B/L No. KKDL-1.002 dated 18.06.2015, Invoice and Packing list No. AQRE- 15-EMOO- 1 EO 11 CO dated 10.06.2015, certificate of origin

dated 18.06.2015, copy of Advance Authorisation License No. 3410041368/3/03/00 dated 10.07.2015 and amended sheet dated 15.07.2015 issued by DGFT, Vadodara, Coastal Shipping Bill BCG No.40/10.12.2015 and 51/29.12.2015 along with Invoice No. ADVEP/INR/2015-16/25084-A dated 03.12.2015, Packing list no. LTHE/JSL/ADVEP-001 & ADVEP/INR/2015-16/25084B dated 03.12.2015, Packing list No. LTHE/JSL/ADVEP-002 and copy of commercial invoice of M/s. Welspun Corp. Ltd., Bharuch, Gujarat for goods indigenously procured. Further, LTH vide their letter dated 27.10.2016 has intimated that it is not possible to identify whether raw material is imported at Kandla or Mundra for 8" pipe mentioned in manifest No. LTHE/ADVEP/LTS3000/Manifest/03 dated 28.01.2016.

10. From scrutiny of documents and above investigation it was found that LTH had entered into an Engineering, Procurement and Construction (EPC) contract with M/s. ONGC Ltd. As per the EPC contract, LTH were required to construct two Well Head Platforms and sub-sea pipeline at Bassien Oil Field, located at west coast of India. The said EPC contract was awarded to LTH in the international competition bidding process. To execute the above contract LTH obtained Advance Authorisation bearing No. 3410041368 dated 10.07.2015 from the regional authority of DGFT, Vadodara. The Advance authorization were issued to them in terms of paragraph 4.05©(iii) of the FTP 2015-20. Thereafter, LTH, MFF, EPC Block, Hazira, Surat imported Carbon steel seamless pipes of 6" and 8" at Kandla port vide Bill of Entry No 9968420 dated 21.07.2015 and cleared the same, availing exemption from duties of Customs, in terms of Notification No. 21/2015-Cus. Dated 01.04.2015 which exempts goods from whole of customs duty for specified deemed export supplies. LTH dispatched the steel pipes to their supporting manufacturer M/s. Jindal Saw Ltd., Mundra, who carried out the concrete coating process on the steel pipes. Such concrete coating on the steel pipes amounts to manufacture, in terms of chapter notes to Chapter 72 of First Schedule to the Central Excise tariff Act, 1985. The concrete coated pipes were cleared from M / s. Jindal Saw Ltd. without payment of Central Excise duty and were shown as sale to M/s. ONGC Ltd. by LTH. The concrete coated steel pipes were dispatched to Bassien Oil Field i.e M/s. ONGC Ltd. vide Coastal Shipping bills No. 40/10.12.2015 and 51/29.12.2015 through Mundra Port. As per EPC contract with M / s. ONGC Ltd., LTH laid sub-sea pipeline at the specified place and on completion of the laying, there were 190 nos of the concrete coated steel pipes as leftover. Thereafter, LTH entered into a contract with BME to sell the said 190 nos of concrete coated steel pipes. These 190 concrete coated pipes were unused and leftover from the sub-marine pipeline laid by LTH for M / s. ONGC Ltd. which were cleared by BME vide bill of Entry No. 4135188 dated 03.02.2016. Out of above mentioned 190 concrete coated steel pipes, raw material of 125 nos of concrete coated steel pipes of OD 8" and 6" viz. Carbon Steel Seamless line pipes API5L OD 219.1MM X WT 8.7MM (79Nos) and Carbon Steel Seamless line pipes API5L OD 168.3MM X WT 8.7 MM (46 Nos) total valued at Rs. 6524772/- were imported and cleared from Kandla Port vide Bill of Entry No. 9968420 dated 21.07.2015.

