

| | | |
|---|---|--|
|  | | OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62 |
| A. File No. | : | GEN/ADJ/ADC/27/2023-Adjn.-O/o Pr. Commr-Cus-Mundra |
| B. Order-in-Original No. | : | MCH/ADC/MK/52/2023-24 |
| C. Passed by | : | Smt. Mukesh Kumari, Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra. |
| D. Date of order /Date of issue | : | 30-05-2023 |
| E. Show Cause Notice No. & Date | : | CUS/APR/MISC/5524/2022-Gr.2 Dated 19.12.2022 |
| F. Noticee(s)/Party/ Importer | : | M/s YARA FERTILISER INDIA PVT. LTD., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra-411001 |
| G. DIN | : | |
| | | |

यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त (अपील), कांडला

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद -380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA

Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए ।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by
—उक्त अपील की एक प्रति और
A copy of the appeal, and

ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं°-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

I/1212910/2023

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject: - Show Cause Notice F. No. CUS/APR/MISC/5524/2022-Gr.2 Dated 19.12.2022 issued to M/s **YARA FERTILISER INDIA PVT. LTD.**, 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra-411001

BRIEF FACTS OF THE CASE:

M/ s. **Yara Fertilizer India Pvt. Ltd.**, 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra- 411001 (holder of IEC No. 3 111008398) (hereinafter also referred to as “the *importer*”) presented Bills of Entry 8272102 dated 01.10.2018, 8640194 dated 29.10.2018, 8734227 dated 05.11.2018, 8903374 dated 18.11.2018, 8903407 dated 18.11.2018, 8906547 dated 19.11.2018 & 8995721 dated 26.11.2018 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)*” classifying the same under Tariff Item 31026000 of first schedule of the Custom Tariff Act, 1975.

During the course of Audit covering the period from October 2018 to December 2018 conducted by the Customs Receipts Auditors from Office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad, it was noticed that Bills of Entry mentioned in Annexure-I were assessed 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 the importer. The entry 225 (I) (b) read as under:

| Sl. No. | Chapter or Heading or | Description of goods | Standard rate |
|---------|-----------------------|----------------------|---------------|
|---------|-----------------------|----------------------|---------------|

| | sub-heading or tariff item | | |
|-----|----------------------------|--|----|
| 225 | 31 | I. The following Water Soluble Fertilizers included in Schedule 1, part A of the Fertilizers Control Order, namely: - (b) Calcium nitrate | 5% |

2. Under the impugned Bills of Entry, the importer imported “YARALIVA Nitrabor-Calcium Nitrate with Boron (Double Salt of- Calcium Nitrate with Boron)” and availed benefit of concessional rate of duty under the above notification which is available only to Calcium Nitrate. The declared description suggests that the impugned imported goods were different than Calcium Nitrate. Thus, it appeared that in the subject two Bills of Entry, the importer has wrongly availed the exemption under serial No. 225 (I) (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)” which is not calcium Nitrate and only calcium Nitrate is covered under the said notification. Therefore, it appeared that in the impugned two Bills of Entry Basic Customs duty was liable to be charged at the prevailing tariff rate i.e., 7.5%.
3. Further, it appeared that the exemption under serial number 225(I)(b) of Notification No. 50/ 2017-Cus dated 30.06.2017, was not available to the impugned goods but the importer wrongly availed the exemption under said notification. Thus, it appeared that the subject Bills of Entry are liable to be reassessed by denying the claimed exemption and the differential Customs duty totally amounting to Rs.15,45,424 / - (as per annexure-I of the impugned SCN) is liable to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
4. Therefore, M/s Yara Fertilizer India Pvt. Ltd., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra- 411001 were issued Show Cause Notice No. CUS/APR/MISC/5524/2022-GR.2 dated 19.12.2022 to show cause to the Additional Commissioner of Customs (Import), Custom House, Mundra having office at PUB Building 5B, Adani Port, Mundra, as to why:
 - i. the exemption under serial No. 225(I)(b) of Notification No. 50/ 2017-Cus dated 30.06.2017, claimed and availed by them in the 07 Bills of Entry detailed above should not be denied.
 - ii. the differential Customs duty amounting to Rs. 15,45,424/-, not paid by the importer in respect of the Seven Bills of Entry mentioned in Annexure-I of the Impugned SCN by wrongly availing exemption under serial No. 225(I)(b) of Notification No. 50/ 2017-Cus dated 30.06.2017 should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid.
 - iii. Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

