**OPINION**

**1. QUERIST:**

M/s. Indium Solder Pvt. Ltd.,

Shed A, NP7, Guindy Industrial Estate,

Ekkaduthangal,

Chennai – 600 032.

**2. FACTS:**

2.1 The querist regularly imports powder materials predominantly consisting of silver for soldering use. The customs authorities, ignoring the test results provided by the querist, has adopted the test result given by the government laboratory and based on the silver content certified in such reports by the laboratory, revised the values for assessment purposes. Besides hold up of consignments for a considerable time, the querist is constrained to pay demurrage and other storage charges. It is further reported that a few consignments are cleared without much difficulty but in a few consignments, depending upon the officer posted, queries are raised with regard to the silver content in the goods imported. This involves testing of the goods, re-assessment of the consignments by enhancing the values based on the test results etc.

2.2 According to the querist, the silver content is correctly declared by them and their supplier as well as independent laboratories confirm their composition details as adopted by the querist. Even then, the customs authorities, based on the customs lab results reject the declared values and carry out re-assessment by enhancement of the value.

**3. QUERY:**

 Since this process involves considerable time, the querist wants to explore the various possibilities and, in that regard, the following are the queries raised by them.

3.1 What if custom officer does not accept the querist’s request to get the sample tested by a NABL accredited lab (which is government certified body). In some of the past cases custom officer rejected the querist’s request to get the testing done and insisted to get testing done in only CSRL (custom) lab.

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3.2 Regarding cross examination and getting the test methodology details from the lab, how is this to be done? (as they simply do not disclose the method). Do we need to send a legal notice for cross examination and whether it will be done by the court appointed team?

3.3 Also what is the time period required to get this done, as the querist may get these shipments cleared not later than 10 days.

3.4 Most important question, since the querist has already faced this issue continuously for 4 -5 in a row during Feb. 2023, can they use it to file a case and get a court judgement.  This the querist can use for all the future shipment clearance, rather than waiting for custom officers to stop future shipments and then the querist going through this entire exercise.

**4. OPINION:**

4.1 Before taking up the questions raised by the querist, it will be necessary and appropriate to refer to the provisions relating to assessment of goods, payment of duty and their clearance upon completion of customs formalities.

4.2 In this regard, Section 17 of Customs Act 1962, which reads as follows, is directly relevant and important. This reads as follows.

*“****SECTION 17. Assessment of duty.*** *— (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

*(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary :*

***Provided*** *that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.*

*(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.*

*(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*

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*(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.*

*… …”*

4.3 From the above extract, it can be seen that as per Section 17(1) the importer is permitted to self-assess the duty liability and pay duty accordingly and take clearance of the goods. In terms of Section 17(3), for verifying the correctness of the self-assessment made, the customs authorities can call for any documents or subject the goods to chemical test and based on such examination of additional documents / test results, if re-assessment is warranted then, the authorities are permitted to carry out re-assessment. From sub-section (5) of Section 17 it also may be seen that where the importer accepts the re-assessment, no speaking orders are to be issued and, in all cases where the re-assessments are disputed, it is obligatory on the part of the customs authorities to issue a speaking order within fifteen days from the date of re-assessment.

4.4 Section 18 of Customs Act referred to above provides for provisional assessment of the goods imported in the following situations.

***“Section 18. Provisional assessment of duty.*** *— (1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46and section 50, —*

*(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or*

*(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or*

*(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or*

*(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,*

*the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.”*

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4.5 Therefore, it is possible to carry out provisional assessment in respect of situations enumerated from (a) to (d) above.

4.6 From the above provisions, it can be seen that when test results or re-assessment etc. are contested, it is obligatory for the authorities to issue a speaking order. On the basis of the speaking order then, it is possible for the importer to initiate further proceedings by way of appeal etc.

4.7 Accordingly, when a consignment is pending clearance and if the customs lab reports a different percentage of metal content with the one declared by the querist, then, request for re-test can be made. Such request for re-test should be backed up by supplier’s test results and other independent laboratory reports showing a different percentage of metal content. On this basis, when request is made, the authorities cannot refuse to carry out re-test. The existence of another test report with a different test result will be sufficient to force the customs authorities to carry out a second test. However, the customs may not accept to refer the matter to any independent laboratory not coming within the purview of the government. Any further test by the customs authorities will be done by the customs lab itself and further testing is usually carried out by the Delhi laboratory.

4.8 After the consignment is cleared and without availability of any further samples for test, re-testing cannot be carried out. When the consignment is pending clearance and test results are at variance with the supplier’s analysis certificate / test certificate, then, at that point of time request for cross examination of the laboratory people can be made. There are cases where customs do not entertain requests for cross examination but where justification is provided, like supplier’s test certificate, third party lab certificate etc. then, the customs authorities will be permitting such cross examination. It is to be noted that all these can be done only when the re-assessment is pending and the consignment is yet to be cleared. Alternatively, the consignment can be cleared by paying duty at the higher value and before issue of the speaking order for the re-assessment made the customs authorities can be asked to permit cross examination of the laboratory people. Such cross examination is done at departmental level before the adjudicating authority, usually Assistant Commissioner/Deputy Commissioner and no court proceedings are involved. The questions will be raised by the importer or their consultant / advocate. In such cases, after completion of the cross examination, speaking orders will be issued.

4.9 It may be noted that there is no option to approach the court directly in respect of any delay in these processes or because a different view is taken by the customs authorities. Courts will indicate that there are alternate remedies available to the importer by way of appeal within the department. Apart from that, it also may be noted that obtaining any order from the court itself will take a few weeks.

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4.10 There is no provision to send any legal notice to customs for cross examination of the lab people. Only request letters can be given to the department seeking cross examination. In case such requests are denied, then, based on communications denying such requests, appeal can be filed before the Commissioner (Appeals) within the customs department.

4.11 After issue of speaking order, appeal can be filed before Commissioner – appeals contesting the enhancement of value. For such appeal, it is necessary that retest results are available which are different from the original test results. In such a situation only, there is scope to succeed in appeal. Any appeal against a speaking order has to be filed within 60 days from date of receipt of such order.

**S. MURUGAPPAN**

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.84/2023-Opinion**

02.05.2023

M/s. Indium Solder Pvt. Ltd.,

Shed A, NP7, Guindy Industrial Estate,

Ekkaduthangal,

Chennai – 600 032.

Attn.: Mr. Ashutosh Jha, Plant Manager <ajha@indium.com>

**Mobile: 96000 10205**

Sir,

**Sub.: Valuation of Silver Soldering Material – Clarifications – Reg.**

1. In connection with the above, please find attached our opinion.

2. Should you need any further clarification in this regard, please feel free to contact me.

3. Kindly arrange for payment of the bill already forwarded on 29.04.2023.

Yours faithfully,

**S. MURUGAPPAN**

Attached: as above.

sm/ss