11. Investigation revealed that LTH by way of selling the goods viz. concrete coated M S pipes to BME has violated the condition No.(x) of Notification No. 21/2015-Customs dated 01.04.2015. The condition no. (x) of above said notification says that “ *the said authorization shall not be transferred and the said materials shall not be transferred and sold ; provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work*”. The raw materials of the above said goods were imported under Advance Authorisation for deemed export. The party i.e. LTH has also not discharged export obligation in respect of Advance Authorization Licence No. 3410041368/3/03/00 dated 10.07.2015 and amended sheet dated 15.07.2015 issued by DGFT, Vadodara. As per para 4.16 of FTP 2015-20 \_ the subject imported goods are meant for actual user only and the same shall not be transferable even after completion of the export obligation and holder of these Advance Authorizations will have option to dispose of the product manufactured out of duty free input once export obligation is completed. As mentioned above LTH has sold the above mentioned goods to other than eligible person and also not produced any proof regarding discharge of export obligation, hence, it appears that they are not eligible for benefit of exemption from duties of Customs in terms of Notification No. 21/2015-customs dated 01.04.2015. Further BME had mis-declared the subject goods as old, used and rusted concrete coated M S pipes in the Bill of Entry No 4135188 dated 03.02.2016. During the examination it was noticed that the said goods were new and unused. The Chartered Engineer from M/s. Sai Didhi Associates vide their certificate dated 05.02.2016 have opined that the goods were unused. Hence, the said goods cannot be treated as waste/scrap. Shri Naveen Mishra, employee of BME in his statement dated 09.02.2016 has stated that they had filed the Bill of Entry as per the LTH’s letter F. No. LTHE/Scrap/MHNRD III/04/A dated 28.01.2016 wherein the subject goods were mentioned as “M S Scrap material”. Hence, it was evident that BME has mis-declared the subject goods and suppressed the material facts about the subject goods on the direction of LTH. Since the subject goods were unused as opined by the Chartered Engineer the value of the goods has been ascertained from the Invoice No. AQRE15EMOO1EO11C dated 10.06.2015 as declared by LTH at the time of importation of the goods at Kandla port vide Bill of entry No. 9968420 dated 21.07.2015. From above, it appeared that LTH has failed to comply the conditions of Notification No.21/2015-Customs dated 01.04.2015 and para 4.16 of FTP 2015-20 by selling the goods to other than eligible person. The importer LTH have not taken any permission from Customs Kandla to dispose the said goods which were exempted from payment of customs duty by way of notification claimed by the importer Therefore, said goods appear liable to confiscation under Section 111(m) and (o) of the Customs Act,1962. Further, importer had rendered these goods liable to confiscation, Therefore, for their act of commission or omission, they appeared liable to penalty under Section 112(a) *ibid*.

12. As per Section 46(4) of the Customs Act, 1962, the importer who is presenting the Bill of Entry shall at the foot thereof 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 relating to the imported goods.

12.1 Rule 14 of the Foreign Trade (Regulation) Rules, 1993, provides inter-alia, that (i) no person shall make sign or use or cause to be made, signed or used any declaration, statement or document for the purpose of obtaining any license or importing or exporting any goods knowing or having reasons to believe that such declaration statement or document is false in any material particular (ii) no person shall employ any corrupt or fraudulent practice for the purposes of obtaining any license or importing or exporting any goods.

12.2 In terms of Section 111(m) (any goods which do not correspond in respect of value or any other particular) with the entry made under this Act or in the case of baggage with the declaration made under section 77 (in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54);

12.3 In terms of Section 111(o) of the Customs Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer are liable to confiscation;

12.4 In terms of Section 112(a) of the Customs Act, 1962-any person 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 to penalty.

12.5 In terms of Section 114A where the duty has not been levied or has been short - levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined.

13 From the above, it appeared that LTH has sold the above mentioned goods to other than eligible person and also not produced any proof regarding discharge of export obligation, hence, it appeared that they are not eligible for benefit of exemption from duties of Customs in terms of Notification No. 21/2015-customs dated 01.04.2015. From above it appears that LTH has failed to comply the conditions of Notification No. 21/2015-Customs dated 01.04.2015 and para 4.16 of FTP 2015-20 by selling the goods to other than eligible person. The importer LTH have not taken any permission from Customs Kandla to dispose the said goods which were exempted from payment of customs duty by way of notification claimed by the importer Therefore, said goods appear liable to confiscation under Section 111(m) & (o) of the Customs Act, 1962. Further, importer had rendered these goods liable to confiscation. Therefore, for their act of commission or omission, they appeared liable to penalty under Section 112(a) *ibid*.



14. Therefore, a Show Cause Notice bearing F.No.S/10-SIIB/SCN-01/Addl.Comm./2017 dated 24.01.2017 was issued to M/s L& T Hydrocarbon Engineering Ltd.,MFF, EPC Block, Hazira, Surat, Gujarat-394510 vide which they were called upon to show cause to the Additional Commissioner of Customs, Kandla Customs House, , Kandla-370210 within 30 days of the receipt of this Show Cause Notice as to why :

(i) the goods namely 125 pcs of carbon steel seamless line pipes imported under Bill of Entry No. 9968420 dated 21.07.2015 as discussed at para 10 to this Show Cause Notice valued at Rs. 6524772/- should not be confiscated under section 111 (m) & (o) ibid;

(ii) the benefit of Notification No. 21/2015 dated 01.04.2015 should not be rejected and merit duty amounting to Rs. 3225910/- as per the duty calculation indicated in detail in Annexure-I should not be demanded under the provisions of Section 28 (4) ibid read with the provisions of Notification No. 21/2015 dated 01.04.2015 along with interest as applicable;

(iii) Penalty should not be imposed under section 112(a) ibid on M/s. L & T Hydrocarbon Engineering Ltd.

