
	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421 Email: Email: adj-mundra@gov.in, commr-cusmundra@nic.in</p>	
DIN: 20250371M0000083628F		Date:-24.03.2025

Demand cum Show-Cause-Notice-
(Issued under section 28(4) of Customs Act, 1962)

M/s. Yara Fertilizers India Pvt. Ltd, 402, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra 411001, holding (IEC 311108398) (hereinafter also referred to as "the importer/the Noticee" for the sake of brevity") presented Bills of Entry, 45 No.'s, having details mentioned in Annexure-A, through their appointed Customs Broker M/s. Boxco Logistics India Pvt. Ltd at Custom House, Mundra, for clearance of imported goods declared as "Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)" And "Yaraliva Tropicote (Double Salt Of Calcium Nitrate) etc (detail mentioned in Annexure-A)" as per the Invoice and Bill of Ladings of the respective Bills of Entry, classifying the same under Tariff item 31026000/31029090 of first schedule of the Customs Tariff Act, 1975.

2. During the course of Audit conducted for the period from April 2020 to September, 2020 and April 2021 to September 2021, it was observed that these Bills of Entry were self-assessed by the importer wherein benefit provided at Sr.No.225 (I) (b) of Notification No.50/2017-Cus dated 30.06.2017 of concessional rate of basic Customs duty @ 5% was availed by them. Further, it is also observed that the said importer has also self-assessed some other BE's from July 2020 to August, 2022 by obtaining benefit of Sr. No. 225(I) (b) of Notification No. 50/2017-Cus dated 30.06.2017 (details as per enclosed Annexure A). The entry 225(1) (b) of Notification No.50/2017-Cus dated 30.06.2017 is read as under: -

Sr. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate
225(1)(b)	31	The following Water Soluble Fertilizers included in Schedule 1, Part A of the Fertilizers Control Order, namely: - (b) Calcium nitrate	5%

THE FERTILISER (CONTROL) ORDER 1985

SCHEDULE I [See Clause 2(h) & (q)] PART-A SPECIFICATIONS OF FERTILISERS

4. Calcium Nitrate

- (i) Total Nitrogen, per cent by weight, minimum 15.5
- (ii) Ammonical Nitrogen percent by weight, maximum 1.1
- (iii) Nitrate Nitrogen as N percent by weight, minimum 14.4.
- (iv) Water soluble Calcium as per cent by weight, minimum 18.8.

(v) *Water insolubles percent by weight, maximum 1.5*

(vi) *Permissible limit of Boron 0.3*

3. During Audit, it is observed that under the impugned Bills of Entries, the said importer had imported "Yaraliva Nitrabor-Calcium Nitrate with Boron (Double Salt of Calcium Nitrate with Boron)" And "Yaraliva Tropicote (Double Salt Of Calcium Nitrate) etc. (detail mentioned in Annexure-A)" and availed the benefit of concessional rate of duty under the above said notification which is available only to Calcium Nitrate falling under Chapter 31 and as defined under Schedule-I, Part-A of the Fertilizers Control Order, 1985. Order No. 19 of the Fertilizers Control Order, 1985 states that "*no person shall himself or by any other person on his behalf:-*

- a) *Manufacture/import for sale, sell. Offer for sale, stock or exhibit for sale or distribute any fertilizer which is not of prescribed standard;*
- b) *Manufacture/import for sale, sell. Offer for sale, stock or exhibit for sale or distribute any mixture of fertilizer, which is not of prescribed standard (subject to such limits of permissible variation as may be specified from time to time by the Central Government) of special mixture of fertilizers which does not conform to the particulars specified in the certificate of manufacture granted to him under this order in respect of such special mixture."*

Further, Section 2(33) of the Customs Act, 1962 states that *the goods whose import is prohibited either under the Customs Act, 1962 or under any other law for the time being in force are prohibited goods*. As per test reports enclosed with the bills of entries, it was noted that the imported goods were not confirming to the prescribed standard of the Fertilizers Control Order, 1985 (copy of bills of entries and analysis report enclosed as RUD-1).

