



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडिया रेडियो के बाजू में, नवरंगपुरा, अहमदाबाद 380009

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फा. सं./ F. No.: VIII/10-30/Pr. Commr/O&A/2020-21

DIN- 20240771MN000000B859

आदेश की तारीख/Date of Order : 09.07.2024
जारी करने की तारीख/Date of Issue : 09.07.2024

द्वारा पारित/Passed by:-

**शिव कुमार शर्मा, प्रधान आयुक्त
Shiv Kumar Sharma, Principal Commissioner**

मूल आदेश संख्या :

- Order-In-Original No: AHM-CUSTM-000-PR.COMMR- 31-2024-25 dated 09.07.2024 in the case of M/s. Nahar Colours and Coating Pvt. Ltd., 2, Survey No.154, Village- Jolwa, Dahej Road, Taluka- Vagra, Gujarat- 394305.**
- 1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दूसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजू में, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.

3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित किए जाने चाहिए।
3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किमी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal 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".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार मंलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice F.No. VIII/10-30/Pr.Commr/O&A/2020-21 dated 28.03.2021 issued by the Commissioner, Customs, Ahmedabad to: (1) M/s. Nahar Colours and Coating Pvt. Ltd., 2, Survey No.154, Village- Jolwa, Dahej Road, Taluka- Vagra, Gujarat-394305 (Registered office at NCCL House, G-1, 90-93, Sukher Industrial Park, Udaipur-313004); and (2) Shri Rajkumar Surana, Managing Director of M/s Nahar Colours and Coating Pvt. Ltd, Regd. office: NCCL House, G-1, 90-93, Sukher Industrial Park, Udaipur-313004.

Brief Facts of the Case:

M/s. Nahar Colours and Coating Pvt. Ltd., 2, Survey No.154, Village-Jolwa, Dahej Road, Taluka- Vagra, Gujarat-394305 having registered office at NCCL House, G-1, 90-93, Sukher Industrial Park, Udaipur-313004 (IEC No. 1394003382) [hereinafter referred to as 'M/s. Nahar' or 'the Noticee' for sake of brevity] imported goods declaring as "Boron Ore (Colemanite-44)" by classifying them under Chapter Tariff Heading No.25280030 of the Customs Tariff Act, 1975 and availing exemption from payment of Basic Customs duty as per Sr.No.113 of Customs Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No.28/2015-Cus dated 30.04.2015 and Sr. 130 of Customs Notification No.50/2017-Cus dated 30.06.2017 for the period from 05.04.2016 to 30.06.2017 and from 01.07.2017 to 11.01.2021, respectively.

2. Based on an intelligence gathered which indicated that some importers were importing processed Colemanite B_2O_3 with different description under Chapter Tariff Heading No.25280090 or 25280030 and wrongly claiming exemption as per Sr.No.130 of Notification No.50/2017-Cus dated 30.06.2017 by mis-declaring the product as Natural Bore Ore as exemption is available only to Boron Ore under said notification, necessary details were verified from ICES regarding import of said item and one consignment under Bill of Entry No.6525531 dated 18.01.2020 of M/s. Nahar was under process for clearance from ICD-Ankleshwar, Ankleshwar. Accordingly, the Deputy Commissioner of Customs, ICD-Ankleshwar, Ankleshwar was requested to put the consignment, declared under Bill of Entry No.6525531 dated 18.01.2020, on hold for drawal of sample and further investigation.

3. Accordingly, the officers of ICD-Ankleshwar, Ankleshwar withdrew representative samples under panchnama dated 30.01.2020 in presence of two independent panchas, Shri Ramdas Sonkusre, Sr. Executive, CONCOR, ICD-Ankleshwar and Shri Lakhan Negi (G Card No.: G/189/18), G-Card Holder of CHA Firm M/s.Indus Shipping Services, from one of the containers bearing No.MSKU2457012 of Bill of Entry No.6525531 dated 18.01.2020. The sample drawn was sent to CRCL, Vadodara vide Test Memo No.54/2019-20dated 31.01.2020 to ascertain following test/parameter to confirm whether the goods declared was Boron Ore or otherwise.

- (i) *whether the sample is of goods which are found naturally on the earth or is processed,*
- (ii) *What is the nature & composition of the goods and whether their percentage is same in which they occur naturally on earth or at the time of extraction from the earth,*
- (iii) *Whether the goods are processed using calcinations or enriched/concentrated by using any other method and*
- (iv) *Whether the goods are in crushed/grinded form i.e. derived from natural form*
- (v) *If description is incorrect then clarify the specific description of the goods.*

4. The Test report dated 05.02.2020 of sample submitted under Test Memo No.54/2019-20 dated 31.01.2020 in respect of sample drawn under panchnama dated 30.01.2020 was received from CRCL, Vadodara which is reproduced here-under:

The sample is in the form of off white powder. It is mainly composed of oxides of Boron & Calcium alongwith siliceous matter.

B₂O₃ content = 44.5 % by wt.

CaO content = 24.5 % by wt.

Loss on drying at 105 degree Celsius = 1.11 % by wt.

Loss on ignition at 900 degree Celsius = 24.3 % by wt.

*Above analytical findings reveal that it is **processed borate mineral (Colemanite)**.*

5. From above test report, it was noticed that the goods imported under said Bill of Entry was processed Borate Mineral Colemanite and M/s Nahar wrongly claimed the benefit of Sr.No.130 of Notification No.50/2017-Cus 30.06.2017 with intention to evade the Customs duty in respect of the consignment declared under Bill of Entry No.6525531 dated 18.01.2020. Therefore, goods declared under above mentioned Bill of Entry, totally weighing 240 MTS valued at Rs.85,96,434/- were seized vide panchnama dated 06.02.2020 under Section 110(1) of the Customs Act, 1962 holding them liable to confiscation under Section 111(m) of the Customs Act, 1962. The same were subsequently released provisionally by the competent authority on request of M/s Nahar under the provisions of Section 110A of the Customs Act, 1962.

6. The Noticee did not agree with the test report given by CRCL, Vadodara and therefore requested the Joint Commissioner of Customs for re-testing of the sample at CRCL, New Delhi. Accordingly, on approval of the Joint Commissioner of Customs, another set sample was sent to Central Revenue Control Laboratory, New Delhi vide Test Memo No.17/2019-20 dated 02.03.2020 with following test queries/parameters:

- (i) *whether the sample is in form in which they are found naturally on the earth i.e. Natural Colemanite,*
- (ii) *What is the nature & composition of the goods and whether their percentage is same in which they occur naturally on earth or at the time of extraction from the earth,*
- (iii) *Whether the goods are in crushed/grinded form, i.e. derived from natural form,*
- (iv) *Whether the goods are processed using calcinations or enriched/concentrated by using any other method,*
- (v) *Whether the goods were processed using any other physical or chemical process and*
- (vi) *After processing, if any, whether the goods can still be defined as 'Ore'.*

7. The Joint Director, CRCL, New Delhi vide letter F.No.25-Cus/C-47/2019-20 dated 04.06.2020 submitted Re-Test report in respect of above mentioned Test Memo which is reproduced hereunder:

"The sample is in the form of off white powder. It is mainly composed of borates of calcium, alongwith siliceous matter and other associated impurities like silica, iron, etc. It is having following properties:

- 1. % Moisture (105 degree C) by TGA = 0.82
- 2. % Loss on ignition at (900 degree C) by TGA = 24.80
- 3. % B₂O₃ (Dry Basis) = 43.08
- 4. % Acid insoluble = 5.34
- 5. XRD Pattern = Concordant with Mineral Colemanite

On the basis of the test carried out here and available technical literature, the sample is Mineral Colemanite- a Natural Calcium Borate (Commonly known as Boron Ore)."

8. The Joint Commissioner, SIIB, Customs, Surat vide letter F.No. VIII/14-01/SIIB/Boron Ore/Raj Borax/19-20 dated 16.06.2020 again requested the Head Chemical Examiner, CRCL, New Delhi to send detailed report covering all the points of test memo as the re-test report received from CRCL, New Delhi for all similar cases, does not cover all queries/questionnaires given in the Test memo. In response to the said letter, the Joint Director, CRCL, New Delhi vide letter F. No 25-Cus/C-40-47/2019-20 dated 24.06.2020 submitted point wise reply which is reproduced as under:

“ Point (I,II&VI) sample is colemanite, a Natural Calcium Borate (Commonly known as Boron Ore.

Point (III) The sample is in powder form (Crushed/ Grinded)

Point (IV) The sample is not calcined

Point (V) The sample is in the form of Colemanite Mineral”

9. The Joint Commissioner, SIIB, Customs, Surat vide letter F.No.VIII/14-01/SIIB/Boron Ore/Raj Borax/19-20 dated 01.07.2020 again requested the Head Chemical Examiner, CRCL, New Delhi to clarify whether the sample was Boron Ore or Boron Ore Concentrate and what was the process through which the sample was enriched/concentrated with following queries/questionnaires:-

Points raised in the Test Memo	Details mentioned in Test Reports	Remarks
Point I Whether the samples were in form in which they are found naturally on earth	The sample is commonly known as Boron Ore.	Since, the test report was not clear as to whether the sample was <u>Ore/Ore Concentrates</u> the classification of the product under Custom Tariff could not be decided.
Point IV Whether the goods are processed using calcination or enriched/ concentrated by using any other method	Samples are not calcined	The website of Etimaden (supplier of imported goods) mentioned that B ₂ O ₃ contents of the Colemanite Ore mined are 27% to 32% whereas the technical data sheet of Ground Colemanite shows the B ₂ O ₃ content as 40%. Thus, there must be any process involved by which the concentration of the product was increased from 27-32% to 40%, i.e. it appears that the product is enriched in concentrator plant to obtain concentrated product. Copy of technical data sheet and print out taken from website are enclosed.

9.1 In response to above letter, the Joint Director, CRCL, New Delhi vide letter F. No.25-Cus/C-40-47/2019-20 dated 08.07.2020 had sent the para-wise reply, which is reproduced as under-

Points raised by you	Remarks as per your letter	Comments
Whether the samples were in form in which they are found naturally on earth	Since, the test report was not clear as to whether the sample was Ore/Ore Concentrates the classification of the product under Custom Tariff could not be decided.	Natural Borates and Concentrates thereof (whether or not calcined) was mentioned in Custom Tariff. The sample is a natural Calcium Borate, Mineral Colemanite- a Natural

		Calcium Borate (commonly known as Boron Ore) was mentioned in the report.
Whether the goods are processed using calcination or enriched/ concentrated by using any other method	The website of Etimaden (supplier of imported goods) mentioned that B ₂ O ₃ contents of the Colemanite Ore mined are 27% to 32% whereas the technical data sheet of Ground Colemanite shows the B ₂ O ₃ content as 40%. Thus, there must be any process involved by which the concentration of the product was increased from 27-32% to 40%, i.e. it appears that the product is enriched in concentrator plant to obtain concentrated product. Copy of technical data sheet and print out taken from website are enclosed.	The sample under reference are not undergone any process of calcination. <u>Laboratory Cannot comment on the starting material and process undergone.</u> It can give the final value of % B ₂ O ₃ .

9.2 From the above and test report received from CRCL, Vadodara and CRCL, New Delhi, it was found that the test report provided by CRCL, Vadodara in respect of sample of Colemanite-44 imported by the Noticee confirmed that Colemanite-44 was processed Borate Mineral Colemanite and found in powder form having B₂O₃ content as 44.5% and 43.08% by weight respectively. The re-test report provided by CRCL, Delhi also confirmed the form of sample as powder which was crushed and grinded. However, it failed to comment on the details of processes undertaken.

10. Summons dated 24.07.2020 and 18.08.2020 were issued to the Noticee to give statement, to which **Shri Rajkumar Surana**, Managing Director of the Noticee, vide letter dated 24.08.2020, authorized Shri Gopal Krishna Tripathi to give statement on their behalf.

10.1 Statement dated 25.08.2020 of **Shri Gopal Krishna Tripathi**, Head of R & D and Authorized Person of the Noticee recorded before the Superintendent of Customs (SIIB), Surat, is reproduced as under:-

Question No.1: Please explain in details the business activity of M/s Nahar Colours & Coating Pvt Ltd, Unit No. 03, Dahej Road, Village-Jolwa, Dist- Bharuch?

