



सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण
CUSTOMS AUTHORITY FOR ADVANCE RULINGS
नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई - ४०० ००१
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001
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The 04th of August, 2022
Ruling Nos. CAAR/Mum/ARC/30/2022
in
Application No. CAAR/CUS/APPL/43/2022 - O/o Commr-CAAR-MUMBAI

Name and address of the applicant: M/s Subcom Projects India Pvt Ltd, Lodha Supremus,
Senapati Bapat Marg, Lower Parel, Mumbai, Maharashtra-
400013

Commissioner concerned: The Principal Commissioner of Customs, Nhava Sheva-II,
Jawaharlal Nehru Customs House, Nhava Sheva, Tal:
Uran, Dist: Raigad, Maharashtra – 400707

The Commissioner of Customs (Import I & II),
Mumbai Zone-1 2nd Floor, New Custom House, Ballard
Estate, Mumbai-400001

The Commissioner of Customs, Chennai-II (Import
Commissionerate), Custom House, 60, Rajaji Salai, Chennai-
600 001

The Commissioner of Customs, Cochin Custom House,
Willingdon Island, Cochin-682009

Present for the applicant: Sh. Sivarajan, Partner, Price Waterhouse & Co LLP;
Sh. Kunal Wadhwa, Partner, Price Waterhouse Coopers Pvt
Ltd.;

Present for the Department: Sh. Manoj Kumar Kedia, Commissioner of Customs (Import
I & II), Mumbai Zone-1;
Sh. R.K.Singh, Additional Commissioner of Customs, O/o
Pr. Chief Commissioner of Customs, Mumbai ;

Ruling

M/s. SubCom Projects India Private Limited ((hereinafter referred to as 'applicant') filed an application on 16.06.2022 seeking advance rulings on the applicability of Sr. No. 555 and 557C of the Customs Tariff Notification No. 50/2017, dated 30.06.2017 for import of cable laying vessel.



2. The applicant is a 99.99% owned subsidiary of SubCom, LLC, USA. SubCom, LLC is a company engaged in the business of laying submarine cables under the seabed, which are used for telecommunication/ internet connectivity. SubCom, LLC is engaged by telecom companies in India for laying submarine cables under the seabed in India. SubCom, LLC has subcontracted the task of laying telecommunication cables under the seabed in India to the applicant. Pursuant to the said contract, the applicant intends to import cable laying vessels on lease from Transoceanic Cables Company LLC on a time charter basis. The applicant would use the cable laying vessels for laying cable under the seabed in India. Vessels may exit Indian Customs waters after the initial import and return to Indian Customs waters to continue cable laying activities. The cable laying vessels are expected to leave Indian Customs waters after the completion of the cable laying activity. While the cable laying vessel is proposed to be imported by the applicant on a lease, the cables and other goods required for cable laying will be imported by the customers of the applicant in India (hereinafter referred to as the purchasers) who had or would in future, award a contract to SubCom, LLC for laying the submarine telecommunication cable under the seabed in India. The purchasers would remit applicable customs duties on such imports. All the cables and other goods required for cable laying would be carried into India on the applicant's cable laying vessel. Subsequent to such import by the purchasers on the vessel of the applicant, the applicant would install those goods and cables.

2.1 The applicant intends to claim exemption from basic customs duty and Integrated Goods and Service Tax with respect to the import of cable laying vessel, as per Sr. Nos. 555 and 557C of the Notification No. 50/2017-Customs, dated June 30, 2017.

The relevant entries of the said notification are reproduced below:

Sr. No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of goods	BCD	IGST	Condition
555	8096	All goods (excluding vessels and other floating structures as are imported for breaking up)	Nil	-	84
557C	89		-	Nil	105

Conditions:

84. *If the vessels and other floating structures are intended to be broken up after their importation, the importer shall present a fresh bill of entry to the Commissioner of Customs, and thereupon such goods shall be chargeable with the duty which would be payable on such goods as if they were entered for home consumption, under section 46 of the Customs Act, 1962 (52 of 1962), on the date of the presentation of such fresh bill of entry for the purposes of break-up of such goods.*

105. *The importer, by the execution of bond, in such form and for such sum as may be specified by the Commissioner of Customs, binds himself to, -*

1. *pay duty on goods used in cable laying or repairing services, leviable under the Customs Act, 1962 and integrated tax leviable under Section 3 (7) of the Customs Tariff Act, 1975;*



2. *pay applicable integrated tax leviable under section 5(1) of the Integrated Goods and Services Tax Act, 2017 on cable laying or repair service;*
3. *to furnish an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that the imported goods shall not be cleared for home consumption, and shall be used only for the intended purpose;*
4. *to re-export the ship/ Vessel immediately after completion of the said cable laying or repairing service;*
5. *to pay on demand an amount equal to the integrated tax payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions.";*

