



PMC Cell – MM

# Oil and Natural Gas Corporation Ltd

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## Circular No. 48/2022

No: DLI/CORP-MM/PMC/2022/13(117)/972017

Dated:17.10.2022

**Sub: Impact of Customs Notification No. 02/2022-Cus dated 01.02.2022 on Service and LSTK Contracts.**

Reference is invited to Circular No. 07/2022 dated 09.02.2022 and 08/2022 dated 17.02.2022, vide which guidelines were issued in line with Notification No. 02/2022-Customs dated 01.02.2022 for availing concessional rate of Customs Duty.

It is noted that various contractors across different work centres of ONGC, have raised the issue of additional financial implication on account of incidence of Custom Duty due to pruning of list of eligible items for import, subsequent to issuance of Customs Notification No. 02/2022-Cus dated 01.02.2022 amending the original Customs Notification No. 50/2017-Cus.

EPC in its meeting (21/2022) held on 03.10.2022 decided to issue following guidelines for handling such issues for Service and LSTK Contracts:

1. The cases of reimbursement of additional financial implication on account of Customs Duty in terms of the Custom Notifications No. 02/2022 dated 01.02.2022 will be examined by Work Center on case to case basis to ascertain the quantitative details in terms of facts & circumstances of each case. Such cases will require to be deliberated by Tender Committee as Post-Contract issue considering the provision under ITB-Clause 13 and GCC-Clause 8.4 of Standard Service Contracts, based on which offers were submitted by the bidders and the contract concluded. During deliberations, Tender Committee at Work Center level will consider the following points in addition to the others:

**1.1 In case where the item to be imported, has been removed under the revised List-33:**

TC to ensure that the item under import is not appearing under the revised list-33 and deliberate on the following points:

- (i) ***Goods being Imported by Contractor are for consumption/ incorporation in Services/LSTK Contracts:***

In such cases, the ownership/title of such goods imported by the Contractor would be transferred to ONGC subsequently as goods or in some other form. Therefore, the additional financial implication on account of Customs Duty in terms of Notification No. 02/2022-Cus would require to be reimbursed to the Contractor subject to Change in Law provisions as per clause 21.4 of Service Contracts.

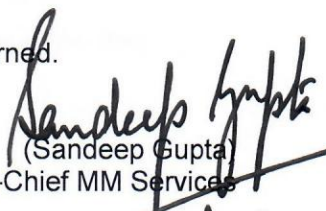


(ii) **Goods being imported by Contractor are in the nature of Capital Goods for usage in execution of Services/LSTK Contracts:**

In such cases, the ownership/title of such goods imported by the Contractor would not be transferred to ONGC as these are the capital goods which are merely used by the Contractor during execution of the Services/LSTK contracts of ONGC. Subsequently, such items are either re-exported or taken back by the Contractor for any other usage on which full Customs Duty was paid at the time of import by Contractor. In such cases, since such Capital Goods imported by the Contractor would not be used for ONGC contracts exclusively during the whole economic life of such Capital Goods, only proportionate duty will be reimbursed subject to Change in Law provisions as per clause 21.4 of Service Contracts. Accordingly, in such cases, subject to contractual conditions, the re-imbursalment of proportionate duty will be decided in terms of Customs Notification No. 23/2008-Cus dated 01.03.2008 (as amended) as a basis, which provides for duty drawback from Nil to 95% depending upon the period for which the same is imported.

2. In any case, since Input Tax Credit (ITC) of IGST portion paid at the time of import under Customs Law, is available to the Contractor for set-off under GST Law, additional payment towards Custom Duty will be made for Basic Custom Duty (BCD) and Social Welfare Surcharge (SWS) and not for IGST, unless it is proved to be ineligible for ITC. The reimbursement of such BCD & SWS etc. to the Contractor will also attract GST at the rate as applicable on the main supply of goods or services by such Contractor to ONGC.
3. In case of applicability of Custom duty, as aforesaid, a confirmation for additional payment towards Custom Duty by Contractor to Customs Department will be provided and payment/reimbursement will be made by ONGC to the Contractor against documentary evidence such as Bill of Entry. Further, such reimbursement will be carried out by making suitable amendment in Contract and suitable provision in respective outline agreement in SAP system.

Above guidelines should be meticulously followed by all concerned.

  
(Sandeep Gupta)  
ED-Chief MM Services  
17/10/22

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