Ans: Sir, M/s Nahar Colours & Coating Pvt Ltd, Unit No. 03, Dahej Road, Village-Jolwa, Dist- Bharuch are engaged in manufacturing of 'Ceramic Glaze Mixture commonly known as Frit. For production of our final product we use feldspar, Calcite, Dolomite, Zinc, Zircon, Calcium Borate (Colemanite), Borax Penta hydrate, Boric Acid, Alumina, China Clay, etc as primary raw material in a definite ratio as per our requirement. Out of the said mentioned raw material, we used to import Zircon, Calcium Borate (Colemanite), Borax Penta hydrate and Boric Acid.

Question No. 02:- Please go through your answer to question no. 01 of this statement and state what percentage of Calcium Borate (Colemanite), Borax Penta hydrate and Boric Acid are used as raw material in production of 'Ceramic Glaze Mixture (Frit)'.

Answer:- Sir, I have gone through my answer to question no. 01 of this statement and I want to submit that Calcium Borate (Colemanite), Borax Penta hydrate and Boric Acid are being taken into similar type of use as melting agent in production of 'Ceramic Glaze Mixture (Frit)'. We use any one or mixture of any two or three of Calcium Borate (Colemanite), Borax Penta hydrate and Boric Acid. These raw materials are used as such [purchased] without doing any process directly in definite ratio of 4% to 6% in production of frit as melting agent.

Question No.03:- Please go through your answer to question no. 02 of this statement and state the name of supplier of Calcium Borate (Colemanite), Borax Penta hydrate and Boric Acid.

Answer:- Sir, I have gone through my answer to question no. 02 of this statement and I want to submit that we used to import Calcium Borate (Colemanite) from M/s Mario Pilato Blat, s.a., Spain and I also want to submit that M/s Mario Pilato Blat, s.a., Spain purchase the Calcium Borate from M/s Etimaden, Turkey. I have along with my Director have visited the plant of M/s Mario Pilato Blat, s.a., Spain earlier and after satisfying with the quality of Calcium Borate (Colemanite) and treatment made at their plant, we have undergone in a contract with them and started import of Calcium Borate (Colemanite).

I also want to admit that Colemanite (Calcium Borate) contains mainly B_2O_3 , Al_2O_3 , CaO , K_2O and As_2O_3 . The Colemanite-44 imported by us contains 44% of B_2O_3 .

We purchased Borax Penta Hydrate & Boric Acid from M/s Borochemie india Pvt Ltd (SEZ Unit), Arshiya International Limited- FTWZ, Sai Village, Navi Mumbai.

Question No.04:- As you are head of R & D of M/s Nahar Colours & Coating Pvt Ltd, please state what is definition of 'Ore'. Whether Ore can be used directly without any processing on it.

Answer:- Sir, in my view, a naturally deposited solid material/rock from which a metal or valuable mineral can be extracted profitably is Ore. No, it cannot be used directly as such without processing. I also want to submit that only powder form of Colemanite is required for manufacturing of 'Ceramic Glaze Mixture (Frit)'.
:-

Question No.05:- It is found that Calcium Borate (Colemanite-44) imported by you is in form of white powder. Please state that any ore can exist in powder form?

Answer:- Sir, in my view, any Ore naturally deposited in rock form. It cannot be exists in powder form. I accept that Calcium Borate (Colemanite-44) imported by us is in form of white powder, it is due to certain process undergone on it. Flow chart of process undergone at plant of M/s Mario Pilato Blat, s.a., Spain are as under (Flow chart provided by M/s Mario Pilato Blat, s.a., Spain is produced before you)
:-

Concentrate Colemanite Ore → Drying → Grinding & Air Classification (Separation of 75 micron) → Ground Colemanite Silos → Packing → Warehouse.

I also want to admit that Colemanite (Calcium Borate) contains mainly B_2O_3 , Al_2O_3 , CaO , K_2O and As_2O_3 . The Colemanite-44 imported by us contains 44 % of B_2O_3 .

Question No.06:- Please go through your answer to question no. 03 of this statement wherein you have stated that supplier of Colemanite-44, M/s Mario Pilato Blat, s.a., Spain purchase the Calcium Borate from M/s Etimaden, Turkey.

Please also go through the print out taken from website of M/s Etimaden (<http://www.Etimaden.gov.tr/en>) wherein it is mentioned that "The B_2O_3 content of the colemanite ore mined from open quarry is between %27-%32". Please also go through the print out of 'product technical data sheet' of Colemanite (Calcium Borate) taken from website of M/s Etimaden and categorized at their website as "Refined Product" wherein it is mentioned that "The Ore is enriched in concentrator plant to obtain concentrated product." Please offer your comments.

Answer:- Sir, I have gone through my answer to question no. 03 of this statement wherein, I have stated that supplier of Colemanite-44, M/s Mario Pilato Blat, s.a., Spain purchase the Calcium Borate (Colemanite) from M/s Etimaden, Turkey. I have also gone through the print out taken from website of M/s Etimaden (<http://www.Etimaden.gov.tr/en>) wherein it is mentioned that "The B_2O_3 content of the colemanite ore mined from open quarry is between %27-32".

Further, I have gone through the print out of 'product technical data sheet' of Colemanite (Calcium Borate) taken from website of M/s Etimaden and categorized at their website as "Refined Product" wherein it is mentioned that "The Ore is enriched in concentrator plant to obtain concentrated product."

From, the above discussed print out taken, it is obvious that the B_2O_3 content of the Colemanite Ore mined from open quarry is between %27-%32 and Etimaden has enriched the said Ore of B_2O_3 concentration (%27-%32) in concentrator plant to obtain concentrated product i.e. product with higher percentage of B_2O_3 .

Question No. 07:- Please go through your answers to question no. 02, question no. 05 (flow chart of process undergone at plant of M/s Mario Pilato Blat, s.a., Spain) & 07 of this statement and offer your comments.

Answer:- Sir, I have gone through my answers to question no. 02, question no. 05 (flow chart of process undergone at plant of M/s Mario Pilato Blat, s.a., Spain) & 07 of this statement. I want to state that it is obvious that B_2O_3 content of the Colemanite Ore mined from open quarry is between %27-%32 and Etimaden has enriched the said Ore of B_2O_3 concentration (%27-%32) in concentrator plant to obtain concentrated product i.e. product with higher percentage of B_2O_3 . The concentrated product by M/s Etimaden is further processed/concentrated at plant of M/s Mario Pilato Blat, s.a., Spain (as discussed by flow chart). After processing at plant of M/s Mario Pilato Blat, s.a., Spain, we import the said product and use it as melting agent in production of 'Ceramic Glaze Mixture (Frit)' without any processing on it.

Question No. 08:- You have stated that Colemanite-44 (Calcium Borate) imported by you contains 44% of B_2O_3 and it is directly used as melting agent without any processing for production of 'Ceramic Glaze Mixture (Frit)'. Please state that whether any process is required on Calcium Borate of concentration other than 44% before using it for production of 'Ceramic Glaze Mixture (Frit)'.

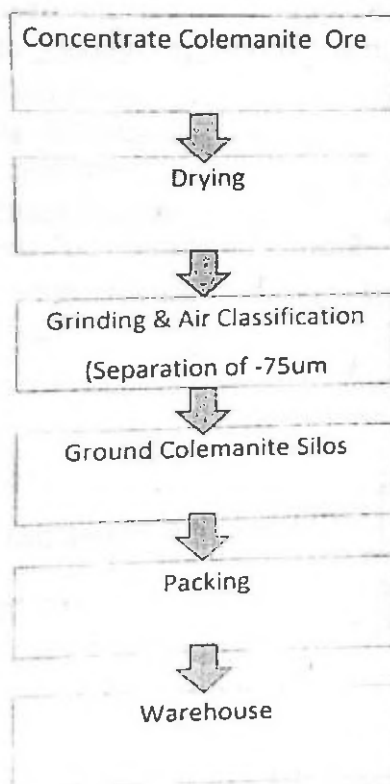
Answer:- Sir, I want to submit that we have imported Colemanite (Calcium Borate) of concentration of 40% to 44% and no process is required before using it for production of 'Ceramic Glaze Mixture (Frit)'. We only examined the percentage of Oxides present in Colemanite (Calcium Borate) and according to variation in oxides present we use the quantity of Colemanite (Calcium Borate). It means if it contains higher percentage of oxide we use less quantity of Colemanite (Calcium Borate) and if it contains less percentage of oxides we need to use more quantity of Colemanite (Calcium Borate).

10.2 Shri Gopal Krishna Tripathi, Head, R & D, M/s. Nahar Colours & Coating Pvt Ltd during his statement dated 25.08.2020 recorded under Section

108 of the Customs Act, 1962, submitted flow chart of production of Ground Colemanite of supplier i.e. M/s. Mario Pilato Blat, s.a., Spain. Scanned image is reproduced hereunder:-

▲▲ Mario Pilato Blat, s.a.

Flow Chart of Ground Colemanite Production



From, the above flow chart and as admitted by **Shri Gopal Krishna Tripathi** during statement dated 25.08.2020, it appeared that to obtain the imported goods i.e. 'Colemanite-44', the supplier namely **M/s. Mario Pilato Blat, S.A., Spain** needed "Concentrated Colemanite Ore", which was to be supplied by the manufacturer i.e. **M/s Etimaden, Turkey**. Thus, it appeared that the concentrated product by **M/s Etimaden** was further processed/concentrated at plant of supplier i.e. **M/s Mario Pilato Blat, S.A., Spain**.

10.3 Shri Rajkumar Surana, Managing Director of the Noticee submitted letter dated 29.08.2020 written in response to the summons dated 18.08.2020 and to give further clarification to oral submission dated 25.08.2020 given by Shri Gopal Krishna Tripathi on his behalf. In the letter Shri Rajkumar Surana questioned the source of the literature of Etimaden which showed that "The B₂O₃ content of the Colemanite Ore mined from open quarry was between %27-%32". However, he further added in the said letter that:

"Our supplier buys the big lumps from Etimaden Turkey which is having B₂O₃ content in the range of 44 - 46% and then process it and supply to us. We use it directly in our furnace along with other minerals like silica sand, feldspar, dotomite, etc. Colemanite (B₂O₃) acts as fluxing agent as silica melts at 1800 degree Celsius and Colemanite makes all melts stable at 1450 - 1550 degree Celsius"

In other words, Shri Rajkumar Surana vide his letter reiterated the facts given by Shri Gopal Krishna Tripathi that their supplier M/s Mario Pilato Blat, S.A, Spain procure Concentrated Colemanite from M/s Etimaden, Turkey and process it further before supplying it to them and they i.e., M/s Nahar use the imported material as such without any further processing.

11. The various material and literature available on website especially of M/s Etimaden, Turkey [producer of Ground Colemanite] in respect of Boron Ore, Colemanite, Ground Colemanite, Ore and Ore Concentrates have been analysed and outcome is discussed hereunder:

11.1.1 The study of the details available on the official website of **M/s Etimaden**, Turkey (<http://www.Etimaden.gov.tr/en>) in respect of mining of Colemanite, process undertaken and sales, etc. has been made and it was noticed that M/s Etimaden was selling their products by categorizing under two heads namely Refined Product and Final Product. Ground Colemanite was one of the products listed under Refined Products. The Product Technical Data Sheet of Ground Colemanite had also been found available on their website which was downloaded and scanned images of relevant pages are reproduced here-under for analysis:

Image No:1

ETIMADEN
İŞLETMELERİ GENEL MÜDÜRLÜĞÜ

PRODUCT TECHNICAL DATA SHEET

GROUND COLEMANITE

GROUND COLEMANITE

Di-Calcium Hexaborate Pentahydrate
 $[2CaO \cdot 0.3B_2O_3 \cdot 5H_2O]$
CAS Number: 1318-33-8
Technical Grade: Powder
Packaging: 1000 kg, 2000 kg
(with or without pellet)

General Information:

Colemanite is the most commonly available boron mineral. Its B_2O_3 content is $40 \pm 0.50\%$. It dissolves slowly in water and rapidly in acidic medium.

The ore is enriched in concentrator plant to obtain concentrated product. The concentrated product is passed through crushing and grinding processes respectively to obtain milled product. It is then packaged in a packaging unit and ready for sale.