DEFENCE SUBMISSION:

6. The Noticee vide their letter dated Nil received by this office on 27.02.2023 filed reply to the aforesaid Show Cause Notice, wherein they have denied every allegations proposed in the SCN. They have, *inter alia*, mainly contended in their defence as under:

- i. *The Noticees vehemently denied each and every allegation in the SCN and submits that the proposals made in the SCN are totally untenable in law and on facts. The SCN is full of false allegations without any factual or legal basis therefor. The allegations are not only biased in nature but also issued only to justify the proceedings initiated arbitrarily.*
- ii. *The present dispute is limited to the availability of exemption under Sr. No. 225(I) (b) of Notification No. 50/2017-Cus. dated 30.6.2017 on import of Yaraliva Nitrabor is pending with the Hon'ble Yaraliva Nitrabor is pending with the Hon'ble CESTAT, Bengaluru in Appeal No. C/21092/2017 filed by the Noticees. It is submitted that since the issue is sub-judice before the Hon'ble CESTAT, the present proceeding be kept in abeyance till the final disposal of the appeal by the Hon'ble CESTAT.*
- iii. *They have submitted that the aforesaid exemption is available to the water-soluble fertilizers mentioned in the Customs Notification, which are also included in Schedule 1, Part A of the FCO (Fertilizers Control Order). Calcium Nitrate fertilizer is specified as water soluble fertilizer in Customs Notification and also in FCO.*
- iv. *They have submitted that YaraLiva Nitrabor is classified, marked and used as "Calcium Nitrate" fertilizer as major ingredient is calcium nitrate with 99.5%. Addition of minuscule quantity of boron does not alter either the character of it being a calcium nitrate fertilizer or its water solubility. There is no 100% water solubility mentioned as for as calcium nitrate is concerned, either in the Customs Notification or under the FCO. Whereas, for e.g. mono-potassium phosphate (0-52-34), NPK (13-40-13), NPK (18-18-18), NPK (13-5-26), NPK (6-12-36) and NPK (20-20-20), the FCO contemplates 100% water solubility. Further, in terms of Rule 3(a) of Interpretative Rules to Customs Tariff, going by the essential character, the goods in question are to be treated as calcium nitrate, even for the customs notification. For the purposes of classification under Heading 31.02, the customs department has treated the ISERS goods to be calcium nitrate, a mineral based fertilizer. Hence, the SCN is incorrect in denying the exemption under Sr. No. 225(I) (b) to the goods in question.*
- v. *They have submitted that when the presence of boron in calcium nitrate does not alter the composition of calcium nitrate, the said product remains to be calcium nitrate which is a water-soluble fertilizer and not boron which is a fortified fertilizer.*
- vi. *They have submitted that the present SCN nowhere disputes (on the other hand accepts) classification of the imported goods under Heading 3102 60 00 which covers double salts and mixture of calcium nitrate and ammonium nitrate, however, on the contrary, denies the exemption benefit on the ground that boron is present in the minuscule quantity.*
- vii. *They have submitted that Calcium Nitrate, as provided in the FCO has almost the same specifications, minus the boron. Merely adding 0.3 % of Boron does not change the nature of the product. Since boron itself is a non-soluble element, getting mixed with calcium nitrate, it loses its property of insolubility. This shows that the essential constituent of the impugned goods is Calcium Nitrate only and all different kinds of Calcium Nitrate mentioned in Schedule I, Part A of the exemption should come under the exemption benefit.*
- viii. *They have submitted that since the imported goods fulfill all the conditions, merely because the fertilizer contains a minuscule amount of boron and put in a different category of FCO does not take the product out of the exemption benefit, moreover when the notification refers to entire Schedule I Part A.*