(iv) Penalty should not be imposed under section 114A ibid on M/s. L & T Hydrocarbon Engineering Ltd.

**DEFENCE SUBMISSION:-**

15. M/s L&T Hydrocarbon Engineering Limited, having their office at North Block-II, 6th floor, L&T Powai Campus, Saki Vihar Road, Mumbai-400072 vide their letter dated 26.04.2017 submitted their written defence reply interalia which they submitted as under-

**Submissions**

15.1 In response to the allegations, they make the following submissions which may be considered without prejudice to one another:

The entire show cause notice has been framed on the wrong premises:

15.2 The noticee had imported the raw material i.e bare carbon steel seamless line pipes and subsequently sent them to the works of M/s Jindal Saw Limited for concrete coating. Such coating tantamount to manufacture in terms of the notes to Chapter 72 of First Schedule to the Central Excise Tariff Act, 1985.

15.3 The noticee on taking the delivery of these coated line pipes from M/s Jindal Saw Limited, Mundra had dispatched them to M/s ONGC's offshore site vide Bill of Coastal Goods No. 40/10.12.2015 and 51/29.12.2015 along with Invoice No. ADV EP/INR/2015-16/25084-A dated 03.12.2015 and ADV EP/INR/2015-16/25084-B dated 03.12.2015.(Copy of the said BOCGs and Invoices are enclosed herewith and marked as Exhibit B)

15.4 These facts were neither denied SIIB nor Kandla Customs and hence shall be treated as admitted as such.

15.5 Further the noticee vide its letter No. LTHE/SCRAP/MHNRD III/04/A dated 28.01.2016 had informed the Dy. Commissioner of Customs (Preventive General), Mumbai Customs that the impugned goods are left over concrete coated line pipes that remained after laying the desired pipelines at ONGC's offshore site against contract no. MR/OW/MM/ADVEP/02/2014 dated 15.11.2014. A manifest from offshore site was also produced by the noticee along with said letter to Customs. In the said letter it was also informed that M/s Bombay Marine Enterprises be allowed to offload the impugned goods from the barge and clear them on completion of custom formalities. *(Copy of the said letter along with manifest is enclosed herewith and marked as Exhibit C)*

15.6 M/s Bombay Marine Enterprises had filed a bill of entry no. 4135188 dated 03.02.2016 for the impugned goods on declaring them as "OLD, USED & RUSTED CONCRETE COATED MS PIPES" and inadvertently paid customs duty of Rs. 13,80,913/- on treating such coated line pipes as imported.

15.7 While the impugned goods are leftover concrete coated line pipes which shall undoubtedly be categorised as SCRAP, the declaration given by BME in the said bill of entry is only for the limited purpose of payment of duty, which statutorily is not leviable on the impugned goods.

15.8 The meaning of the expression "SCRAP" as given in Oxford English Reference Dictionary is "a small detached piece; a fragment or remnant". The impugned goods are nothing but the remnants of the concrete coated line pipes that were laid at the M/s ONGC's offshore site which could not be used as such. Hence the impugned goods are rightly treated by the noticee as scrap.

15.9 Further the impugned goods are left over concrete coated line pipes which were not imported from outside India but are indigenously manufactured by M/s Jindal Saw Limited out of the bare carbon steel seamless pipes. Hence the characteristic of the concrete coated line pipes is INDIGENOUS and not IMPORTED as alleged by the Customs.

15.10 The basic premise of the SCN that the noticee had sold the goods imported against advance authorisation to third party is inappropriate as the impugned goods are not imported goods but the left over concrete coated line pipes.

15.11 Further it had been wrongly inferred that the noticee had not fulfilled the export obligation from the statement of Mr Ishwarlal Raghuvanshi, an official of noticee, wherein he mentioned that because of the pendency of payment certificate from M/s ONGC, the advance authorisation is yet to be closed. While the supply

invoices of the noticee to M/s ONGC are on records of the revenue the copy of contract with ONGC was also shared. It shall be appreciated that the contract with ONGC was a lumpsum EPC turnkey contract and at the time of the said investigation the contract was under execution and therefore while the supplies were effected the payment certificate was not obtained.