Usage and Benefits:

Glass and ceramics: It is used as an agent to lower the fusing point and to increase resistance against thermal shocks and the thermal expansion coefficient in glass production. Furthermore, it is used in ceramic and enamel glaze formulations. Due to the fusing temperature being close to those of the other components in the blend, it provides a

ETIMADEN
ETIKOLEMANİT
GROUND COLEMANITE
MADE IN TÜRKİYE

Ayvalı Mahallesi Halli Sezal Erkut Caddesi Afra Sokak
No: 1/A 05010 Etilik, Keçiören - ANKARA / TÜRKİYE
Tel: +90(312) 294 20 00 - Fax: +90(312) 294 20 40

For more information:
Technology Development Department
EYS FRM-ETI-00 17 / 23/9/2014-02
Rev. 2020/01

Image No:2

stable structure, homogeneous fusing and low segregation. Colemanite is also used for the production of glass fiber (textile grade glass fiber). Since sodium is not desired in the production of textile grade glass fibers, boric acid and colemanite are preferred over other boron products.

The colemanite used for this purpose:

- Decreases the mixture fusing temperature.
- Enables low viscosity at fusing temperature.
- Prevents crystallization.
- Has positive effects on the physical and chemical properties of the glass product.

Metallurgy: Due to its nature of acting as a solvent for almost all metal oxides, it is used as flux in the metallurgy industry. In the gold refinery industry, on the other hand, it is used in the slag formula to dissolve metal oxides.

Another area of use for the boron products is the addition of colemanite to powdered slag in the iron-steel industry in order to obtain slag with a glassy, compact structure. Slag which is formed in the ladle metallurgy and which becomes powdered after cooling can cause problems in terms of handling, storing; can be harmful to the environment and lead to additional costs for the business, as it does not have much wetting and compacting properties. Addition of colemanite to the ladle furnace during steel production provides a compact structure to slag and this problem is reduced. The use of colemanite in the iron-steel industry is becoming widespread. In the ladle metallurgy, about 10-30 kg slag is formed per a ton of steel. It is estimated that 30 million tons of powdered ladle slag is formed globally on average.

Fertilizer: Because of its low solubility, ground colemanite is preferred in fertilizers produced for sandy soils in fertilizer industry.

Miscellaneous: Ground colemanite is also used in the detergent and cosmetic industries. Boric acid is produced by the reaction of colemanite and sulfuric acid.

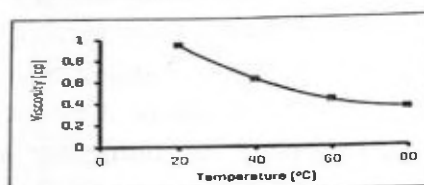
Ayvalı Mahalleli Halil Sezai Erbuğ Caddesi A/İle Sokak
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For more information:
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Rev. 2020/01

Image No:3

Solubility:
It is slightly soluble in water.

Solution viscosity values:



Temp. (°C)	Conc. (%)	Viscosity (cp)
20	0.05	0.95
40	0.05	0.62
60	0.05	0.43
80	0.05	0.35

Chemical Content:

Component	Content	
	- 45 Micron	-75 Micron
B ₂ O ₃	40.00 ± 0.50 %	40.00 ± 0.50 %
CaO	27.00 ± 1.00 %	27.00 ± 1.00 %
SiO ₂	4.00 - 6.50 %	4.00 - 6.50 %
SO ₃	0.60% max	0.60% max
As	35 ppm max	35 ppm max
Fe ₂ O ₃	0.08% max	0.08% max
Al ₂ O ₃	0.40% max	0.40% max
MgO	3.00% max	3.00% max
SrO	1.50% max	1.50% max
Na ₂ O	0.50% max	0.50% max
Heat loss	25.00% max	25.00% max
Humidity	1.00% max	1.00% max
Bulk density	1.00 ton/m ³ max	1.00 ton/m ³ max

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Rev. 2020/01

11.1.2 On going through the details and General Information available in Scanned Image No.1, it was noticed that the details were in respect of Ground Colemanite and the Chemical Name of Ground Colemanite was Di-Calcium Hexaborate Pentahydrate and chemical formula was 2CaO.3B₂O₃.5H₂O. Technical Grade was Powder and sold in packaging of 1000 Kg and 2000 Kg (with or without pallet). The content of B₂O₃ was 40+/- 0.50%. Further, **M/s Etimaden** also discussed regarding concentration of Colemanite Ore under General Information which is reproduced below:

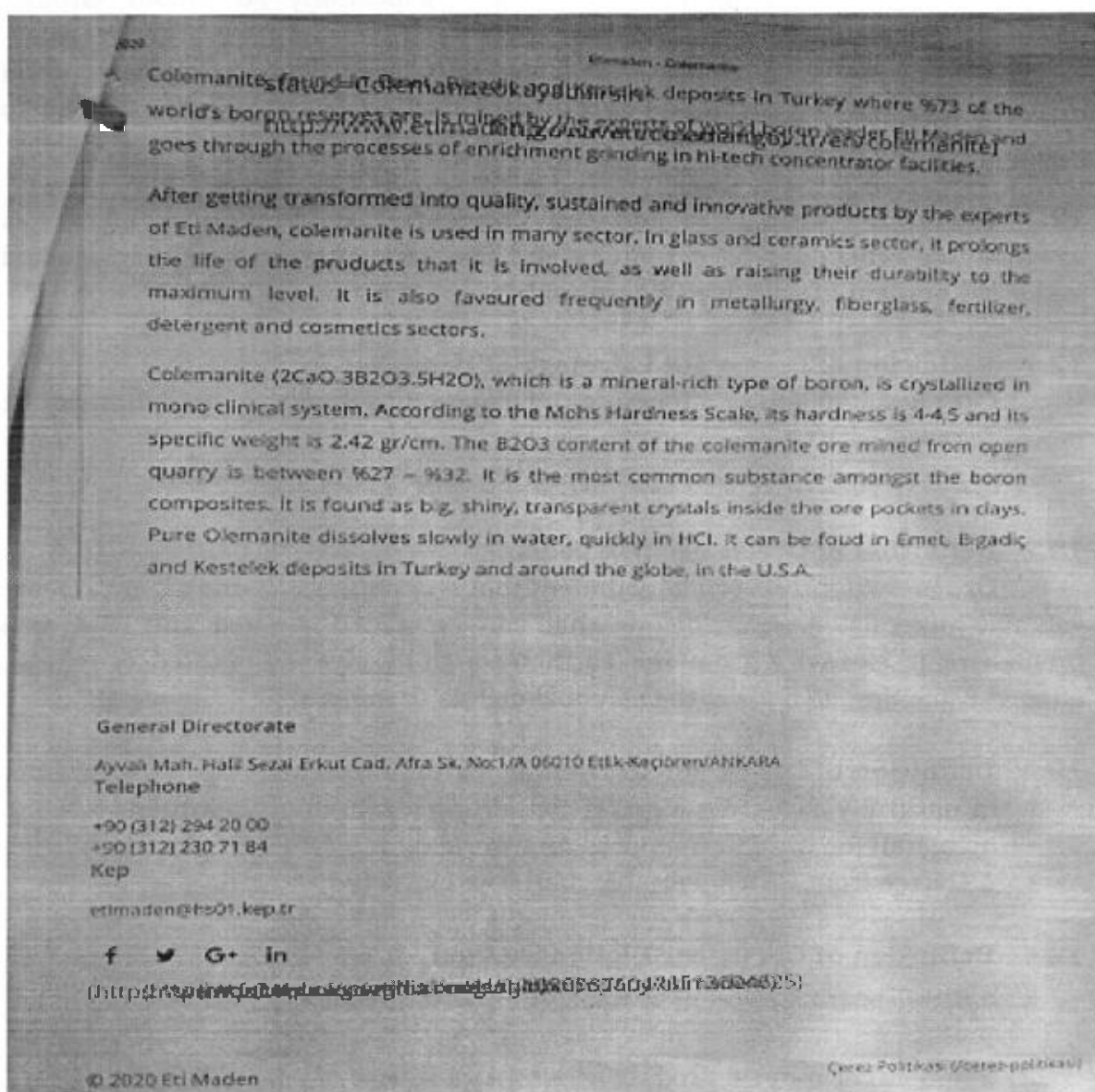
“The Ore is enriched in Concentrator Plant to obtain concentrated product. The Ground Concentrated product is passed through crushing and grinding processes respectively to obtain milled product. It is then packaged in a packaging unit and ready for sale”

11.1.3 Thus, from the details available on Website of **Etimaden** as discussed above, it was apparent that Ground Colemanite was a concentrated product of Colemanite which contained B_2O_3 40+/- 0.50% and produced by enrichment of Colemanite in Concentrator Plant. Thereafter, such Ground Concentrated product was passed through crushing and grinding processes respectively to obtain milled product and then it was packaged in a packaging unit, which became ready for sale.

11.1.4 The Boron Element and its major Boron Minerals, availability in Turkey and it's uses have been described in detail on the website of **Etimaden** which described that Boron minerals were natural compounds containing Boron oxide in different proportions. The most important Boron minerals in commercial terms were; Tincal, Colemanite, Kernite, Ulexite, Pandermite, Boracite, Szaybelite and Hydroboracite. The main Boron minerals transformed by Etimaden were; Tincal, Colemanite and Ulexite.

11.1.5 Boron minerals were made valuable by **Etimaden** by using various mining methods and were enriched by physical processes and converted into concentrated Boron products. Subsequently, by refining and by transforming into highly efficient, profitable and sustainable Boron products, it was used in many fields of industry especially in glass, ceramics, agriculture, detergent and cleaning industries, etc. **Etimaden** had currently 17 refined Boron products in its product portfolio. Primary refined Boron products were; Etibor-48, Borax Decahydrate, Boric Acid, Etidot-67, Etibor-68 (Anhydrous Borax), Zinc Borate, Borax Pentahydrate, Boron Oxide, Ground Colemanite and Ground Ulexite. The most abundant Boron minerals in Turkey in terms of reserve were Tincal and Colemanite. In the facilities in 4 Works Directorates under Etimaden, mainly Borax Pentahydrate, Borax Decahydrate, Boric Acid, Etidot-67, Boron Oxide, Zinc Borate, Calcine Tincal, Anhydrous Borax, Ground Colemanite and Ground Ulexite were produced and supplied to domestic and international markets.

11.1.6 **Etimaden** also discussed in detail regarding availability, production, quality and uses of Colemanite in their website which showed that Colemanite were found in Emet, Bigadiç and Kestelek deposits in Turkey, was mined by the experts of Etimaden and went through the processes of enrichment grinding in hi-tech concentrator facilities. After getting transformed into quality, sustained and innovative products by the experts of **Etimaden**, Colemanite was used in many sectors. Colemanite ($2CaO.3B_2O_3.5H_2O$), which was a mineral-rich type of Boron, was crystallized in mono clinical system. According to the Mohs Hardness Scale, its hardness was 4-4.5 and its specific weight was 2.42 gr/cm. The B_2O_3 content of the Colemanite ore mined from open quarry was between %27-%32. For the purpose of illustration the scanned image of page containing such details is reproduced as under:



11.2 Thus, from details available on website of **Etimaden** in respect of mining of Colemanite & production of Ground Colemanite and flow chart of production of Colemanite-44 of **M/s Mario Pilato Blat**, S.A, Spain as discussed at para 10.3, it was very clear that:

1. Colemanite was one of most important Boron minerals in commercial terms which were found in Emet, Bigadiç and Kestelek deposits of Turkey and mined by **Etimaden**,
2. The B_2O_3 content of the Colemanite ore mined from open quarry was between 27%-32%, However, the line " B_2O_3 content of the Colemanite ore mined from open quarry is between 27%-32%" had been deleted from their website after initiation of inquiry.
3. Boron minerals i.e. Colemanite were made usable and valuable by **Etimaden** by using various mining methods which were enriched by physical processes and converted into concentrated Boron products.
4. Mined Colemanite goes through the processes of enrichment grinding in hi-tech concentrator facilities available with **Etimaden** and concentrated Colemanite is produced. By this process the mined Colemanite Ore having B_2O_3 ranging between 27%-32% had been enhanced to Colemanite Ore Concentrate which was sold as Ground Colemanite having B_2O_3 40%. Ground Colemanite was a concentrated product of Colemanite produced by enrichment in concentrator plant.