- ix. It is pertinent to note that Sr. No. 225(I) (b) of Notification No. 50/2017-Cus. Dated 30.6.2017 grants exemption to other fertilizers which comply with the specific composition e.g., Potassium Nitrate (13:0:45), however, no such requirement is mentioned for Calcium Nitrate. This implies that exemption shall be extended to all fertilizers which are water soluble and contains Calcium Nitrate as major constituent, irrespective of other minuscule ingredients.
- x. The present SCN incorrectly proposes to deny the exemption benefit to the imported goods only on the basis that it is not '100% water soluble complex fertilizers' as mentioned in category 1(h) to Part A of the Schedule I of the FCO. It is submitted that evidently, there is clear misreading of the notification. Notification grants exemption to water soluble calcium nitrate fertilizer listed in Schedule I Part A of the FCO. There is no 100% water solubility mentioned as far as calcium nitrate is concerned, either in the Customs Notification or under the FCO.
- xi. It is settled law that exemption notification should be read strictly. Therefore, had there been any intention to extend exemption to 100% water soluble complex fertilizer, the legislature would have explicitly mentioned in the exemption notification itself. In absence of specification, exemption is correctly available to all water-soluble fertilizers which has Calcium Nitrate as major constituent, subject to same is listed in Schedule I Part A to the FCO.
- xii. They have submitted that YaraLiva Nitrabor has Calcium Nitrate as major ingredient, and has 99.5% water solubility, therefore, it satisfies all the conditions required for extending the exemption benefit under Sr. No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017. Hence, the present SCN is incorrect to deny the exemption benefit.
- xiii. They have submitted that in the absence of a statutory definition, trade parlance is to be relied upon to understand the meaning of a product. In the instant case, the impugned products are calcium nitrate with boron however the said product is used as calcium nitrate in common trade parlance.
- xiv. They have submitted that where there is no statutory definition, an item given in the tariff should be interpreted in the commercial sense or in common trade parlance, they have placed reliance on the various judgements – CCE, New Delhi Vs. Connought Plaza Restaurant (P) Ltd. – 2012 (286) ELT 321 (SC) wherein the Apex Court distinguished the case of Akbar Badruddin Jiwani Vs. Collector of Customs – 1990 (47) ELT 161 (SC) ; Ramavtar Budhaiprasad Vs. Assistant Sales Tax Officer reported (1962) 1 SCR 279 ; Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh reported AIR 1967 SC 1454 ; South Bihar Sugar Mills Ltd. Vs. Union of India reported in 1978 (2) ELT 336.
- xv. They have submitted that the instant SCN proposes to demand differential duty amounting to Rs. 15,45,424/- pertaining to the imports made during the period of 01.10.2018 to 26.11.2018 invoking extended period under Section 28 (4) of the Customs Act. The Show Cause Notice alleges that the noticee has willfully mis-declared the classification in the Bills of Entry to evade the payment of Customs Duty and hence the longer period is liable to be invoked in terms of Section 28 (4) of the Customs Act. By emphasizing on the relevant portion from the judgments of the Supreme Court in the cases of Nizam Sugar Factory Vs. CCE-2008 (9) STR 314 (SC); ECE Industries Vs. CCE-2004 (164) ELT 236 (SC); and others as well: they have submitted that extended period of limitation has been incorrectly invoked since there is no mis-statement or suppression of facts in respect of the imports in question.
- xvi. They have submitted that claiming of exemption notification or claiming a particular heading for the purposes of classification does not amount to mis-declaration and place reliance on various decisions – Northern Plastic Ltd. Vs CCE 1998 (101) ELT 549 (SC) & Ace Kargoways Pvt. Ltd. Vs. CC 2003 (158) ELT 505.

I/1212910/2023

- xvii. *They have submitted that penalty cannot be imposed where duty demand is not sustainable and placed reliance on various decisions – Collector of Central Excise Vs. H.M.M. Limited – 1995 (76) ELT 497 (SC), Commissioner of Central Excise, Aurangabad Vs. Balakrishna Industries, 2006 (201) ELT 325 (SC), the Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable.*
- xviii. *They have also submitted that penalty proposed in the instant SCN imposed under Section 114A of the Customs Act, 1962 is incorrect and reliance is placed on the decisions in the case of – Anand Nishikawa Vs. CCE-(2005) 7 SCC 749; Pushpam Pharmaceuticals Company Vs. CCE-1995 (78) ELT 401 (SC); Aban Lloyd Offshore Vs. CCE-2006 (200) ELT 370 (SC) and others as well.*
- xix. *They have further submitted that no interest is demanded under Section 28AA of the Customs Act, 1962 when demand itself is not sustainable by placing reliance upon a judgment by the Supreme Court in the case of Prathibha Processors Vs. UOI-1996 (88) ELT 12 (SC).*

7. In view of the foregoing submissions, they prayed the proceedings initiated under Show Cause Notices be dropped and said SCN must be discharged forthwith with consequential relief to them and a personal hearing may be granted to them before passing any order in this case.

RECORDS OF PERSONAL HEARING :

8.