3.1. Further, it is also observed that benefit of concessional rate of BCD under Sr. No. 225(I)(b) of the Notification *ibid* is available to 'Calcium Nitrate' included in Part A of Schedule 1 of the Fertilizers Control Order and should meet the above mentioned specification prescribed in the said fertilizers control order. However, it is noted from the Analysis Certificate of the imported goods that goods did not meet the prescribed specifications. It is also noted that the analysis certificates contained the details of percentage of Nitrogen, Water soluble Calcium and insoluble only. As per Part A of Schedule I of the Fertilizers Control Order *ibid*, there should be maximum/minimum contents of other nutrients viz. Ammonical Nitrogen, Nitrate Nitrogen, Water insoluble in Analysis etc. *ibid* for claiming concessional rate of BCD. In absence of these, admissibility of concessional BCD @5% is not available. Thus, it appears that the goods are not as per Fertilizers Control Order, 1985.

3.2. Whereas, the imported goods are not confirming to the standard fixed under the Fertilizer Control Order, 1985. The said imported items were required to meet the maximum/minimum content specification (as per Control Order). However, analysis certificate submitted by the importer are not confirmatory that the goods meet the prescribed standards (RUD-1). Thus, it appeared that in the subject Bills of Entry, 45 No.'s, the importer has wrongly availed the exemption under Sr.No.225 (1) (b) of Notification No.50/2017-Cus dated 30.06.2017 for imported goods i.e. "Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)" And "Yaraliva Tropicote (Double Salt Of Calcium Nitrate) etc (detail mentioned in Annexure-A)" which

are not Calcium Nitrate and only Calcium Nitrate is covered under the said notification. Therefore, it appeared that in the impugned Bills of Entry Basic Customs duty was liable to be charged at the prevailing tariff rate i.e. 7.5% instead of 5% as claimed. That the import of fertilizers not conforming to the standard fixed under the fertilizers Control Order, 1985 and thus, the goods appears liable for confiscation under Section 111(d) of the Customs Act, 1962.

Computation of Differential duty:

4. Benefit of concessional rate of basic customs duty @ 5% is allowed to Calcium Nitrate only vide Sr. No. 225 (1) (b) of Customs Notification No.50/2017-, otherwise Customs Tariff Head 31026000/31029090 attract Basic Customs Duty @ 7.5%. In the instant case, the importer had imported "Yaraliva Nitrobor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)" And "Yaraliva Tropicote (Double Salt Of Calcium Nitrate) etc. (detail mentioned in Annexure-A)" which are not as per prescribed standards as per Fertilizers Control Order, 1985, therefore, it appears that the importer has wrongly availed the benefit of Sr. No. 225 (1) (b) of Notification No.50/2017-Customs. Accordingly, the importer is liable to pay differential Customs duty of **Rs. 2,17,70,321/- (Rupees Two Crores Seventeen Lakhs Seventy Thousand Three Hundred Twenty One Only)** as per calculation indicated in Annexure-A attached with this notice.

5. Relevant Legal provisions, in so far as they relate to the facts of the case:-

A. Customs Notification No. 50/2017-Cus dated- 30.06.2017;

B. The Customs Tariff.

C. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-

"(i) The importer while presenting a bill of entry shall 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, and such other documents relating to the imported goods as may be prescribed".

D. Section 28 (4) of the Customs Act, 1962 provides that "Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

- (a) collusion; or
- (b) any willful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice".

E. Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

F. Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any wilful mis-statement or suppression of facts. The relevant provision is reproduced below: -

114A - Penalty for short-levy or non-levy of duty in certain cases - 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: Provided that where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

6. The importer/noticee has willfully mis-stated the facts & wrongly availed Customs duty exemption benefit of Sr. No. 225 (1) (b) of Notification no. 50/2017-Cus dated- 30.06.2017 by paying BCD at lower rate i.e. @ 5% instead of correct rate of BCD @ 7.5% as per Customs Tariff.

7. In the light of the documentary evidences, as brought out above and the legal position, it appears that it was a well thought out attempt by the importer/noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the description/classification of the goods imported.

8. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer claimed undue notification benefit for the said goods in order to clear the goods by wrongly availed Customs duty exemption benefit of Sr. No. 225 (1) (b) of Notification no. 50/2017-Cus dated 30.06.2017 by paying BCD at lower i.e. @ 5% instead of correct rate of BCD @ 7.5%. With the introduction of self-assessment under Section 17, more faith is bestowed on the importer, as the

practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer has intentionally not paid correctly the customs duties on the imported goods. Therefore, it appears that the importer has willfully violated the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assess the impugned goods and has also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of **Rs. 35,29,03,216/-** as detailed in Annexure-A to this notice, appears to be liable for confiscation under Section 111(m) of the Customs Act, 1962. The goods appear not to be of prescribed standard as per FCO, 1985, therefore, the imported goods become prohibited in nature and liable for confiscation under Section 111(d) of the Customs Act, 1962. In view of above omissions, the importer is also liable for penalty under Section 112(a)(i).

9. Therefore, it appears that the importer wilfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty. Further, it appears that in respect of the Bills of Entry as mentioned in the **Annexure-A**, such wrong claim of notification benefit on the part of the importer has resulted in short levy of duty of **Rs. 2,17,70,321/- (Rupees Two Crores Seventeen Lakhs Seventy Thousand Three Hundred Twenty One Only)** for 45 Bills of Entry as detailed in Annexure-A, which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 (hereinafter referred to as 'the Act') along with interest as applicable under Section 28AA of the Act. By the said deliberate wrong claim of notification benefit, the importer also appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

10. Now, therefore, M/s. Yara Fertilizers India Pvt. Ltd, 402, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra 411 001 are hereby called upon to show cause to the Principal Commissioner of Customs, Custom House, Mundra, having office at First Floor, PUB Building, 5B, Mundra (Kutch) Gujarat 370 421, as to why: -

- (i) The goods imported vide 45 Bills of Entry as mentioned in **Annexure-A** to this show cause notice, should not be re-assessed at correct rate of BCD i.e. @ 7.5% and consequently benefit of Sr. No. 225 (1) (b) of Notification no. 50/2017-Cus dated- 30.06.2017 should not be denied to the above said goods;
- (ii) The goods having assessable value of **Rs. 35,29,03,216/-** covered under Bills of Entry as detailed in **Annexure-A** to this show cause notice, should not be held liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962;
- (iii) The differential duty worked out as **Rs. 2,17,70,321/-/- (Rupees Two Crores Seventeen Lakhs Seventy Thousand Three Hundred Twenty One Only)** for 45 Bills of Entry as detailed in Annexure-A should not be recovered from importer under Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;

- (iv) Penalty should not be imposed upon them under Section 112(a) and/or 114A of the Customs Act, 1962.

11. The importer further required to produce at the time of show cause, all the evidences upon which they intend to rely in support of their defence. They are further called upon to inform in writing to the Principal Commissioner of Customs, Custom House, Mundra as to whether they desire to be heard in person before the case is adjudicated. If no cause is shown within 30 days from the date of receipt of this notice or if they fail to appear for personal hearing when the case is posted for hearing the case will be decided ex-parte on the basis of evidences available on record.

12. This Show Cause Notice is being issued as per the scrutiny of records conducted so far. Hence, the department reserves its rights under the provisions of Customs Act, 1962 to conduct further Audit / Scrutiny of the records and issue subsequent or separate show cause notice(s), if any.

13. The importer/noticee is further informed that they have the right to opt for closure of these proceedings under Section 28(6) of Customs Act, 1962. If they so decide, then in terms of Section 28(5) of the Customs Act, 1962 by availing option given under Section 28(5) of the Customs Act, 1962.

14. The present show cause notice is issued without prejudice to any other action that may be taken under any other provision of Customs Act, 1962 and/or rules made there under and/or under the provisions of any other law for the time being in force in India. The department is also free to issue addendum/corrigendum to this Show Cause Notice if any further fact/documents come to notice.


(K. Engineer)

Pr. Commissioner of Customs
Custom House, Mundra

Encl.: Annexure-A and RUD-1

To,

1. M/s.Yara Fertilizers India Pvt. Ltd,
402, Suyog Fusion, Dhole Patil Road,
Sangamwadi, Pune,
Maharashtra 411001.
{Email: india.operation@yara.com}.

Copy to:

1. The Dy. Commissioner of Customs, Audit Section, Mundra Customs.
2. CB M/s. Boxco Logistics India Pvt. Ltd., Godrej Coliseum, Office No. 801, C-Wing, Behind Everard Nagar, Near Priyardarshani, Sion (East), Mumbai-400022.
3. Guard File.