5. Thereafter such Ground Concentrated product was passed through crushing and grinding processes respectively to obtain Ground Colemanite.
6. **M/s Mario Pilato Blat**, S.A, Spain purchased Ground Colemanite from Etimaden, Turkey and processed it further before supplying them to the Noticee.

12. Discussion about Ore and Ore Concentrates: The various literatures available on website in respect of Ore and Ore Concentrates have been studied and some of them are discussed here-under:

12.1 Definition of Ore as per Petrology of Deposits:

Ore: a metalliferous mineral, or aggregate mixed with gangue that can be mined for a profit →

Gangue: associated minerals in ore deposit that have little or no value

12.2 Definition of Ore as per Wikipedia:

Ore is natural rock or sediment that contains one or more valuable minerals, typically metals that can be mined, treated and sold at a profit. Ore is extracted from the earth through mining and treated or refined, often via smelting, to extract the valuable metals or minerals

12.3 Definition of Ore as per Merriam Webster:

1. a naturally occurring mineral containing a valuable constituent (such as metal) for which it is mined and worked.
2. a source from which valuable matter is extracted.

12.4 Definition of Ore as per Dictionary.Com

1. a metal-bearing mineral or rock, or a native metal, that can be mined at a profit.
2. a mineral or natural product serving as a source of some nonmetallic substance, as sulfur.

12.5 Definition of Ore as per Britanica:

a natural aggregation of one or more minerals that can be mined, processed, and sold at a profit. An older definition restricted usage of the word *ore* to metallic mineral deposits, but the term has expanded in some instances to include non-metallic.

12.6 Definition of Ore Concentrate as per Wikipedia:

Ore concentrate, dressed ore or simply **concentrate** is the product generally produced by metal ore mines. The raw ore is usually ground finely in various comminution operations and gangue (waste) is removed, thus concentrating the metal component.^[1]

13. The terms 'Ores' and 'Concentrates' have been defined in the Explanatory Notes of Chapter 26 of the HSN which defined that the term 'Ore' applies to metalliferous minerals associated with the substances in which they occur and with which they are extracted from the mine; it also applies to native metals in their gangue (e.g. metalliferous sands"). The term 'concentrates' applies to Ores which have had part or all of the foreign matter removed by special treatments, either because such foreign matter might hamper subsequent metallurgical operations or with a view to economical transport".

The definitions of Ore and Ore Concentrate discussed above showed that the term "Ore" was a naturally occurring raw and native mineral which was produced by mines and contained various foreign material and impurities. Ore

was extracted from the earth through mining and treated or refined to extract the valuable metals or minerals. The "Ore Concentrate" is dressed ore obtained by passing through the physical or physico-chemical operation viz cleaning, washing, drying, separation, crushing, grinding, etc. Natural Ore which were extracted from the mines though might have predominance of a particular mineral but do not consist of any particular mineral alone. It is a naturally occurring raw and native mineral which is produced by mines and contains various foreign material, impurities and other substances and not suitable for further operations. Ore was extracted from the earth through mining and treated or refined to extract the valuable metals or minerals. The "Concentrate" was the form or Ores from which part or all of the foreign matters have been removed and obtained by passing through the physical or physico-chemical operation viz cleaning, washing, drying, separation, crushing, grinding, etc. Therefore, it appeared from the above that Natural Ore consisted of various minerals and other minerals and substances and therefore as such it cannot be directly used for any further manufacturing. Whereas concentrate is form, from which part or all of the foreign matters have been removed.

14. From the data available in EDI system of Customs, it was noticed that the Noticee was importing "Boron Ore (Colemanite-44)" from Spain, supplied by **M/s. Mario Pilato Blat**, S.A., Spain by classifying under Chapter Tariff Heading No.25280030 of the Customs Tariff Act, 1975 and by availing exemption from payment of Basic Customs duty as per Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 by declaring 'Colemanite-44' as Boron Ore and before this notification they were availing exemption from payment of Basic Customs Duty as per Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015. The details of "Boron Ore (Colemanite-44)" imported by the Noticee and cleared under jurisdiction of the Commissioner of Customs, Ahmedabad from April, 2016 was prepared and attached as **Annexure-A/1, A/2, A/3, A/4 and A/5** for Financial year 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 [Up to 11.01.2021] respectively to the Show Cause Notice.

15. From the data available in EDI system of Customs, it was noticed that the Noticee classified Boron Ore (Colemanite-44) under Chapter Tariff Heading No.25280030 of Customs Tariff Act, 1975. The Chapter Tariff Heading No.25280030 of Customs Tariff Act, 1975 under which M/s Nahar declared the goods i.e. "Boron Ore (Colemanite-44)" is reproduced as under:-

Chapter Head	Description	Unit	Rate of duty
2528	NATURAL BORATES AND CONCENTRATES THEREOF (WHETHER OR NOT CALCINED), BUT NOT INCLUDING BORATES PREPARED FROM NATURAL BRINE; NATURAL BORIC ACID CONTAINING NOT MORE THAN 85% OF H ₃ BO ₃ CALCULATED ON THE DRY WEIGHT		
252800	Natural borates and concentrates thereof (Whether or not calcined), but not including borates separated from natural brine; natural boric acid containing not more than 85 % of H ₃ BO ₃ calculated on the dry weight		
25280010	Natural Sodium Borates and Concentrates Thereof (Whether or not Calcined)	KG	10%
25280020	Natural boric acid containing not more than 85% of H ₃ BO ₃ (calculated on the dry weight)	KG	10%

25280030	Natural calcium borates and concentrates thereof (whether or not calcined)	KG	10%
25280090	Others	KG	10%

16. During investigation of a similar enquiry by D.R.I., Surat in respect of import of "ULEXITE" described as "ULEXITE BORON ORE" manufactured by same producer **M/s Etimaden**, Turkey and supplied through trader **M/s Asian Agro Chemicals Corporation**, UAE, it was found that said product i.e., "ULEXITE" is a concentrated product of Natural Boron Ore. The said investigation in respect of import of "ULEXITE" described as "ULEXITE BORON ORE" by M/s Indo Borax and Chemicals Ltd, 302, Link Rose Building, Linking Road, Near Kotak Mahindra Bank, Santacruz West, Maharashtra has been completed and Show Cause Notice no. DRI/AZU/SRU-06/2020/Indo-Borax dated 16/12/2020 was issued. **M/s Pegasus Customs House Agency Pvt. Ltd.**, CHA of **M/s Indo Borax and Chemicals Ltd** vide letter dated 03.07.2020 submitted the copies of import documents of **M/s Indo Borax** which included the test report of 'ULEXITE' supplied by **M/s Etimaden**, Turkey showing the description of the goods supplied as:-

"Ulexite, Concentrated, Granular, In Bulk 3_125mm"

The Show Cause Notice issued by DRI also mentioned that the test report of the consignment imported as 'ULEXITE BORON ORE' was also obtained and as per Test Report of Chemical Examiner, Grade-I, Central Excise & Customs Laboratory, Vadodara, all such imported items were 'processed mineral Ulexite' (RUD-06 of the Show Cause Notice No.DRI/AZU/SRU-06/2020/Indo-Borax dated 16/12/2020).It is pertinent to mention here that as per the literature available at site of M/s Etimaden, ULEXITE Granular was a refined product having lesser concentration of B_2O_3

i.e., 30% in comparison to their product "Ground Colemanite" which was having minimum concentration of B_2O_3 at 40%. Hence, it was clear that "Ground Colemanite" and "Colemanite-44" which was derived by processing of Ground Colemanite was more refined and concentrated product and the test report of the producer in case of "ULEXITE" declared it as concentrated product and the presence of higher %age of B_2O_3 made it more concentrate. However, no such test report of the producer M/s Etimaden has been disclosed by the importer M/s Nahar in present case also through e-sanchit portal/customs department.

17. The Union Government, after assessing the practice of declaring Concentrate of Boron ore as 'Boron Ore', has withdrawn the exemption given to 'Boron Ore' and now Sr.No.130 of Notification No.50/2017-Customs is amended to prescribe rate of 2.5% Basic Customs Duty(BCD) on all goods under Chapter Tariff Heading No.2528. As a result, Boron Ore and Concentrate would uniformly attract BCD at a uniform rate of 2.5%. [Sr. No.12 of Notification No. 02/2021-Customs dated 1st February, 2021]

18. In view of the discussions in the aforesaid paras, it appeared that the Noticee were engaged in import of "Colemanite-44" and the same was directly used as melting agent without any processing for production of 'Ceramic Glaze Mixture (Frit)'. The said product was imported from Spain, supplied by **M/s. Mario Pilato Blat**, S.A., Spain and the basic raw material i.e. 'Concentrated Colemanite Ore' was procured by the supplier i.e. **M/s. Mario Pilato Blat**, S.A., Spain from the producer i.e. M/s. Etimaden, Turkey for further processing to obtain end product i.e. "Colemanite-44". M/s Nahar classified 'Colemanite-44' under Chapter Tariff Heading No.25280030 of the Customs Tariff Act, 1975 by declaring it as Natural Boron Ore and availed exemption from payment of Basic Customs duty as per Sr.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No.28/2015-Cus dated 30.04.2015 and Sr.130 of Customs Notification No.50/2017 dated 30.06.2017 for the period from

05.04.2016 to 30.06.2017 and 01.07.2017 to 11.01.2021 respectively.

18.1 In view of the above discussions, it also appeared that the Noticee imported Colemanite-44 and directly used it as melting agent without any processing for production of 'Ceramic Glaze Mixture (Frit)' which was revealed by Shri Gopal Krishna Tripathi, Head, R & D of the Noticee in his statement dated 25.08.2020 and affirmed by Shri Rajkumar Surana, Managing Director of the Noticee vide his letter dated 29.08.2020.

18.2 In view of the above discussions, it further appeared that the term "Ore" was a naturally occurring raw and native mineral which was produced by mines and contain various foreign material and impurities. Ore was extracted from the earth through mining and treated or refined to extract the valuable metals or minerals. The "Ore Concentrate" was dressed Ore obtained by passing through the physical or physico-chemical operation viz cleaning, washing, drying, separation, crushing, grinding, etc. Natural Ore which was extracted from the mines though might have predominance of a particular mineral but do not consist of any particular mineral alone. It was a naturally occurring raw and native mineral which was produced by mines and contains various foreign material, impurities and other substances and as such not suitable for further operations. Ore was extracted from the earth through mining and treated or refined to extract the valuable metals or minerals to make it usable. The "Concentrate" was the form of Ores from which part or all of the foreign matters have been removed and obtained by passing through the physical or physico-chemical operation viz cleaning, washing, drying, separation, crushing, grinding, etc. Therefore, it appeared from the above that Natural Ore consisted of various minerals and other minerals and substances and therefore as such it could not be directly used for any further manufacturing. Whereas concentrate was form, from which part or all of the foreign matters had been removed.

18.3 In view of the discussions in aforesaid paras and details available on website of **Etimaden**, Turkey, it appeared that Colemanite was one of most important Boron minerals in commercial terms which was found in Emet, Bigadiç and Kestelek deposits of Turkey and mined by **Etimaden**. The B_2O_3 content of the Colemanite Ore mined by **Etimaden** from open quarry was between 27%-32%. Boron minerals i.e. Colemanite were made usable and valuable by Etimaden by using various mining methods which were enriched by physical processes and converted into concentrated Boron products. Mined Colemanite went through the processes of enrichment and grinding in hi-tech concentrator facilities available with **Etimaden** and by this process concentrated Colemanite was produced. Further, by this process the mined Colemanite Ore having B_2O_3 ranging between 27%-32% has been enhanced to produce Colemanite Ore Concentrate. The concentrated product by **M/s. Etimaden**, Turkey was further processed/concentrated at plant of **M/s. Mario Pilato Blat**, S.A., Spain to obtain product "Colemanite-44". The content of B_2O_3 has also been confirmed as 44.5% and 43.08 % by CRCL, Vadodara and CRCL, New Delhi respectively. Thus, Colemanite-44 is a processed/concentrated product of Colemanite, obtained from processing of Concentrated Colemanite Ore, supplied by **M/s. Etimaden**, Turkey by enrichment in Concentrator Plant and packed in bag and sold in powder form. Thus, Colemanite-44 processed by **M/s. Mario Pilato Blat**, S.A., Spain is 'Ore Concentrate' i.e. Concentrates of Natural Calcium Borates.