2.2 As per Sr. No. 557C of the Notification, the import of cable laying vessel for purpose of laying cable in Indian Customs waters is exempt from IGST subject to fulfilment of five conditions. A substantial portion of the goods (owned by the system purchaser) would be carried into India on the applicant's cable laying vessel. While the applicant intends to undertake to fulfil conditions numbers 2 to 5 specified above, the applicant believes that it has to satisfy condition number 1 as well. Condition number 1 requires that the importer of the cable laying vessel (i.e., the applicant in the instant case) shall bind himself to pay BCD and IGST on the goods used in cable laying or repairing services. The fact that the goods used in cable laying are not imported by the applicant may create ambiguity regarding whether the applicant is eligible for exemption. As per the applicant, the condition of payment of appropriate customs duty on the goods used in the process of cable laying gets fulfilled regardless of who is the importer on record (IoR). Therefore, they believe that they are eligible to claim benefits under the said notification. In support of the above, the applicant has submitted various case laws.

2.3 In this context, the applicant seeks rulings on the following questions:

1. Is the applicant eligible to claim exemption from BCD on import of cable laying vessel as per Sr. No. 555 of the notification?
2. Can the applicant claim exemption from IGST for import of cable laying Vessel as per Sr.No. 557C of the notification in the case where the applicant is the importer on record ('IoR') for the cable laying vessel and the purchasers are the IoR for the cables, and other goods used in cable laying service?

3. In their CAAR-1 form, the applicant has indicated that they intend to import said goods from the jurisdiction of the principal commissioner/ commissioner of seaports of Zone-1 and 2, Mumbai, Chennai and Cochin. Their application, therefore, was forwarded to the respective customs jurisdictions for comments. However, no reply has been received, though reminders have also been sent.

4. A personal hearing was held on 19.07.2022 at 12.00 PM. Sh. Sivarajan and others appeared on behalf of the applicant. Sh. Manoj Kedia and Sh. R. K. Singh appeared on behalf of Customs Zone-1, Mumbai. Sh. Sivrajan and his team explained that ABC, Singapore has contracted Subcom, USA to import a cable laying vessel into India. Accordingly, the applicant would import the vessel on behalf of the US-based parent company. The vessel would also carry the cable to be laid for which the bill of entry would be filed by the Indian counterpart of the Singapore-based parent company. Sh. Sivrajan explained that even for the cable, the duty would be paid by them which would be reimbursed by the importer, subsequently in this context, they wish to ascertain their eligibility for the benefit of Sr. Nos. 555 and 557C of the



Notification No. 50/2017- Cus, as amended, with special emphasis on the conditions attached to the latter.

4.1 S/Sh. Kedia and Singh asked about the import process, machinery onboard the vessel, consumable stock etc.

5. I have considered all the materials placed before me in respect of the subject devices. I have also gone through the submissions made by the applicant during the personal hearing. No written reply has been received from the jurisdictional commissioners. Therefore, I proceed to pronounce my rulings on the basis of information available on record. The issue before me is the applicability of Sr. Nos. 555 and 557C of the Customs Tariff Notification No. 50/2017, dated 30.06.2017 for import of cable laying vessel. At first, I will examine the classification of the cable laying vessel. GRI 1 provides that the classification of goods shall be "determined according to the terms of the headings and any relative section or chapter notes." In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order. Chapter 89 covers ships, boats and other vessels of all kinds (whether or not self-propelled), and also floating structures such as coffer-dams, landing stages and buoys.

As per the HSN explanatory note to heading 8906, *it covers all vessels not included in the more specific headings 89.01 to 89.05.*

It covers:

(1)...

(6) Vessels for the transportation and mooring of buoys; cable ships for laying underwater cables, e.g., for telecommunications.

Heading 8906 is further divided into warships and other vessels. Therefore, based on the chapter note and explanatory note, the cable laying vessel appears to merit classification under subheading 89069000.

5.2 Before examining the issue of applicability of the said notification, I will analyse the cable laying contract between various parties. As per the contract signed between the purchasers and SubCom LLC, USA, the ownership of the goods used for cable laying service (like undersea cable, repeaters, optical gear, machinery, apparatus, materials, computer hardware etc) is transferred by SubCom LLC to the purchasers before the goods enter India as the purchaser will own and operate this important critical infrastructure in India. Therefore, purchasers are owners and IoR for the cables and other goods to be imported into India. Cables and other goods used for cable laying services would be imported by the purchasers in the applicant's vessels. In other words, the cable laying vessel and the goods to be installed by the vessel would be imported into India at the same point in time by different importers. The applicant would be the IoR for the vessel while the purchasers would be the IoR for the cable and goods on board the applicant's vessel. The applicant further stated that they would ensure payment of Customs Duty on behalf of or by the purchasers. The applicant will also ensure that the customs duty on the cables and other goods are remitted by the purchasers before the cable laying vessel is imported into India.