15.12 The noticee has fulfilled the export obligation both in terms of value and quantity as desired by the Foreign Trade Policy 2015-20 and on finalisation of the adhoc norms by the Norms Committee of the DGFT, the said advance authorisation shall be submitted to RA, DGFT, Vadodara for redemption.

15.13 From the facts on records, it is evident that the goods i.e bare pipelines imported against advance authorisation were never diverted to any third party nor sold as such but what has been sold are left over concrete coated line pipes which are remnants of the manufactured goods after supplying to the project authority.

15.14 From the foregoing submissions, it is abundantly clear that the allegations made in the SCN do not survive and the same are squarely in the wrong premise and without any legal or other rational basis. The demand of customs duty on the bare pipes is not maintainable and liable to be dropped.

15.15 No justification for confiscation of goods and imposition of any penalty

15.16 Since the impugned goods are not leviable to any custom duty under the custom Act 1962, the confiscation of goods u/s 111 doesn't arise at all.

15.17 The impugned goods are not at all imported from outside India and hence penalty as envisaged and imposed u/s 112 and 114 of Customs Act 1962 is untenable.

15.18 In view of the above submissions, they requested to kindly drop the proceeding.

#### **PERSONAL HEARING:-**

16. The noticee viz. M/s L& T hydrocarbon Engineering Ltd. was granted the date of personal hearing on 23.02.2017 or 27.02.2017 or 28.02.2017 vide the instant Show Cause Notice itself and were directed to appear for personal hearing by themselves or through their duly authorized representative under proper Vakalatnama on any of the aforesaid three dates fixed for such personal hearing . They were also directed to submit their defence reply within 15 days of receipt of this Show Cause Notice. In reference to the above, M/s 'LTH' vide their letter dated 27.02.2017 informed that they have received the SCN on 17.02.2017, they are in the process of collating information and documents related to the SCN and requested to grant them four weeks time to file their appearance in the matter and in turn to file their reply to the above referred SCN. Personal hearing in the matter was granted on 27.03.2017 but the noticee did not turn up for the same on 27.03.2017. However, they vide their letter dated 03.04.2017 requested to give the date of Personal Hearing preferably in

3<sup>rd</sup> week of April, 2017. Accordingly, Personal hearing in the matter was granted to them on 26.04.2017 which was attended by their authorized representative namely Shri Ishwarlal N. Raghuvanshi, DGM-Marine Logistics. They had submitted their written defence reply on 26.04.2017 and also made oral submissions at the time of Personal Hearing. However, due to change in Adjudicating Authority, another Personal hearing was granted to the noticee on 06.09.2017 which was attended on the scheduled date i.e. 06.09.2017, on their behalf, by their authorized representative Shri Ishwarlal N. Raghuvanshi, DGM-Marine Logistics. He reiterated the submissions made under their written defence reply dated 26.04.2017 and further stated that they have nothing to add more in their defence and requested to decide the case accordingly.

#### **DISCUSSION AND FINDINGS:**

17. I have carefully gone through the entire records of the case, including the Show Cause Notice dated 24.01.2017, the written submission dated 26.04.2017 as well as the oral submissions made during the Personal Hearing and the relevant provisions of law. I take up the case on its merit for a decision.

18. I find that the following main issues are involved in the subject Show Cause Notice, which are required to be examined/decided-

(a) Whether the goods namely 125 pcs of carbon steel seamless line pipes imported under Bill of Entry No.9968420 dated 21.07.2015 as discussed at para 10 to this Show Cause Notice valued at Rs. 65,24,772/- should be confiscated under section 111(m) & Section (o) of the Customs Act, 1962.

(b) Whether the benefit of Notification No. 21/2015 dated 01.04.2015 should be rejected and merit duty amounting to Rs. 32,25,910/- as per the duty calculation indicated in detail in Annexure-I of the SCN should be demanded under the provisions of Section 28 (4) ibid read with the provisions of Notification No. 21/2015 dated 01.04.2015 alongwith interest as applicable;

(c) Whether penalty should be imposed under Section 112(a) of the Customs Act, 1962 on M/s. L & T Hydrocarbon Engineering Ltd;

(d) Whether Penalty should be imposed under Section 114A of the Customs Act, 1962 on M/s. L & T Hydrocarbon Engineering Ltd.