18.4 It also appeared from the above discussion at para 16 that if the producer's test report (for their product 'ULEXITE') described their product of lesser concentration as 'concentrated', then the test reports which were being supplied by **M/s Etimaden** with its all consignments and production flow chart of supplier i.e. **M/s. Mario Pilato S.A.**, Spain showing receipt of 'Concentrated Colemanite

Ore' as basic raw material for production of product "Colemanite-44", have not been disclosed to the Customs Department with intent to claim the consignment as 'Natural Boron Ore' for availing the exemption benefits under Sr. No.113 of the Notification No.12/2012-Cus dated 17.03.2012 as amended (upto 30.06.2017) and Sr.No.130 of the Notification No.50/2017-Cus dated 30.06.2017 (from 01.07.2017 onwards).

18.5 It appeared that as per Sr.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No.28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No. 50/2017 dated 30.06.2017, the NIL rate of Basic Customs Duty was prescribed on the goods i.e. Boron Ore falling under Chapter Heading 2528 of Customs Tariff Act, 1975. From the Chapter Heading 2528 of the Customs Tariff Act, 1975 it was noticed that Natural Borates and Concentrates thereof fall under the said Chapter Heading. Thus, from simultaneous reading of Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No. 28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 and corresponding description of goods, it was noticed that exemption had been given only to Boron Ore not to Concentrate of Boron Ore.

18.6 It further appeared that Colemanite-44 imported under Bill of Entry No.6525531 dated 18.01.2020, totally weighing 240 MTs valued at Rs. 85,96,434/- had been seized under Section 110(1) of the Customs Act, 1962 being liable for confiscation under Section 111(m) of the Customs Act, 1962 which was subsequently released provisionally by the competent authority on request of **M/s Nahar** under provisions of Section 110A of the Customs Act, 1962.

18.7 It also appeared that the Noticee imported 'Colemanite-44' by declaring it as Boron Ore and cleared under Jurisdiction of the Customs Commissionerate of Ahmedabad from April, 2016 onwards. The Bills of Entry filed by the Noticee for the period from 05.04.2016 to 10.12.2019 had been assessed finally. After initiation of inquiry, the Bills of Entry filed by the Noticee have been assessed provisionally and they paid Basic Customs duty @ 5% as per Sr.No.120 of Notification No.50/2017 dated 30.06.2017.

19. It appeared that the imported goods declared as "Boron Ore (Colemanite-44)" by the Noticee appeared to be a Concentrate of Natural Calcium Borate, however the Noticee had mis-declared the description as "Boron Ore (Colemanite-44)" instead of "*Concentrates of Natural Calcium Borate* " or "*Concentrates of Boron Ore*" and wrongly claimed and availed the benefit of exemption knowingly and deliberately with intention to evade Customs Duty as per Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No.28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 for the period from 05.04.2016 to 30.06.2017 and 01.07.2017 to 11.01.2021 respectively by declaring Colemanite-44 as Boron Ore as the exemption was available only to Boron Ore, knowingly and deliberately with intention to evade Customs duty amounting to **Rs.5,16,41,838/-** as detailed in **Annexures A/1, A/2, A/3, A/4, A/5 and consolidated in Annexure- A/6** for the period 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 [up to 11.01.2021] respectively. The fact that 'Colemanite-44' imported by them were in fact 'Concentrate of Natural Calcium Borate' was clearly evident from the process and literature discussed by **Etimaden** on their website in respect of Ground Colemanite wherein they have clearly stated that after mining from open query, enrichment in concentrator plant has been done and content of B₂O₃ had been enhanced from 27%-32% to make it usable and after passing through crushing and grinding processes were packed and sold in Powder form which was also evident from the production flow chart of supplier

i.e. **M/s. Mario Pilato Blat**, S.A. Spain. Therefore, the Noticee despite knowing that the goods imported by them by declaring as Boron Ore were in fact Ore Concentrate, wrongly claimed and availed the benefit of the above mentioned notification which was available only to Boron Ore. By the aforesaid acts of willful mis-statement and suppression of facts, M/s.Nahar had short-paid the applicable Customs Duty and other allied duties/taxes by way of deliberate misrepresentation, willful mis-statement and suppression of facts in order to evade the differential Duty leading to Revenue loss to the Government exchequer. It appeared that it was not the case where the importer/Noticee was not aware of the nature and appropriate classification of goods. However, the importer/Noticee had willfully mis-declared the description to evade payment of Custom Duty by self-assessing the same, claiming the benefit of Customs Notification No.50/2017 dated 30.06.2017 (Serial No. 130), paying NIL BCD, as the said goods appeared to be 'Concentrates of Natural Borate' instead of 'Natural Boron Ore'. Hence, the provisions of Section 28(4) of the Customs Act, 1962 for invoking extended period to demand the evaded Duty was clearly attracted in this case. The differential Duties on imports are 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.

20. Section 114A of the Customs Act, 1962 provides for imposition of penalty equivalent to the Customs Duty in cases where the Duty has not been levied or has been short levied by reason of collusion or any willful mis-statement or suppression of facts. In this case, the mis-declaration of description of the imported goods was intentionally made and therefore, the importer/Noticee also appeared liable to penalty under Section 114A of the Customs Act as short payment of Duty was on account of /due to reason of willful mis-statement or suppression of facts on the part of importer. The importer/Noticee also appeared liable for penalty under Section 114AA of the Customs Act, 1962 as test report of the producer **M/s Etimaden** or flow chart of the supplier **M/s. Mario Pilato Blat**, S.A., Spain have not been disclosed by **M/s Nahar** through e-sanchit portal of the department with intent to wrongly avail exemption from payment of Customs Duties.

21. The Noticee have imported 26114.2 MTS totally valued at Rs.92,57,19,562/- of Boron Ore Concentrate and wrongly claimed and availed the benefit of exemption from payment of Customs Duty as per Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No.28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 for the period from 05.04.2016 to 30.06.2017 and 01.07.2017 to 11.01.2021 respectively by declaring Colemanite-44 as Boron Ore as the exemption was available only to Boron Ore. Out of said goods, goods totally weighing 240 MTS totally valued at Rs. 85,96,434/- imported under Bill of Entry No.6525531 dated 18.01.2020 had been seized, being liable for confiscation under Section 111(m) of the Customs Act, 1962, which was subsequently released provisionally by the competent authority. Further, balance goods weighing 25874.2 MTS totally valued at Rs. 91,71,23,128/- which were not available for seizure had been imported in contravention of the provisions of Section 46(4) of the Customs Act, 1962. For these contraventions and violations, the total goods fall under the ambit of smuggled goods within the meaning of Section 2(39) of the Customs Act, 1962 and hence appeared liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 in as much as by wrongly claiming and availing the benefit of Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017, the importer/Noticee had wrongly claimed the goods imported to be Ores and is

therefore liable for penalty under Section 112(a)& (b) of the said Act for such acts of contravention.

22. Shri Rajkumar Surana, Managing Director of **M/s Nahar Colours and Coating Pvt Ltd** was responsible for import and he knowingly with intention to evade Customs Duty wrongly claimed and availed the benefit of exemption from payment of Customs Duty as per Sr. No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012, as amended vide Notification No.28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 and **Shri Rajkumar Surana**, Managing Director of the Noticee contravened the provisions of the Customs Act and failed to comply with the provisions of the Customs Act thereby rendering himself liable for penalty under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

23. Therefore, a Show Cause Notice F.No.VIII/10-30/Pr.Commr/O&A/2020-21 dated 28.03.2021 was issued wherein M/s. Nahar was called upon to Show Cause as to why:

- (i) The exemption of Basic Customs Duty (BCD) under (i) Notification No. 12/2012-Cus dated 17.03.2012, as amended (Sr.No.113) (till 30.06.2017) and (ii) Notification No.50/2017-Cus dated 30.06.2017, as amended (Sr. No. 130) (01.07.2017 onwards) should not be disallowed;
- (ii) Differential Customs Duty amounting to **Rs. 5,16,41,838/- (Rupees Five Crore Sixteen Lakhs Forty One Thousand Eight Hundred Thirty Eight Only)** as detailed in **Annexures A/1, A/2, A/3, A/4, A/5** and Consolidated at **Annexure- A/6** to the Show Cause Notice, leviable on Boron Ore Concentrate imported by declaring as Boron Ore should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- (iii) The goods having assessable value of **Rs. 92,57,19,562/-** imported by wrongly claiming as Boron Ore as detailed in **Annexures A/1, A/2, A/3, A/4 & A/5** to the Show Cause Notice should not be held as liable to confiscation under Section 111(m) of the Customs Act, 1962;
- (iv) Interest should not be recovered from them on the differential Customs Duty as at (ii) above, under Section 28AA of the Customs Act, 1962;
- (v) As the goods placed under seizure were released provisionally on execution of a Bond for Rs.85,96,434/- and a security of Rs.15,21,999/, why the Bond should not be enforced and the security furnished should not be appropriated towards the value of the goods;
- (vi) Penalty should not be imposed on them under Section 112(a) & (b) of the Customs Act, 1962;
- (vii) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962;
- (viii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;
- (ix) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962;
- (x) Protest lodged by them should not be vacated and Customs Duty of **Rs.1,22,05,123/-(Rs. One Crore Twenty Two Lakhs Five Thousand One Hundred Twenty Three only)** paid under protest towards their differential Duty liability should not be adjusted against their total differential Duty liabilities;

23.1 Further Show Cause Notice No VIII/10-06/O&A/2020-21 dated 28.12.2020 were issued to Shri Rajkumar Surana, Managing Director of M/s. Nahar Colours and Coating Pvt. Ltd., as to why:-

- (i) Penalty should not be imposed on him under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

24. Written submission: Advocate of the importer M/s. Nahar Colours and Coating Pvt. Ltd. and its Managing Director Shri Shri Rajkumar Surana filed written submission date 01.03.2024 wherein they inter alia stated as under:

24.1 As per the Orders of the Hon'ble Tribunal, the matters have to be re-considered in the light of Test Reports of CRCL, New Delhi and the judgments relied upon by the Importers:

24.1.1 that the Hon'ble Tribunal has categorically held that question of going to Wikipedia and Websites to ascertain the meaning of the term "Ore" does not arise since the goods have been tested and on test CRCL, New Delhi has reported that the goods are Boron Ore; that the Hon'ble Tribunal has held that the matter has to be decided in the light of the said Test Reports of CRCL, New Delhi; that since the Test Reports of CRCL, New Delhi categorically report that the goods are Boron Ore, the benefit of the exemption cannot be denied by holding that the goods are not Boron Ore.

24.1.2 that the Hon'ble Tribunal has held that the issue whether Ore continues to be Ore after removal of impurities is considered and decided by the various judgments relied upon by the importers; that as per the said judgments, which are referred to herein after, Ore does not cease to be Ore by mere reason of removal of foreign particles and impurities; that as per the directions of the Hon'ble Tribunal, the matter has to be decided in the light of the said judgments, it would follow that the goods do not cease to be Ore by reason of removal of the foreign particles/ impurities and hence cannot be denied the exemption granted to Boron Ore; that the **Test Report of CRCL, New Delhi, relied upon in the Show Cause Notice itself clearly establishes that the imported goods are "Boron Ore" and therefore covered under Sr. No.113 of Notification No.12/2012-Cus and Sr.No.130 of Notification No. 50/2017-Cus.:**

24.1.3 That Sr.No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus, both granted exemption from basic customs duty to "Boron Ores" falling under Customs Tariff Heading 2528; that therefore, the only two questions which have to be answered are whether the imported goods fall under Customs Tariff Heading 2528 and whether the imported goods are a "Boron Ore". As regards the first question, it is not in dispute that the goods fall under Tariff Heading 2528 and that as regards the second question, the Test Report of CRCL, New Delhi, relied upon in the Notice, clearly establishes that the goods are "Boron Ore". Accordingly, the goods were clearly eligible for exemption under the said two Notifications;

24.1.4 That very evidence relied upon in the Show Cause Notice, namely, the Test Report of CRCL, New Delhi, establishes that the imported goods are "Boron Ore"; that the Test report of CRCL, New Delhi, categorically states that on the basis of the test carried out by CRCL and the available technical literature, the sample is "**Mineral** Colemanite- a **Natural** Calcium Borate (commonly known as **Boron Ore**); that it is therefore clear from the said Test Report that the goods are Boron ore and therefore covered by Sr.No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus.