5.3 As per Sr.No. 555 of the notification all goods (excluding vessels and other floating structures imported for breaking up) classified under the heading 8906 shall be exempt from BCD subject to fulfilment of condition no. 84. Condition no. 84 is applicable in cases where the vessels and other floating structures are intended to be broken up after their importation.



As the vessel is imported for the purpose of laying cable in Indian customs waters, condition no. 84 does not seem to apply in the instant case. Therefore, the cable laying vessel classified under the heading 8906 fits under Sr. No. 555 of the notification, and hence, would be eligible for exemption from BCD.

5.4 In respect of the eligibility for exemption of IGST as per Sr. No. 557C of the said notification, the applicant would have to fulfil the following conditions:

- a) Undertake to pay customs duty on goods used in cable laying or repairing services,
- b) Undertake to pay IGST on cable laying or repair service provided in India,
- c) Provide an undertaking to the customs authorities in India to the effect that the imported goods shall not be cleared for home consumption and shall be used only for the intended purpose;
- d) Re-export the ship/ vessel immediately after completion of the said cable laying or repairing service,
- e) Undertake to pay IGST on the cable laying vessel but for the exemption in the event of a violation of any of the above conditions

The applicant undertakes to fulfil conditions nos. 2 to 5 above. However, the issue remains whether the applicant can provide an undertaking on condition number 1 above, i.e., to pay customs duty on goods used in cable laying services. As per the applicant, condition number 1 suggests that the applicant should be the IoR for the said goods and they should pay BCD. The applicant further states that this interpretation that the IGST exemption shall be available only when the applicant pays the customs duty on the goods imported in the process of cable laying by being an IoR in the current facts and circumstances may lead to the double payment of customs duty, at the first instance by the purchasers and then by the applicant. Alternatively, the applicant would have to pay customs duty on the import of the cable laying vessel by being denied the exemption available for the same.

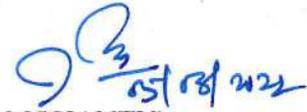
5.3.1 As per the applicant, the condition number 1 only requires that the appropriate customs duty should be paid on the goods imported into India in the process of cable laying. In the instant case, the intention of the legislature, i.e., payment of appropriate customs duty on the goods used in the process of cable laying gets fulfilled regardless of who is the IoR, provided an appropriate customs duty is paid. Therefore, the applicant is of the view that they are eligible to claim exemption from IGST even if the purchasers are the IOR and pay the customs duty. It is a well settled principle that a statute must be construed according to the intention of the legislature and the courts should act upon the true intention of the legislation while applying the law and interpreting law. In the case of *CST v. Industrial Coal Enterprises* (1999) 2 SCC 607 the Hon'ble Supreme Court held that "*provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision.*". In the case of *State of Jharkhand v. Tata Cummins Ltd* (2006) 4 SCC 57 the Hon'ble Supreme Court observed that "*however, when an assessee is promised with a tax exemption for setting up an industry in the backward area as a term of the industrial policy, we have to read the implementing notifications in the context of the industrial policy. In such a case, the exemption notifications have to be read liberally keeping in mind the objects envisaged by the industrial policy and not in a strict sense as in the case of exemptions from tax liability under the taxing statute.*". In the present case, it appears that the object of the notification is to grant IGST exemption on import of cable laying vessel subject to payment of appropriate customs duty on the goods imported into India in the process of cable laying apart from fulfilment of the other conditions mentioned therein. The applicant



stated that they would submit a modified undertaking ensuring payment of customs duty on behalf of or by the purchasers. The applicant would also ensure in the undertaking that the customs duty on the cables and other goods are remitted by the purchasers before the cable laying vessel is imported into India. Therefore, I find that the applicant would be eligible to claim IGST exemption under Sr.No 557C of the notification subject to fulfilling the condition of duty payment on goods used in the cable laying services.

5.4 During the personal hearing the jurisdictional commissionerate raised the issues of the import process, machinery on board the vessel, consumable stock etc. However, as these do not pertain to the subject matter of the application, I will not deliberate on it. These issues would have to be considered by the assessing officer at the time of import as per law.

6. In view of the foregoing discussions, I rule that the applicant is eligible to claim benefits under Sr. Nos. 555 and 557C of the Notification No. 50/2017, dated 30.06.2017 for import of cable laying vessel, subject to fulfilment of conditions, as discussed above.



(M.R. MOHANTY)

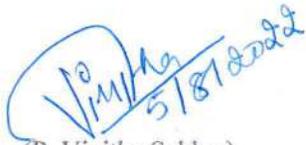
Customs Authority for Advance Rulings,
Mumbai



This copy is certified to be a true copy of the ruling and is sent to: -

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8. The Chief Commissioner (AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi - 110066. Email: cdrcestat123@gmail.com, ccar.cestat-delhi@gov.in
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(P. Vinitha Sekhar)
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