In Virtual personal hearing Mr. Akhilesh Kangsia & Ms. Madhura Khandekar, both Advocate/Consultant, have appeared on WEBEX Meeting on behalf of the Noticee and reiterated the detailed written submissions and stated that their client, M/s. Yara Fertilizers India Pvt. Ltd are eligible for the benefit of the notification no.-50/2017-Cus. Dated 30.06.2017. Further, stated that extended period in the instant SCN should not be invoked since the issue has already been raised in the past by Mangalore Customs as well as Mundra Customs, therefore the Department was always aware of the issue. They pleaded that SCN as whole is not sustainable and proceedings to be dropped.

DISCUSSION AND FINDINGS :

9. I have carefully gone through Show Cause Notice, the written submissions filed by the Noticee as well as the oral submissions made during the course of personal hearing on 02.03.2023 and the available records of the case and I find that following main issues are involved in the SCN which are required to be decided –

- i. Whether the exemption under Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017, claimed and availed by the importer in the Bills of Entry detailed in the Show Cause Notices is liable to be denied.
- ii. Whether the differential Customs duties amounting to Rs. 15,45,424/-, not paid by the importer in respect of the Bills of Entry mentioned in the Show Cause Notice by wrongly availing exemption under Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017 are required to be demanded and recovered from the importer under Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate

I/1212910/2023

under Section 28AA ibid.

iii. Whether the importer, M/s Yara Fertilizer India Pvt. Limited is liable for penalty under Section 114A of the Customs Act, 1962.

10. The facts of the case indicate that the importer, M/s Yara Fertilizer India Pvt. Ltd., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra – 411001 imported “**YARALIVA Nitrabor – Calcium Nitrate with Boron (Double Salt of Calcium Nitrate with Boron)**” falling under Customs Tariff item 31026000 by claiming BCD exemption under Sl. No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017. The subject Bills of Entry were self-assessed wherein benefit provided at Serial No. 225(I) (b) of Notification No. 50/2017-Cus., dated 30.6.2017 of concessional rate of basic Customs duty @ 5% was taken. The department has claimed in the Show Cause Notice that the importer have wrongly availed the exemption under Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017 for imported goods i.e., “**YARALIVA Nitrabor – Calcium Nitrate with Boron (Double Salt of Calcium Nitrate with Boron)**” which is not calcium Nitrate and only calcium Nitrate is covered under the said notification and therefore, in the impugned Bills of Entry, the Basic Customs duty was liable to be charged at the prevailing tariff rate of 7.5%. The Show Cause Notice have accordingly proposed denial of the benefit of exemption claimed under above said notification, demand of differential customs duties under Section 28(4) along with interest at appropriate rate under Section 28AA and imposition of penalty on the importer under Section 114A of the Customs Act, 1962.

11. The main issue to be decided in the instant case is as to whether the importer is eligible to avail benefit under the Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017 on import of goods declared as “**YARALIVA Nitrabor – Calcium Nitrate with Boron (Double Salt of Calcium Nitrate with Boron)**”. In this context, I have gone through the Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017 as amended. The Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017, reads as under :

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

12. I find that as per the said exemption Notification No. 50/2017-Cus., dated 30.6.2017 read with Fertilizer (Control) Order, 1985 as amended, the benefit of the said exemption is only available to Water soluble Calcium Nitrate Fertilizer.

13. I further find that the exemption under Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017 can be extended to the fertilizer “**Calcium Nitrate**” only when it meets the required specifications of the Fertilizer (Control) Order, 1985 as indicated at Sl. No. 2 of 1(i), Part A, Schedule I, wherein the said fertilizer contain :

I/1212910/2023

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

Further, in Certificates of Weight and Analysis in these cases, the analysis report of the products involved in the instant case indicates the percentage of various constituents present in the fertilizers under import, as under –

| Description | Percentage |
|----------------------|--------------------------|
| Total Nitrogen | 15.4% |
| Nitrate – N | 14.1% |
| Ammonium – N | 1.3% |
| Total Cao | 25.6% |
| Calcium | 18.3% |
| Boron | 0.3% |
| Granulometry | >2mm : 90% <2mm : 10% |
| Water insoluble | 0.5% |
| Bulk Density (Loose) | 1.10 KG/L |

14. A close scrutiny of the details given herein-above clearly show that the product involved in the instant case is not merely Calcium Nitrate, but instead, it is a compound of the salt Calcium Nitrate and the element Boron. In this regard, I further find that <https://www.yara.co.uk/crop-nutrition/fertiliser/calcium-nitrate/yaraliva-nitrabor/> throws up the following details ;-

Quote:

YaraLiva NITRABOR (15.4% N + 25.9% CaO + 0.3% B) is a field grade calcium nitrate fertiliser, with added boron suitable for field application to all crops ...