24.1.5 That, in response to letters addressed by SIIB, the CRCL, New Delhi had reiterated that the sample is "**Mineral** Colemanite- a **Natural** Calcium Borate (commonly known as **Boron Ore**)" and that the same is not calcined; that since CRCL, New Delhi, which is an expert body, has reported on the basis of test that the imported goods are "Boron Ore", it is not open to the department to disregard

the said Test Report of an expert and to contend to the contrary that the imported goods are not "Boron Ore"; that they placed reliance on following judgments, which hold that Test Report of the CRCL, New Delhi, which is an expert body, cannot be disregarded:

- H.P.L. Chemicals Ltd v CCE-2006 (197) ELT 324
- Orient Ceramics & Inds Ltd v CC - 2008 (226) ELT 483 (SC).

24.1.6 That it is settled law that goods described in an exemption Notification have to be interpreted as commonly understood by persons dealing with the same; that CRCL, New Delhi, which is an expert testing authority, has on test reported that the goods are Boron Ore as commonly known and therefore, the goods cannot be denied the benefit of exemption given by the Notification to "Boron Ore".

24.2 Question whether goods are classifiable under CTSN 25280090 or CTSN 25280030 is irrelevant for the purpose of exemption Notification:

24.2.1 That there is no dispute regarding the fact that the goods are classifiable under Heading 2528; that since the Sr. Nos. 113 and 130 of Notifications Nos.12/2012 and 50/2017 respectively, refer only to Heading 2528, it follows that for the purpose of claiming the exemption under the said Sr. Nos. 113 and 130, it is entirely irrelevant whether the goods fall under Sub-Heading 25280090 or Sub-heading 25280030. Therefore, the contention in the Show Cause Notice that the said goods are correctly classifiable under Sub-heading 25280030 is irrelevant and has absolutely no bearing on the eligibility to exemption.

24.2.2 That the Show Cause Notices have proceeded on the erroneous premise that the exemption under Sr. No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus is confined and restricted only to "Natural Ore" i.e. naturally occurring raw and native mineral as obtained from the mine and containing various foreign material, impurities and other substances. According to the Show Cause Notices, if after extracting such Natural ore from the mine, it is subjected to physical processes of removing the foreign material, impurities and other substances, it ceases to be "Natural Ore" and becomes "Concentrated Ore" and is not covered by the said Sr. No. 113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus. The said basis for denying the exemption is totally untenable in law.

24.2.3 That a bare perusal of the said **Sr. Nos.113 and 130** of Notifications Nos. 12/2012-Cus and 50/2017-Cus respectively, would show that they **cover "Boron Ores" without any qualification or restriction and once** the CRCL, New Delhi has on test reported that the goods are "Boron Ore" as commonly known, the benefit of the said exemption cannot be denied on the ground that the said Boron Ore is not in its natural state as mined, but has been subjected to the physical process of removing the foreign material, impurities and other substances.

24.2.4 That there **is no restriction or condition** in the said Notifications that the Boron Ore should be in the state or condition in which it is mined i.e. with foreign particles, impurities and other substances; that there is no stipulation in the said Notifications that if the Boron ore is imported after removing the foreign particles, impurities and other substances, it would not be entitled to the exemption.

24.2.5 That by contending that the expression "Boron Ores" appearing in the said Sr. Nos. 113 and 130, must be confined and restricted to Natural Boron Ores i.e. Ore in the state and condition in which it is mined without removing the

impurities/ foreign particles, the Show Cause Notice has committed the error of reading into the Notification additional words and conditions which are absent in the Notification; that placed reliance on the following judgments which hold that it is not permissible to read into the Notification, any additional words or conditions/ restrictions which are not stipulated in the Notification:

- Inter Continental (India) v UOI – 2003 (154) ELT 37 (Guj)
- Affirmed in UOI v Inter Continental (India) – 2008 (226) ELT 16 (SC)
- KantilalManilal& Co v CC – 2004 (173) ELT 35.

24.3 With effect from 1st March 2005, the entry “Natural Boron Ore” in the earlier exemption Notifications has been replaced by the entry “Boron Ores”.

24.3.1 That while the Notifications prior to 1st March 2005, viz. Notification No.23/98-Cus (Sr. No.20), Notification No.20/99-Cus (Sr. No.22), Notification No.16/200-Cus (Sr. No.50), Notification No.17/2001-Cus (Sr. No.54) and Notification No.21/2000-Cus (Sr. No.57), all used the expression “Natural Boron Ore”, with effect from 1st March 2005, by amending Notification No.11/2005-CUS, the expression “Natural Boron Ore” was replaced by the expression “Boron Ores”;

24.3.2 That the word ‘Natural’ which qualified Boron Ore in the notifications in force prior to 1st March 2005 was consciously dropped by the amending Notification 11/2005-Cus and subsequent Notifications Nos. 12/2012-Cus and 50/2017-Cus and the singular “Ore” was made into plural “Ores”. With effect from 1st March 2005, the exemption is available to all types of Boron Ores and is not restricted or confined to only Natural Boron Ore i.e. ore in the condition in which it is mined; that the contention in Para 16.3 of the Show Cause notice that the exemption is available only to Natural Boron Ore, is clearly erroneous in view of the dropping of the word Natural from the Notifications with effect from 1st March 2005; that the contention that the goods should not be Concentrated Ore and should be in the natural state in which they are mined, without removal of foreign particles and such contention is not tenable in view of the specific and conscious dropping of the word Natural from the Notifications with effect from 1st March 2005;

24.4 Contentions in Show Cause Notice are contrary to the law laid down by the Hon’ble Supreme Court and the Hon’ble Tribunal:

24.4.1 That the contention that the expression “Boron Ores” appearing in the Notifications means only the Ore as mined in its native state and does not cover “Concentrated Ore” i.e. Ore from which foreign materials have been removed, is plainly contrary to the decision of the Hon’ble Supreme Court in the case of **Minerals & Metals Trading Corporation of India v UOI & ors-1983 (13) ELT 1542 (SC)**, in which it is held that the term “Ore” cannot refer to the Ore as mined and that the term “Ore” means Ore which is usable and merchantable and as commercially understood;

24.4.2 That the Hon’ble Supreme Court has held that the term “Ore” cannot be construed to mean the Ore as mined since the Ore as mined would be mainly rock which in that state can neither be imported nor marketed; that the Hon’ble Supreme Court has held that the Ore as mined has necessarily to be subjected to the physical processes of removing the foreign particles, impurities and other substances by which it becomes concentrated and that the ore does not cease to be Ore when it is thus concentrated and it is also immaterial that it is imported in powder or granule form;

24.4.3 That the contention in the Show Cause Notice that ore ceases to be ore on removal of the foreign materials from it, is plainly erroneous and contrary to the said decision of the Hon'ble Supreme Court and the following decisions of the Tribunal, which have been disregarded while issuing the Show Cause Notice:

a) CC v Hindustan Gas & Industries Ltd - 2006 (202) ELT 693:

This decision examined the scope of the term "Ores" appearing in Sr. No.10 of Notification No.5/98-CE dated 2-6-1998 and by following the aforesaid decision of the Hon'ble Supreme Court in the case of MMTC, held that the term "Ores" will cover "Concentrated Ore". It was held that the term "Ore" is the genus and "Concentrated Ore" is a specie of Ore and therefore covered by the term "ore".

b) CC v Electro Ferro Alloys P. Ltd- 2007 (217) ELT 302:

In this decision it was held that the term "Ores" appearing in Sr. No.21 of Notification no.2/2002-CE dated 1-3-2002, covers "Concentrated Ore" since the "Ore" is the genus and "Concentrated Ore" is a species of Ore. The aforesaid decisions in MMTC and Hindustan Gas & Industries Ltd were followed in this decision.

c) Shri Bhavani Minerals v CCE-2019 (366) ELT 1041:

In this decision it was held that the term "Ore" appearing in the expression "Iron Ore fines" in exemption Notification no.62/2007-Cus dated 3-5-2007 would cover Concentrated ore. The aforesaid decisions were followed in this decision.

24.4.4 That the very definitions of "Concentrated Ore" relied upon in the Show Cause Notice show that Concentrated Ore is purified ore or dressed ore; that concentrated ore is therefore a specie of the Genus Ore as held by the aforesaid decisions; that in the said decision of the Hon'ble Tribunal in the case of ShriBhavani Minerals, in Para 5.1 it is held that as per the HSN notes both ore and ore concentrate are ores and that the said HSN Notes do not make any distinction between the two.

24.5 Contentions raised in the Show Cause Notice based on website of EtiMaden which was not updated are untenable:

24.5.1 That the Show Cause Notice has in Paras 10.1.6 and 10.2 placed reliance on website of EtiMaden to contend that as per the said website, the B₂O₃ content of Colemanite ore mined from open quarry is between 27% - 32% and the Colemanite ore is made usable and valuable by EtiMaden by using various mining methods which enriched by physical processes and converted into concentrated boron products; that it is contended that by processes of enrichment grinding in hi-tech concentrator facilities the mined Colemanite ore having B₂O₃ ranging between 27%-32% is enhanced to 40%;

24.5.2 That by Certificate dated 15th February 2021, EtiMaden have clarified that the B₂O₃ content of their natural borates are not updated frequently on their website since it changes with the nature of the ore vein operated; that they have further clarified that the boron lumps have B₂O₃ content ranging from 38-42% and these are simply powdered and no chemical treatment is done; that they have further clarified that the Boric Oxide content differs in every ore vein and that they give specification and certificate of analysis in respect of each shipment.

24.5.3 That in the circumstances, the contentions raised in the Show cause notice based on the website which was not updated, to the effect that the B₂O₃ content in the mined Colemanite is only between 27-32% is misconceived and untenable;

24.6 Scope of Sr. Nos.113 and 130 of Notifications Nos. 12/2012-Cus and 50/2017-Cus respectively cannot be determined by reference to other entries in the Notification:

24.6.1 That the scope of the expression "Boron Ores" appearing in Sr.No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus cannot be determined by reference to other entries in the said Notifications; as laid down in the following judgments, each entry in a Notification is a distinct, separate and self-contained exemption and the scope of an entry in the Notification has to be determined independently based on the words/terms used therein and not by comparison with or reference to the terms of some other entry in the Notification:

Tata Tea Ltd v CCE – 2004 (164) ELT 315

Indian Oil Corporation v CCE – 1991 (53) ELT 347.

24.6.2 That in view of the decisions of the Hon'ble Supreme Court and the Hon'ble Tribunal, the expression "Boron Ores" appearing in Sr. No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus, is on its own terms to be considered as wide enough to cover the Ore, which after mining has been purified by removal of foreign matter, it is immaterial that the said Sr. Nos.113 and 130 do not specifically mention Concentrated Ore; that in respect of Boron Ores, the scope was with effect from 1st March 2005 specifically broadened and widened by consciously dropping the word Natural and by making the singular "Ore" into plural "Ores"; that the scope of entry relating to Boron Ores cannot therefore be restricted by comparison with other entries in the Notification;

24.7 Reliance placed on proceedings in respect of Indo Borax and Chemicals is misplaced:

24.7.1 That the reliance placed in the Show Cause Notice on the proceedings in case of another importer viz. Indo Borax and Chemicals is totally untenable in law; that the goods imported by the said importer were Ulexite which are not the goods imported in the present case and therefore, no reliance can be placed on the proceedings in the said case of import of Ulexite even though the supplier and producer were the same as in the present case; that moreover, every case has to be examined on its own merits and on the basis of evidence available in the case in question; that the present case cannot be decided on the basis of evidence available in some other case and that too in respect of a product different from that in the present case.

24.8 Larger period of Limitation inapplicable in the present case:

24.8.1 That without prejudice to the aforesaid submissions, in any event, the Show Cause Notice is partly barred by time, having been served after the expiry of the limitation period of two years specified in Section 28(1) of the Customs Act 1962; that to the extent the Show Cause Notice extends beyond the normal period of limitation of two years provided in Section 28 (1) of the Customs Act 1962, the same is therefore barred to that extent.