19. In regard to aforesaid proposal for confiscation of the goods namely 125 pcs of carbon steel seamless line pipes imported under Bill of Entry No.9968420 dated 21.07.2015 and valued at Rs. 65,24,772/- under section 111(m) & 111(o) of the Customs Act, 1962, firstly, I refer to the relevant Section 111 (m) and 111(o) of the Customs Act, 1962, which are reproduced below-

**Section 111 of the Customs Act, 1962:-** Confiscation of improperly imported goods, etc, the following goods brought from a place outside India shall be liable to confiscation:-

(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under Section 77 [in respect thereof, or in the case of goods under

transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

19.1 In the instant case, I find that M/s. L&T Hydrocarbon Engineering Ltd (hereinafter referred to as M/s 'LTH') had entered into an Engineering, Procurement and Construction (EPC) contract with M/s. ONGC Ltd. to construct two well Head Platforms and sub-sea pipeline by them at Bassien Oil Field, located at west coast of India. The said EPC contract was awarded to M/s 'LTH' in the international competition bidding process. To execute the above said contract they obtained Advance Authorisation bearing No.3410041368 dated 10.07.2015 from the regional authority of DGFT, Vadodara in terms of paragraph 4.05©(iii) of the Foreign Trade Policy 2015-20. Thereafter, M/s 'LTH' imported Carbon steel seamless pipes of 6" and 8" at Kandla port vide Bill of Entry No. 9968420 dated 21.07.2015 and cleared the same, availing exemption from duties of Customs, in terms of Notification No. 21/2015-Cus. dated 01.04.2015 which exempts goods from whole of customs duty for specified deemed export supplies. I find that after importation of the same M/s 'LTH' had sent the said steel pipes to their supporting manufacturer M/s. Jindal Saw Ltd., Mundra, for further processing/manufacturing i.e. concrete coating process. Such concrete coating on the steel pipes amounts to manufacture, in terms of chapter notes to Chapter 72 of First Schedule to the Central Excise tariff Act, 1985. I find that the said concrete coated pipes were cleared from M/s. Jindal Saw Ltd. without payment of Central Excise duty, availing benefit of Notification No.12/2012(CE) dated 17.03.2013 and the same were dispatched to Bassien Oil Field i.e. M/s. ONGC Ltd. vide Coastal Shipping bills No. 40/10.12.2015 (1288 pcs) and 51/29.12.2015 (1745 pcs) through Mundra Port. As per EPC contract with M/s. ONGC Ltd., M/s 'LTH' laid sub-sea pipeline at the specified place and on completion of the laying, there were 190 nos of the concrete coated steel pipes as unused & leftover. It is further observed that thereafter, M/s 'LTH' entered in to a contract with BME to sell the said 190 nos of concrete coated steel pipes which in turn were cleared by BME vide bill of Entry no. 4135188 dated 03.02.2016. I find that out of aforesaid 190 concrete coated steel pipes, raw material of 125 nos of concrete coated steel pipes of OD 8" and 6" viz. Carbon Steel Seamless line pipes API5L OD 219.1MM X WT 8.7MM (79Nos) and Carbon Steel Seamless line pipes API5L OD 168.3MM X WT 8.7 MM (46 Nos) total valued at Rs. 65,24,772/- were imported and cleared from Kandla Port vide Bill of Entry No. 9968420 dated 21.07.2015.

On going through the records, I find that investigation has revealed that M/s 'LTH' by way of selling the concrete coated M S pipes to BME has violated the condition No.(x) of Notification No. 21/2015-Customs dated 01.04.2015.

In this regard, I refer to and discuss the condition no. (x) of above said notification which provides as under

*“ the said authorization shall not be transferred and the said materials shall not be transferred and sold ; provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work”.*

