**OPINION**

**1.** **QUERIST:**

M/s.Ben Line Agencies, Chennai on behalf of National Institute of Ocean Technology, Chennai.

**2. FACTS:**

2.1 Querist is handling stores and supply/loading of equipment to NIOT vessels which are registered as ‘coastal run’ and also as ‘foreign run’.

2.2 It is reported that one of the NIOT vessels viz. ‘Sagar Nidhi’ is registered as a Foreign Run Vessel. It appears that Customs have raised objections with regard to movement and return of scientific and research equipment from the above vessel without going through the process of import clearance as, according to them, unloading of the goods from a vessel in the foreign run will constitute import into the country.

2.3 It also appears that Customs have allowed manual filing of shipping bill at the time of loading of the goods to the vessels and also permitting manual filing of bill of entry when the equipment are unloaded from the vessels when they call at the ports. A clarification that these movements will constitute export and import under the provisions of Customs Act has been provided to NIOT by customs in terms of a letter dated 10.3.2023.

2.4 It is further stated that in terms of exemption notifications applicable to NIOT for scientific and research equipment updated as of now, basic customs duty exemption can be claimed. However, IGST needs to be paid. Therefore, in this background, Customs are insisting for payment of IGST at the time of clearance of these equipment when they are unloaded from the vessel.

**3. QUERY:**

The querist would like to know the correctness of the stand taken by the Customs and also the scope with regard to clearance of the goods without payment of duty.

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**4. OPINION:**

4.1 I have gone through the clarificatory letter dated 10.3.2023 issued by Customs to NIOT. It is an undisputed fact that the particular vessel (Sagar Nidhi) is registered under ‘Foreign Run’ as of now. In such as case, it will be a foreign going vessel for the purpose of Customs Act and when it goes beyond the territorial waters of India, anything loaded into such vessel will constitute “export”. Similarly, when the vessel comes back and the goods are unloaded from the vessel at any port in India, it will become “import” into the country.

4.2 In this regard, the definition of the expressions, “Export”, “Import” and “Indian Customs Waters” in terms of Section 2(18), 2(23) and 2(28) is as follows.

*(18) “export”, with its grammatical variations and cognate expressions, means taking out of India to a place outside India;*

*(23) “import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;*

*(28) “Indian customs waters” means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) and includes any bay, gulf, harbour, creek or tidal river;*

4.3 By taking into account the above definitions, it is to be noted that for any equipment loaded into the above vessel, appropriate documentation needs to be filed by treating it as “export” and similarly, when the equipment comes back, appropriate documentation needs to be filed by treating the transaction as “import”. Therefore, to this extent, the customs authorities are correct in their contention as set out in their letter dated 10th March 2023. At the same time, considering the peculiar nature of the above process, Customs can allow manual filing of shipping bill and also manual filing of bill of entry.

4.4 In the above background, since the subject vessel goes outside the territorial waters of India and comes back, it will be appropriate that Export Manifest and Import Manifest are filed, if the same is possible with reference to various other provisions applicable to a vessel when it calls at a port. If such filing of EGM/IGM can be done, then, shipping bills and bills of entry can be filed in the EDI system itself by avoiding the cumbersome manual process.

4.5 It may be noted that apart from specific exemption notifications that may be applicable to government research institutes, in the present case, it should be possible to claim complete exemption for the equipment by invoking the provisions relevant for re-import of goods that are exported.

4.6 In this connection, attention is invited to Notification No.45/2017-Customs dated 30.6.2017 relating to exemption for re-import of goods exported from India on or after 1st July 2017. A copy of the above notification is attached as Annexure to this opinion.

4.7 A perusal of the above notification will show that goods exported without any claim for drawback, or claim for refund of IGST and without availing benefits under any export incentive schemes (such as EPCG, Advance authorization) can be cleared without payment of basic customs duty as well as IGST and compensation cess as per Sl.No.5 of the Table attached to the above notification. Re-import should take place within a period of three years and identity of the goods need to be established and ownership between export and import should not have changed.

4.8 In respect of the goods taken out of India in the research vessel and then brought back to the shore, it should be possible to establish identity and claim total exemption in terms of the above notification.

4.9 For this purpose, it is necessary that marks and numbers to establish identity of each item loaded on to the vessel need to be noted and when the vessel comes back, the identity of the same items can be established with the initial report. Once this is done, then without payment of any duty, including IGST, the Institute should be able to clear the goods.

4.10 It may be noted that even in this process, it is necessary that the procedure relating to filing of shipping bills, getting the goods examined, obtaining the examination report and then filing of bill of entry at the time of return of the equipment and examination of the same to establish identity with reference to the export documents, all have to be gone through. This procedure in the long run may be cumbersome.

4.11 One option will be to approach the Ministry of Finance with a request to them to issue specific exemption notification in respect of equipment loaded on such research vessels and then brought back, subject to certain conditions as may be prescribed by the Ministry. If an appropriate exemption is given in the above manner, establishment of identity each time involving a cumbersome process can be avoided.

4.12 However, it may be noted that it may not be possible to avoid filing of documents relating to export as well as import. This is in view of the specific definitions in the Customs Act relating to what will be “export” and what will be “import”.

**S. MURUGAPPAN**

Attached: as above.

sm/ss

**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the queriest 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.

**BY E-MAIL / COURIER**

**File No.80/2023-Opinion**

22.04.2023

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**Mobile: 92822 44022**

Sir,

**Sub.: Movement of Scientific and Research Equipment in NIOT Vessels registered as ‘Foreign Run’ – Clarifications – Reg.**

1. In connection with the above, find attached the following.

(a) Opinion.

(b) Our Bill towards professional charges.

2. Should you need any further clarification in this regard, please feel free to contact me. Kindly arrange for payment of the attached bill.

Yours faithfully,

**S. MURUGAPPAN**

Attached: as above.

sm/ss