24.8.2 That the larger period of limitation of five years specified under Section 28(4) of the Customs Act 1962 is inapplicable in the present case since there is no collusion or wilful mis-statement or suppression of facts on part of the importer; that the larger period of limitation under Section 28(4) of the Customs Act 1962 had been invoked in the Show Cause Notice on the totally untenable ground that the imporeter had willfully mis-stated the classification of the imported goods for claiming the benefit of the said Notifications and that in the Bills of Entry the Appellant willfully mis-stated the goods to be Ground Colemanite B2O3 40% Natural Boron Ore instead of Concentrate of Ore;

24.8.3 That it is settled law that claiming of a particular classification or Notification is a matter of belief on the part of the importer and the claiming of a particular classification or exemption Notification does not amount to mis-declaration or willful mis-statement or suppression of facts.

24.8.4 That the importer had correctly described the goods in the Bills of Entry as Ground Colemanite B2O3 40% Natural Boron Ore which they indeed are as evident from the Test Report of the CRCL, Delhi which the Department is relying upon in the said Notice; that as laid down in the following judgments, the claiming of a particular classification or Notification with which the department subsequently disagrees does not amount to mis-declaration or willful mis-statement or suppression of facts:

Northern Plastic Ltd v Collector – 1998 (101) ELT 549 (SC)
CC v Gaurav Enterprises – 2006 (193) ELT 532 (BOM)
C. Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM

S. Rajiv & Co. v CC – 2014 (302) ELT 412.
Lewek Altair Shipping Pvt. Ltd. v CC -2019(366) ELT 318 (Tri- Hyd)
Upheld in 2019 (367) ELT A328 (SC)

24.8.5 That a number of Bills of Entry were **assessed by the proper officer** of customs and were not system assessed; that as evident from the Examination Order in respect of such Bills of Entry, one of the **Mandatory Compliance Requirements Examination Instructions** was to “**VERIFY THAT THE GOODS ARE BORON ORES**” for the purpose of exemption under Sr. 113 of Customs Notification No. 12/2012-Cus dated 17.03.2012 and under Sr. 130 of Customs Notification No. 50/2017 dated 30.06.2017; that it is therefore clear that the issue whether the goods are Boron Ores or not was specifically examined in the case of number of Bills of Entry and the exemption benefit was extended by the proper officer of customs after such verification/ examination and accordingly, it cannot be said that there was any willful mis-statement or suppression of facts on our part; that when the proper officer of customs has in a number of Bills of entry extended the exemption after verification and satisfaction that the goods were Boron Ores, the larger period of limitation cannot apply merely because the department subsequently entertains a different view on the scope of the Notification.

24.8.6 That when the goods are declared to be Ground (i.e. Powdered) and also examined and verified by the proper officer of customs, it was known to the assessing officer that the Ore was not imported as mined; that the assessing officer however granted the exemption on the correct understanding that Concentrated ore is also Ore; that merely, because subsequently the department has changed its view that Ore must mean only Ore as mined, that cannot constitute willful mis-statement or suppression of facts.

24.9 Section 111(m) of the Customs Act 1962 has no application:

24.9.1 That the contention that the goods are liable to confiscation on the ground that the importer had allegedly mis-classified the same and/or allegedly claimed wrong exemption, is totally unsustainable in law; that the goods had been correctly described in the Bills of Entry and there was no mis-declaration as regards the description, value or other particulars of the goods;

24.9.2 That mere claiming of an allegedly incorrect classification or notification does not attract the provisions of Section 111(m) of the Customs Act 1962; that Section 111(m) is attracted only where the goods do not correspond to any particular mentioned in the Bill of Entry and claiming of a particular classification or Exemption notification is not a statement of any particular of the goods as explained hereinabove;

24.10 Redemption fine cannot be imposed since goods were neither seized nor are available for confiscation:

24.10.1 That without prejudice to the aforesaid submissions, in any event, no redemption fine can be imposed since the goods were neither seized nor are available for confiscation; that no redemption fine can be imposed in respect of goods which were not seized and which were not available for confiscation as laid down in the following decisions:

- CC v Finesse Creation Inc- 2009 (248) ELT 122 Bom
- upheld in Commissioner v Finesse Creation Inc-2010 (255) ELT A120 (SC)
- Commissioner v Sudarshan Cargo P. Ltd – 2010 (258) ELT 197 (Bom)
- Chinku Exports v CC – 1999 (112) ELT 400
- upheld in Commissioner v Chinku Exports- 2005 (184) ELT A36 (SC)
- Shiva Kripa Ispat P. Ltd v CC – 2009 (235) ELT 623-Tri-LB

upheld in Commissioner v Shiva Kripa Ispat P. Ltd -2015 (318) ELT A259 (Bom)

24.11 No penalties are imposable:

24.11.1 That no penalties can be imposed under Section 114A and Section 117 of the Customs Act, 1962; that there has been no collusion, wilful mis-statement, suppression of facts or false declaration on part of the importer and that therefore no penalty can be imposed under Section 114A of the Customs Act 1962; that as explained above, the goods are not liable to confiscation under Section 111(m) of the Customs Act 1962, no penalty can be imposed under Section 117 of the Customs Act 1962; that it is settled law as laid down in the following judgments that claiming of a particular classification or Notification with which the department does not agree does not justify imposition of penalty:

- C. Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM
- S. Rajiv & Co. v CC – 2014 (302) ELT 412
- Kores (India) Ltd. 2019(5) TMI 922.

25. Personal Hearing: Personal Hearing was fixed on 01.03.2024 for M/s. Nahar Colour and Coatings Pvt. Ltd. and its Director Shri Rajkumar Surana. Shri J. C. Patel, Advocate, on behalf of the importer and its Director attended the Personal Hearing held on 01.03.2024 wherein he reiterated submission dated 01.03.2024 and also submitted the compilation of the provisions and some case laws.

26. Findings: I have carefully gone through the Show Cause Notice dated 28.03.2021, written submission dated 01.03.2024, relevant provisions of law and various decisions relied on by the advocate in their submission on behalf of M/s. Nahar Colours & Coatings Pvt. Ltd. and its Managing Director Shri Rajkumar Surana and records of personal hearing held on 01.03.2024.

27. This denovo proceeding has been initiated consequent to the CESTAT's Final Order No A/10118-10134/2023/2018 dated 25.01.2023 in respect of Appeal No. C/10206/2022 and C/10207/2022 filed by M/s. Nahar Colours & Coatings Pvt. Ltd. and its Director Shri Rajkumar Surana respectively. Relevant Para of CESTAT's Final Order No A/10118-10134/2023/2018 dated 25.01.2023 is re-produced:-

"04. We have carefully considered the submission made by both the sides and perused the records. We find that exemption under the aforesaid notification is

proved to goods viz. 'Boron Ore'. From the perusal of the finding of adjudicating authority, the test report of the product shows that the goods is 'Boron Ore' however, the same obtained after removal of impurities. The adjudicating authority has relied upon Wikipedia and Website for the meaning of 'Ore'. In our considered view, when the test reports are available on record, there is no need to go to the website and Wikipedia. Whether the goods will remain as Ore after removal of impurities has been considered in various judgement cited by the appellants. However, the adjudicating authority has not properly considered various defence submission made by the appellants and the judgements relied upon by the appellants.

05. Accordingly, we are of the view that matter needs to be reconsidered in the light of the test reports and judgements relied upon by the appellant. All the issues are kept open. Impugned orders are set aside. Appeals are allowed by way of remand to the adjudicating authority."

28. Issue for consideration before me in this denovo proceeding are as under:-

28.1 Whether the goods imported by M/s. Nahar Colours & Coatings Pvt. Ltd under various Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4, & A-5 of the Show cause Notice, declared by them as "Boron Ore (Colemanite-44)" classified under Customs Tariff Item No. 25280030 is "Boron Ore" or is 'Concentrate of Natural Calcium Borate' or 'Concentrate of Boron Ore'?

28.2 Whether the exemption of Basic Customs Duty (BCD) under (i) Notification No. 12/2012-Cus dated 17.03.2012, as amended (Sr. No. 113) (till 30.06.2017) and (ii) Notification No.50/2017-Cus dated 30.06.2017, as amended (Sr. No. 130) (01.07.2017 onwards) should be disallowed?

28.3 Whether the goods imported by M/s.Nahar Colours & Coatings Pvt. Ltd under various Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4, A-5 & A-6 of the Show cause Notice are liable for confiscation or otherwise?

28.4 Whether M/s. Nahar Colours & Coatings Pvt. Ltd are liable to pay the differential amount of Customs Duty, as detailed in Annexure A-1, A-2, A-3, A-4 & A-5 of the Show Cause Notice under Section 28(4) of the Customs Act, 1962 and whether they are also liable for penalty under the provisions of Section 112(a)/112 (b), 114A, 114AA and Section 117 of the Customs Act, 1962?

28.5 Whether, Shri Rajkumar Surana, Managing Director of M/s Nahar Colours & Coatings Private Limited is liable for Penalty under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962?

29. Points at Sr. No. 28.2 to 28.5 supra, viz. Eligibility of Exemption Notification, Duty liability with interest and penal liabilities on importer as well as its Managing Director would be relevant only if the main point stated at Sr. No. 28.1 supra is answered in the affirmative. Thus, the main point is being taken up firstly for examination.

30. Whether the goods imported by M/s. Nahar Colours & Coatings Pvt. Ltd under various Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4, & A-5 of the Show cause Notice, declared by them as "Boron Ore (Colemanite-44)" classified under Customs Tariff Item No. 25280030 is "Boron Ore" or is 'Concentrate of Natural Calcium Borate' or 'Concentrate of Boron Ore'?

30.1.1 I find that Hon'ble Tribunal in their Order dated have stated that"that In our considered view, when the test reports are available on record, there is no

need to go to the website and Wikipedia". I find that present case is not merely based on the Test Reports, but it is also based the supplier's activities, HSN of Section 2528, and meaning /definition of Ore and Concentrate etc. First of all, it would be worth to discuss the Test Reports.

30.1.2 I find that initially, the sample were drawn from the import of impugned goods imported vide Bill of Entry No.6525531 dated 18.01.2020 by M/s. Nahar. The sample drawn was sent to CRCL, Vadodara vide Test Memo No. 54/2019-20 dated 31.01.2020 who reported as under :

"sample was in the form of **off-white fine powder**, mainly composed of oxides of Boron & Calcium alongwith siliceous matter wherein **B₂O₃ was 44.5% by weight** and CaO was 24.5 % by weight. Loss on drying at 105 degree Celsius=1.11 by wt., Loss on ignition at 900 degree Celsius =24.3 by wt. **Above analytical findings reveal that it is processed borate mineral (colemanite)**".

30.1.3 M/s. Nahar did not agree with the test report given by the CRCL, Vadodara and therefore requested the Joint Commissioner of Customs for re-testing of the sample at CRCL, New Delhi. Accordingly, on approval of the Joint Commissioner of Customs, another set of sample was sent to Central Revenue Control Laboratory, New Delhi vide Test Memo No. 17/2019-20 dated 02.03.2020 . The Joint Director, CRCL, New Delhi vide letter F.No.25-Cus/C-47/2019-20 dated 04.06.2020 submitted Re-Test report in respect of above mentioned Test Memo which was as under:

"The sample is in the **form of off white powder**. It is mainly composed of borates of calcium, alongwith siliceous matter and other associated impurities like silica, iron, etc. It is having following properties:

1. % Moisture (105 degree C) by TGA =0.82
2. % Loss on ignition at (900 degree C) by TGA = 24.80
3. % **B₂O₃ (Dry Basis)** = **43.08**
4. % Acid insoluble = 5.34
5. XRD Pattern =Concordant with Mineral Colemanite

On the basis of the test carried out here and available technical literature, the sample was Mineral Colemanite- a Natural Calcium Borate (Commonly known as Boron Ore)".