From plain reading of above mentioned condition of Notification No. 21/2015-Customs dated 01.04.2015. it is crystal clear that the said authorization shall not be transferred and the said materials shall not be transferred and sold. I find that the raw materials of the above said goods were imported under Advance Authorisation for deemed export and M/s 'LTH' has also not discharged export obligation in respect of Advance Authorization Licence No. 3410041368/3/03/00 dated 10.07.2015 and amended sheet dated 15.07.2015 issued by DGFT, Vadodara. As per para 4.16 of FTP 2015-20, the subject imported goods are meant for actual user only and the same shall not be transferable even after completion of the export obligation and holder of these Advance Authorizations will have option to dispose of the product manufactured out of duty free input once export obligation is completed. As discussed(supra) M/s LTH have sold the above mentioned goods to other than eligible person and also not produced any proof regarding discharge of export obligation, hence, it is observed that they are not eligible for benefit of exemption from duties of Customs in terms of Notification No. 21/2015-customs dated 01.04.2015. I do not find any substance in the contention of M/s 'LTH' in their defence submission that there is no mis-declaration of goods on their part and their contention is contrary to the authentic and solid evidences available on records. I find from statement of Shri Naveen Mishra, employee of BME, which was recorded on 09.02.2016 under Section 108 of Customs Act, 1962, wherein he has admitted that they had filed the Bill of Entry No 4135188 dated 03.02.2016 as per the LTH's letter F. No. LTHE/Scrap/MHNRD III/04/A dated 28.01.2016 wherein the subject goods were mentioned as "M S Scrap material". Further, during the examination the Chartered Engineer from M/s. Sai Didhi Associates vide their certificate bearing no. SSA/CEC/SIIB-BOMBAY MARINE/699/2015-16 dated 05.02.2016 have also submitted his opinion that the goods were unused. In view of above material facts available on records, the said goods cannot be treated as waste/scrap. Hence, it is clearly concluded that M/s 'LTH' is wholly responsible for the mis-declaration and suppression of the material facts about the subject goods. As discussed above that the subject goods were unused as opined by the Chartered Engineer, hence the value of the goods have been ascertained from the invoice No. AQRE15EMOO1EO11C dated 10.06.2015 as declared by M/s 'LTH' at the time of importation of the goods at Kandla port vide Bill of entry No. 9968420 dated 21.07.2015. Considering the above facts, I find that M/s 'LTH' have failed to comply the conditions of Notification No. 21/2015-Customs dated 01.04.2015 and para 4.16 of Foreign Trade Policy 2015-16 by selling the goods to other than eligible person. I further find that M/s 'LTH' have not taken any permission from Customs Kandla to dispose the said goods which were exempted from payment of customs duty by way of notification claimed by them. , In view of the foregoing, I find that M/s 'LTH' is liable for contravention of various legal provisions and such contravention/or violation falls within the purview of the nature of offence prescribed under Section 111(m) and 111(o) of

the Customs Act, 1962, accordingly, I hold that the said goods are liable to confiscation under Section 111(m) and Section(o) of the Customs Act, 1962.

19.2 I find that there is a difference between “confiscation” and “liable for confiscation”. It is settled law that the goods which are “liable for confiscation” can be ordered for to be confiscated, and fine in lieu of confiscation can be imposed. Mis-declaration of the goods is one of the modality to derive illegal benefit by evasion of customs duty and is breach of law. In cases where proper declaration of the goods are not made for some purpose, then it would not only amount to violation of the conditions for import/export of the goods but it would certainly amount to illegal/unauthorized imports and against the statute.

19.3 In the instant case, as discussed above, there was violation of the conditions of Notification No.21/2015-Customs dated 01.04.2015 and para 4.16 of Foreign Trade Policy 2015-20. I further find that M/s. ‘LTH’ have contravened the provisions of Section 46(4) of the Customs Act, 1962, Rules 14 of the Foreign Trade (Regulation) Rules, 1993, in as much as they have deliberately mis-declared the goods. Accordingly, confiscation of the goods is justified. Since the goods are “not available for confiscation” but they are “liable for confiscation” under Section 111(m) of the Customs Act, 1962, therefore, I hold that M/s ‘LTH’ are liable for redemption fine under Section 125 of the Customs Act, 1962 in lieu of confiscation.

20. Now the next issue for determination is whether M/s ‘LTH’ are eligible to avail the benefit of Notification No. 21/2015 dated 01.04.2015 and the demand of Customs duty amounting to Rs. 32,25,910/- (as per the duty calculation indicated in detail in Annexure-I of the SCN) under the provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest is sustainable.

In the instant case, as discussed(supra), M/s LTH, had imported Carbon steel seamless pipes of 6” and 8” at kandla port vide Bill of Entry No. 9968420 dated 21.07.2015 and cleared the same, availing exemption from duties of Customs, in terms of Notification No. 21/2015-Cus. Dated 01.04.2015 which exempts goods from whole of customs duty for specified deemed export supplies.

The key for understanding of the above said Notification No. 21/2015-Cus. dated 01.04.2015 is to read the notification in simple terms and not to import any other meaning which is not intended in the notification. The condition no. (x) of the said notification says that “ *the said authorization shall not be transferred and the said materials shall not be transferred and sold ; provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work*”.