Nutrient Composition

- N15.4%
- o Nitrate - N14.1%
- o Ammoniacal - N1.3%
- CaO25.9%
- B0.3%
- Chloride Free
- Form: Granular

15. The details obtained from the Website of M/s Yara Fertilizers, as given hereinabove clearly show that Boron is an element added to Calcium Nitrate. This fact is declared by none other than the Company that manufactures the product. This would lead even a person with average intelligence to conclude without an iota of doubt that the product is a compound of Calcium Nitrate and Boron and not merely Calcium Nitrate.

16. On the basis of the contents of paragraphs number 13 to 15, I hold that the product imported by the Importer in the instant case is Calcium Nitrate with Boron and not merely Calcium Nitrate. In this regard, from the table given in paragraph 11 herein above, it is quite

I/1212910/2023

clear that the Exemption envisaged in Exemption Notification Number No. 50/2017-Cus., dated 30.6.2017 as amended is available only in respect of Calcium Nitrate. If the Exemption is extended to the present product, then it would mean that the word, "Boron" should be added to the words, " Calcium Nitrate". Is such addition is allowable in law ? This question finds an answer in a judgment given by the Hon'ble Supreme Court. I find that the Hon'ble Supreme Court, in Appeal No. CIVIL APPEAL NO.949 OF 2004 in the case of COMMISSIONER OF CENTRAL EXCISE, SURAT-I APPELLANT VERSUS M/S.FAVOURITE INDUSTRIES, in its judgment dated 29-02-2012 has observed as follows ;-

29. In Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies (2004) 11 SCC 798, this Court has held:

"8. It is settled law that in order to claim benefit of a notification, a party must strictly comply with the terms of the notification. If on wording of the notification the benefit is not available then by stretching the words of the notification or by adding words to the notification benefit cannot be conferred. The Tribunal has based its decision on a decision delivered by it in Rukmani Pakkwell Traders v. CCE. We have already overruled the decision in that case. In this case also we hold that the decision of the Tribunal is unsustainable. It is accordingly set aside."

30. In Commissioner of Customs (Preventive), Gujarat v. Reliance Petroleum Limited, (2008) 7 SCC 220, this Court has held:

*"30. We are not oblivious of the proposition of law that an exemption notification should be construed directly but it is also well settled that interpretation of an exemption notification would depend upon the nature and extent thereof. The terminologies used in the notification would have an important role to play. Where the exemption notification *ex facie* applies, there is no reason as to why the purport thereof would be limited by giving a strict construction thereto.*

17. In my view, the ratio of the above judgment is that no word should be added or no word should be deleted from the words given in Exemption Notifications. Applying this ratio to the present case, I hold that the word, "Boron" cannot be treated as added to the words, "Calcium Nitrate" in the instant case. Consequently, I hold that the exemption envisaged in the said Entry at Serial number 225 in the said Exemption Notification cannot be made available to the present case.

18. I find that the Noticee in their written defence submissions quoted and have placed reliance on various case laws/judgments in support of their contention on the merits of the case. In this regard, in view of the judgment of Supreme Court cited in paragraph number 16 hereinabove, I hold that all the judgements/decision relied upon by the Noticee on the merits of the case would not be applicable.

19. I find that the Noticee in their defence submission have submitted that after due verification all the Bills of Entry were finally assessed by the Customs authorities and Section 28 of the Customs Act, 1962 do not provide the authority to reassess the already finally assessed Bills of Entry. In this regard, what is vital is that All the Bills of Entry involved in the instant case were assessed by System and the goods as well as the documents were not subjected to scrutiny by the officers. The Importers cannot be allowed to go scot free when they had employed an ineligible Exemption Notification. This act cannot but be labelled as deliberate act to attempt to evade payment of proper amount of duty. I rely upon the judgment of the Hon'ble Supreme court in case of Alnoori Tobacco Products [2004 (170) ELT-135(SC)] Hon'ble Apex Court in case of Jain Shudh Vanaspati Ltd., in this context. Under the circumstances I reject all the contentions raised by the

I/1212910/2023

Importer (Noticee) on Limitation.