It is worth mentioning that the raw materials of the above said goods were imported under Advance Authorisation for deemed export. M/s ‘LTH’ has also not discharged export obligation in respect of said Advance Authorization Licence No. 3410041368/3/03/00 dated 10.07.2015 and amended sheet dated 15.07.2015 issued by DGFT, Vadodara. As per para 4.16 of FTP 2015-20 the subject imported

goods are meant for actual user only and the same shall not be transferable even after completion of the export obligation and holder of these Advance Authorizations will have option to dispose of the product manufactured out of duty free input once export obligation is completed. As discussed(supra), M/s 'LTH' has sold the above mentioned goods to other than eligible person and also not produced any proof regarding discharge of export obligation, hence, it is observed M/s 'LTH' has failed to comply the conditions of Notification No. 21/2015-customs dated 01.04.2015 and para 4.16 of FTP 2015-20 by selling the goods to other than eligible person. I further find that the importer M/s 'LTH' have not taken any permission from Customs Kandla to dispose the said goods which were exempted from payment of customs duty by way of notification claimed by them. Therefore, I hold that M/s 'LTH' are not liable to avail the benefit of Notification No. 21/2015-customs dated 01.04.2015. Since in the instant case M/s 'LTH' has wrongly availed the benefit of above said notification, which in turn led to non-payment of Customs duty amounting to Rs. 32,25,910/-, accordingly I hold that the Customs duty of Rs. 32,25,910/-is liable to be recovered from them under Section 28 (4) of the Customs Act, 1962 .

Further, Section 28AA of the Customs Act, 1962 stipulates that when the noticee are liable to pay duty in accordance with the provisions of Section 28ibid, they in addition to such duty are also liable to pay interest as well. The said Section provides for payment of interest automatically along with the duty. I have already held that Customs duty of Rs. 32,25,910/- is required to be recovered from them. In view of above facts and findings, I hold that said noticee i.e. M/s 'LTH' is also liable to pay interest involved on the amount of Rs. 32,25,910/-under the provisions of Section 28 AA of the Customs Act,1962 .

21. In regard to penalty under Section 112(a) and Section 114 A of Customs Act, 1962 on M/s L& T Hydrocarbon Engineering Ltd., firstly I refer to and discuss the provisions of Section 112(a) and 114A of the Customs Act,1962. They are reproduced as under :-

**Section 112(a) of the Customs Act, 1962:-**

“ In terms of Section 112(a) of the Customs Act, 1962 - any person, 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 to penalty”.

**Section 114A of the Customs Act, 1962:-**

“In terms of Section 114A where the duty has not been levied or has been short - levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub- section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined.”



I find that for imposition of penalty under Section 112(a), it is necessary to bring on records the reason that there is omission of the Act and such omission renders the goods liable for confiscation or abets the doing or omission of such act or any provision of the Act or Rule are sufficient cause to impose the penalty on the person(s). The contention of the noticee viz. M/s 'LTH' in respect of penalty under Section 112(a) and 114A is that since the impugned goods are not at all imported from outside India and hence penalty as envisaged and imposed under Section 112(a) and 114A of Customs Act, 1962 is untenable.

As discussed(supra) in detail, M/s 'LTH' has sold the above mentioned goods i.e. concrete coated pipes to other than eligible person and not produced any proof regarding discharge of export obligations. Moreover, among other facts and circumstances, one fact that can not be lost sight of is that the noticee were aware of the provisions and conditions laid down by subject Notification No. 21/2015- Customs dated 01.04.2015 and para 4.16 of Foreign Trade Policy 2015-20. However, I find that they have failed to comply the conditions of said Notification and para 4.16 of FTP 2015-20 by selling the goods to other than eligible person. They as a importer were required to take permission from Customs Kandla to dispose the said goods which were exempted from payment of customs duty by way of notification claimed by them, however they have failed to do so in the instant case. Since, I have already held that M/s 'LTH' has rendered the goods liable to confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962, therefore, for their act of commission or omission, I hold that penalty under Section 112(a) is attracted on them.

22. In regard to penalty on M/s 'LTH' under Section 114A of the Customs Act, 1962, from the above facts and as per the available records of proceedings, as discussed above that Shri Naveen Mishra, employee of BME, in his statement which was recorded under Section 108 of the Customs Act, 1962 on 09.02.2016, has admitted that they had filed the Bill of Entry as per the LTH's letter F. No. LTHE/Scrap/MHNRD III/04/A dated 28.01.2016 wherein the subject goods were mentioned as "M S Scrap material". Further already discussed that the Chartered Engineer from M/s Sai Sidhi Associates, vide their Certificate bearing No. SSA/CEC/SIIB-BOMBAY MARINE/699/2015-16 dated 05.02.2016 have also opined that goods are "unused". Hence, as discussed(supra) it is established that M/s LTH has mis-declared the subject goods and wilfully suppressed the material facts and in this manner evaded the Customs duty of Rs. 32,25,910/-. Therefore, I find that M/s 'LTH' is fully responsible for mis-declaration of the goods and by this act of mis-declaration of the goods and suppression of the facts, they are rightly liable for penal action under Section 114A of the Customs Act, 1962. Thus on the basis of above facts and findings, I hold that penalty under Section 114A of the Customs Act, 1962 is imposable on M/s L& T Hydrocarbon Engineering Ltd., MFF, EPC Block, Hazira, Surat, Gujarat-394510.