20. Further, It has been noticed that at no point of time, the said notice has disclosed full, true and correct information about the appropriate rate of Customs duty or intimated to the Department that has come to the notice of the Department only after CERA Audit. The Government has from the very beginning placed full trust on the importer/exporter and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. Government had made a legislative provision to let importers and exporters make self-assessment of their customs duty liability, which will be subject to checks and re-assessment by the Customs Officer, if found necessary. The objective of the trust based system of Self-Assessment of Customs duty by importers or exporters is to expedite release of imported/export goods. The system operates on an electronic Risk Management System (RMS). Above all, more importantly, it is a predominate fact that the Certified Facilitation Centers (CFC) has been set up to help taxpayers assess their tax liability with ease. It is essential for the correct classification of goods and for ensuring the adherence of imported goods to exemption by virtue of particular Notification issued in this regard categorically.

21. In view of the above discussions, I hold that the present case attracts the larger period of Limitation, envisaged in Section 28(4) of Customs Act 1961. Therefore, I further hold that demand of the differential Customs duty the extent of Rs. 15,45,424/- has to be confirmed.

22. As regard the liability to pay interest on the said differential duty, the element of interest gets attached to the principal amount of Customs Duty automatically by the operation of law and it is mandatory.

23. As regard proposal in the Show Cause Notice for imposition of penalty on the importer under Section 114A of the Customs Act, 1962, I find that Section 114A of the Customs Act, 1962 is also mandatory and it cannot be reduced, as I have already held that the provisions of larger period of Limitation have been correctly invoked in the instant case. In this regard, I rely upon the case of M/s Dharmendra Textile Processors 2008 (231) ELT 3 (SC), M/s Rajasthan Spinning & Weaving Mills 2009 (238) ELT 3 (SC), Mehta & Co. 2011 (264) ELT 481 (SC), Majestic Auto Ltd. 2013 (189) ELT 95 (All.) and Franco Indian Remedies P Ltd 2010 (251) ELT 183 (Mad). In these judgments, mandatory penalty equal to the said amount has been upheld wherever the provisions of larger period of Limitation were found to be invokable. In my view, the provisions of Section 11AC of Central Excise Act, 1944 are identical to the provisions of Section 114A of Customs Act 1961. In view of these findings, I hold that the contentions of the Noticee (Importer) have no merit regarding the liability of penalty. Accordingly, I hold that equal penalty as envisaged in Section 114A of Customs Act 1961.

24. In view of the forgoing discussion and findings, I pass the following order:

ORDER

- i. I reject the importer's claim of exemption under Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017, in the Bills of Entry as detailed in the Show Cause Notice mentioned in Para 1 above.
- ii. I confirm and order to recover the differential Customs duty of **Rs. 15,45,424/- (Rupees Fifteen Lakh Forty five thousand Four hundred Twenty Four only)**

I/1212910/2023

from the importer M/ s. **Yara Fertilizer India Pvt. Ltd.**, 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra- 411001 for wrongly availing exemption under Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017 under Section 28(4) of the Customs Act, 1962.

- iii. I order to charge and recover interest from the importer M/ s. **Yara Fertilizer India Pvt. Ltd.**, 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra- 411001 on the confirmed duty at Sr. No. (ii) above under Section 28AA of the Customs Act, 1962.
- iv. I impose penalty of Rs. 15,45,424/- on the importer M/ s. **Yara Fertilizer India Pvt. Ltd.**, 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra- 411001 under Section 114A of the Customs Act, 1962.

25. This order is issued without prejudice to any other action that may be contemplated against the importer or any other person under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

26. The SCN No. CUS/APR/MISC/5524/2022-Gr.2 dated 19.12.2022 issued by the Additional Commissioner (Import), Custom House, Mundra, is hereby disposed of in the above terms.

**Additional Commissioner,
Customs House, Mundra**

F.No. GEN/ADJ/ADC/27/2023-Adjn

Date : 30-05-2023

BY SPEED POST

To,
M/ s. **Yara Fertilizer India Pvt. Ltd.**,
42, Suyog Fusion,
Dhole Patil Road,
Sangamwadi,
Pune, Maharashtra-411001

Copy to :

1. The Commissioner, Custom House, Mundra
2. The Deputy/Assistant Commissioner (RRA), Customs House, Mundra
3. The Deputy/Assistant Commissioner (TRC), Customs House, Mundra
4. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra
5. The Deputy/Assistant Commissioner (**GROUP-II**), Customs House, Mundra
6. The Deputy/Assistant Commissioner (Audit), Customs House, Mundra
7. Guard File