23. I find from the available records of the case that the authorized representative of M/s 'LTH', in support of their defence, have placed reliance on decision/judgements viz. CESTAT Ahmedabad Order No. A/11324/2015 dated

15.09.2015 in case of M/s Swiber Construction Pvt. Ltd V/s Commissioner of Customs, Kandla and CESTAT, WZB, Mumbai Order No. A/410/2005-WZB/C-I(C.S.T.B.), dated 27.10.2005 in appeal no. C/791/2004 of CLOUGH ENGINEERING PVT. LTD. V/s Commissioner of Cus.(Import), Mumbai. I am of the view that the conclusions arrived may be true in those cases, but the same cannot be extended to other case(s) without looking to the hard realities and specific facts of each case. Those decisions/judgements were delivered in different context and under different facts and circumstances, which can not be made applicable in the facts and circumstances of this case. Further, these would have been relevant had there been any doubt for taking a decision regarding the declaration of the impugned goods imported and covered by the Show Cause Notice. As such, there would not have even a need for referring to those decision/judgements. Therefore, I find that applying the ratio of one case to that of the other, the decisions of the Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004(170)ELT 135(SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC(Port), Chennai Vs Toyota Kirloskar[2007(2013)ELT4(SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

24. In view of the foregoing discussions and findings, I pass the following order-

**ORDER**

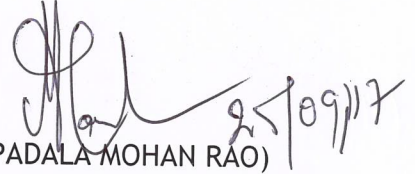
(a) I order for confiscation of the goods namely 125 pcs of carbon steel seamless line pipes imported under Bill of Entry No.9968420 dated 21.07.2015, valued at Rs. 65,24,772/- under section 111(m) & 111(o) of the Customs, Act, 1962. However, since the impugned goods are not physically available for confiscation, I impose a redemption fine of Rs.20,00,000/- (Rupees Twenty Lakhs only) under Section 125 of the Customs Act, 1962 in lieu of the said confiscation.

(b) I reject the benefit of Notification No. 21/2015 dated 01.04.2015 and confirm the demand of duty amounting to Rs. 32,25,910/- (Rupees Thirty Two Lakh Twenty Five Thousand Nine Hundred Ten only) as per the duty calculation indicated in detail in Annexure-I of the SCN, under the provisions of Section 28 (4) ibid read with the provisions of Notification No. 21/2015 dated 01.04.2015 alongwith interest as applicable. Accordingly I order recovery of the duty of Rs.32,25,910/- from M/s L& T Hydrocarbon Engineering Ltd., MFF, EPC Block, Hazira, Surat-394510, (Gujarat) under Section 28 (4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962

(c) I impose a penalty of Rs.16,00,000/- (Rupees Sixteen Lakhs only ) under Section 112(a) of the Customs Act, 1962 on M/s L& T Hydrocarbon Engineering Ltd., MFF, EPC Block, Hazira, Surat-394510, (Gujarat) .

(d) I impose a penalty of Rs. 32,25,910/- (Rupees Thirty Two Lakh Twenty Five Thousand Nine Hundred Ten only) under Section 114A of the Customs Act, 1962 on M/s L& T Hydrocarbon Engineering Ltd., MFF, EPC Block, Hazira, Surat-394510, (Gujarat) .

25. This order is passed without any prejudice to any other action that may be taken against the above mentioned firms and the persons under provisions of the Customs Act, 1962 or any other law for the time being in force.



(PADALA MOHAN RAO)

Additional Commissioner (Adj.)  
Custom House, Kandla

F.No.S/10-209/ADJ/ADC/L& T/2016-17

Dated 25.09.2017

BY REGISTERED POST /A.D.

To:-

M/s L& T Hydrocarbon Engineering Ltd.,  
MFF, EPC Block, Hazira,  
Surat-394510, (Gujarat)

Copy to:-

1. The Deputy/Assistant Commissioner(SSIB), Custom House, Kandla
2. The Deputy/Assistant Commissioner(RRA), Custom House, Kandla
3. The Deputy/Assistant Commissioner (Recovery), Custom House, Kandla
4. Guard File.