30.1.4 The Joint Commissioner, SIIB, Customs, Surat vide letter F.No VIII/14-01/SIIB/Boron Ore/Raj Borax/19-20 dated 16.06.2020 requested the Head Chemical Examiner, CRCL, New Delhi to send detailed report covering all the points of test memo as the re-test report received from CRCL, New Delhi for all similar cases does not cover all queries/questionnaires given in the Test memo. In response to the said letter, the Joint Director, CRCL, New Delhi vide letter F.No.25-Cus/C-40-47/2019-20 dated 24.06.2020 submitted point wise reply as under:

- "Point (I,II&VI) sample is colemanite, a Natural Calcium Borate (Commonly known as Boron Ore)
- Point (III) **The sample is in powder form (Crushed/Grinded)**
- Point (IV) The sample is not calcined
- Point (V) The sample is in the form of Colemanite Mineral"

30.1.5 The Joint Commissioner, SIIB, Customs, Surat vide letter F.No.VIII/14-01/SIIB/Boron Ore/Raj Borax/19-20 dated 01.07.2020 again requested the Head Chemical Examiner, CRCL, New Delhi to clarify whether the sample was Boron Ore or Boron Ore Concentrate and what was the process through which the sample was enriched/concentrated with following queries/questionnaires:-

Points raised in the Test Memo	Details mentioned in Test Reports	Remarks
Point I Whether the samples were in form in which they are found naturally on earth	The sample is commonly known as Boron Ore.	Since, the test report was not clear as to whether the sample was <u>Ore/Ore Concentrates</u> the classification of the product under Custom Tariff could not be decided.
Point IV Whether the goods are processed using calcination or enriched/concentrated by using any other method	Samples are not calcined	The website of Etimaden(supplier of imported goods) mentioned that B ₂ O ₃ contents of the ColemaniteOre mined are 27% to 32% whereas the technical data sheet of Ground Colemanite shows the B ₂ O ₃ content as 40%. Thus, there must be any process involved by which the concentration of the product was increased from 27-32% to 40%, i.e. it appears that the product is enriched in concentrator plant to obtain concentrated product. Copy of technical data sheet and print out taken from website are enclosed.

30.1.6 In response to above letter, the Joint Director, CRCL, New Delhi vide letter F. No. 25-Cus/C-40-47/2019-20 dated 08.07.2020 send the para-wise reply as under-

Points raised by you	Remarks as per your letter	Comments
Whether the samples were in form in which they are found naturally on earth	Since, the test report was not clear as to whether the sample was Ore/Ore Concentrates the classification of the product under Custom Tariff could not be decided.	Natural Borates and Concentrates thereof (whether or not calcined) was mentioned in Custom Tariff. The sample is a natural calcium borate, Mineral Colemanite- a Natural Calcium Borate (Commonly known as Boron Ore) was mentioned in the report.
Whether the goods are processed using calcination or enriched/concentrated by using any other method	The website of Etimaden(supplier of imported goods) mentioned that B ₂ O ₃ contents of the ColemaniteOre mined are 27% to 32% whereas the technical data sheet of Ground Colemanite shows the B ₂ O ₃ content as 40%. Thus, there must be any process involved by which the concentration of the product was increased from 27-32% to 40%, i.e. it appears that the product is enriched in	The sample under reference are not undergone any process of calcination. <u>Laboratory Cannot comment on the starting material and process undergone.</u> It can give the final value of % B ₂ O ₃ .

	concentrator plant to obtain concentrated product. Copy of technical data sheet and print out taken from website are enclosed.	
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I find that at one instance, CRCL, Delhi says that sample is **"a Natural Calcium Borate (Commonly known as Boron Ore)"** and on another instance **says that "Laboratory cannot comment on the starting material and process undergone. It can give the final value of % B₂O₃"**. Thus, I find that the Test Report of CRCL, Delhi is not conclusive to certain extent that CRCL Delhi has specifically stated that **"Laboratory cannot comment on the starting material and process undergone"**. Further it is stated that **based on available technical literature, they have reported that sample is of 'Natural Calcium Borate (Commonly known as Boron Ore)'**. Further, Joint Commissioner, SIIB, Customs, Surat, vide letter dated **01.07.2020** had specifically asked CRCL Delhi that "Whether the samples were in form in which they are found naturally on earth". The CRCL, Delhi vide their reply dated 08.07.2020 has replied that "Natural Borates and Concentrates thereof (whether or not calcined) was mentioned in Custom Tariff. The sample is a natural calcium borate, Mineral Colemanite- a Natural Calcium Borate (Commonly known as Boron Ore) was mentioned in the report".

Thus, I find that there was nothing in Test Report of CRCL, Delhi which indicate methodology adopted for testing and determination of sample as Natural Calcium Borate (Commonly known as Boron Ore). The CRCL, Delhi has also admitted that the sample they tested were in ***powder form (Crushed/Grinded) and B₂O₃ was 43.08%***. Thus, I find that the report of CRCL also does not rule out the fact that some process has been undergone. Thus, I find that CRCL, Vadodara has also said that the sample was off-white fine powder, wherein B₂O₃ was 44.5% by weight. CRCL, Delhi, also stated that sample was in powder form (crushed/grinded). Further sample of M/s. Raj Borex tested by CRCL Vadodara also stated that sample was in *grayish powder mainly wherein B₂O₃ was 41.6%*. Thus, I find that product have undergone some process, possibly concentration in the concentration plant (as indicated in the website of Etimaden) which resulted in the increase of B₂O₃ content from 27-32% to 41.5%/38.5%.

30.1.7 Further, I find that during investigation of an identical goods by D.R.I., Surat in case of import of "ULEXITE" described as "ULEXITE BORON ORE" manufactured by same producer M/s Etimaden, Turkey and supplied through same trader M/s Asian Agro Chemicals Corporation, UAE, it was found that said product i.e., "ULEXITE" was a concentrated product of Natural Boron Ore. The said investigation in respect of import of "ULEXITE" described as "ULEXITE BORON ORE" by M/s Indo Borax and Chemicals Ltd, 302, Link Rose Building, Linking Road, Near Kotak Mahindra Bank, Santacruz West, Maharashtra was completed resulting in issuance of the Show Cause Notice no.DRI/AZU/SRU-06/2020/Indo-Borax dated 16/12/2020. M/s Pegasus Customs House Agency Pvt. Ltd., CHA of M/s Indo Borax and Chemicals Ltd vide letter dated 03.07.2020 had submitted copies of import documents of M/s Indo Borax which included the test report of 'ULEXITE' supplied by M/s Etimaden, Turkey showing the description of the goods supplied as *"Ulexite, Concentrated, Granular, In Bulk 3_125mm"*

30.1.8 The Show Cause Notice issued by DRI mentioned that the test report of the consignment imported as 'ULEXITE BORON ORE' was obtained and as per Test Report of Chemical Examiner, Grade-I, Central Excise & Customs Laboratory, Vadodara all such imported items were 'processed mineral Ulexite' (as per the

Show Cause Notice no. DRI/AZU/SRU-06/2020/Indo-Borax dated 16/12/2020); that as per the literature available at site of M/s Etimaden, ULEXITE Granular was a refined product having lesser concentration of B₂O₃ i.e. 30% in comparison to their product "Ground Colemanite" which is having minimum concentration of B₂O₃ at 40%. Hence, it was clear that "Ground Colemanite" was a more refined and concentrated product and the test report of the producer in case of "ULEXITE" declared it as concentrated product and the presence of higher %age of B₂O₃ made it more concentrate. However, no such test report of the producer M/s Etimaden had been disclosed by M/s Vishwa Glass in present case through e-sanchit portal/Customs Department.

30.1.9 I find that Hon'ble CESTAT, Ahmedabad in its Order dated 25.01.2023 has stated that"*that In our considered view, when the test reports are available on record, there is no need to go to the website and Wikipedia*". I find that word 'Ore' and 'Concentrate' as referred in Chapter 2528 has not been defined. Further, CRCL, Vadodara says that it is "off-white fine powder and B₂O₃ was 40.5% by weight, CRCL, Delhi interalia stated that "sample is in powder form (Crushed/Grinded) and B₂O₃ was 38.05% dry basis. Further, CRCL, Delhi, in case of import by M/s. Raj Borex, stated that "sample was of grayish powder and B₂O₃ was 41.6% . Thus, I find from these Test reports that there is no dispute that process has been done on the 'Natural Boron Ore' and in absence of the definition of " Ore" and "Concentrate" as mentioned in Chapter 2528, it would be appropriate to refer to the definition of " Ore" and "Concentrate" from the dictionary and Wikipedia. To fortify this stand, I rely on the ratio of the decision of Hon'ble Kerala High Court rendered in the case of TagharVasudevaAmbrish v. Appellate Authority for Advance Ruling — 2022 (63) G.S.T.L. 445 (Kar.) which has held as under:

"14. It is well settled that when the word is not defined in the Act itself, it is permissible to refer to the dictionaries to find out the general sense in which the word is understood in common parlance. [See : Mohinder Singh v. State of Haryana - AIR 1989 SC 1367 and Commissioner of Central Excise, Delhi v. Allied Air-Conditioning Corpn. (Regd.) - (2006) 7 SCC 735 = 2006 (202) E.L.T. 209 (S.C.)].
*****"

Further, Hon'ble Supreme Court in the case of Star Paper Mills Ltd Vs. Collector of C.Ex. reported in 1989 (43) ELT 178 (SC) has held that "Words and expressions not defined in the statute, Dictionary meaning is referable"

Hon'ble Rajasthan High Court in case of Godrej & Boyce Mfg. Co. Ltd Vs. Commercial Taxes Officer, Anti-Evasion, Zone-I, Jaipur reported in 2017 (353) ELT 279 (Raj.) has interalia held as under.

"11. In my view, aid of Wikipedia can certainly be taken into consideration by both the sides. If, some aid can be taken out of the meaning given by Wikipedia as it is also an encyclopaedia, it may not be wholly reliable but certainly it can be taken into consideration and even the Apex Court has held that aid of Wikipedia can also be taken into consideration..."

Thus, following the ratio of aforesaid decisions of Hon'ble Supreme Court relied on by the Hon'ble High Court of Kerala and Rajasthan High Court, it would be worth to refer the definition of 'Ore' and 'Concentrate' from Dictionary and Wikipedia. Since the definition of 'Ore' and 'Concentrate' has already been discussed in detail at Para 11 to 11.6 in the Show Cause Notice, it is needless to reproduce the same but from the meaning of 'Ore' and 'Concentrate' as defined in various Dictionaries and Wikipedia, as discussed in **Para 12 to 12.6 of the SCN**, I find that 'Boron Ore' and 'Concentrate thereof' are two different and distinct product. From the definition of 'Ore' and 'Concentrate', I find that term

"Ore" refers to a naturally occurring raw and native mineral which were produced by mines and contain various foreign material and impurities. Ore was extracted from the earth through mining and treated or refined to extract the valuable metals or minerals. The "Concentrate" was dressed Ore obtained by passing through the physical or physico-chemical operation viz. cleaning, washing, drying, separation, crushing, grinding, etc. Natural Ore which was extracted from the mines though might have predominance of a particular mineral but do not consist of any particular mineral alone. It was a naturally occurring raw and native mineral which was produced by mines and contained various foreign material, impurities and other substances and not suitable for further operations. Ore was extracted from the earth through mining and treated or refined to extract the valuable metals or minerals. The "Concentrate" was the form of Ores from which part or all of the foreign matters have been removed and obtained by passing through the physical or physico-chemical operation viz. cleaning, washing, drying, separation, crushing, grinding, etc. Therefore, it appeared from the above that Natural Ore consists of various minerals and other minerals and substances and therefore as such it could not be directly used for any further manufacturing, whereas concentrate was form, from which part or all of the foreign matters had been removed.

30.1.10 Further, I find that the terms Ores and Concentrates have been defined in the Explanatory Notes of Chapter 26 of the HSN which defines that the term 'Ore' applies to metalliferous minerals associated with the substances in which they occur and with which they were extracted from the mine; it also applied to native metals in their gangue (e.g. metalliferous sands"). The term 'concentrates' applied to Ores which have had part or all of the foreign matter removed by special treatments, either because such foreign matter might hamper subsequent metallurgical operations or with a view to economical transport".

30.1.11 Further, I find that Shri Gopal Krishna Tripathi, Head of R&D and Authorized person of M/s. Nahar Colour & Coatings Pvt. Ltd in his statement dated 25.08.2020 has specifically **admitted they have imported Colemanite (Calcium Borate) of concentration of 40% to 44% and no process is required before using it for production of 'Ceramic Glaze Mixture (Frit)**. Further, he has specifically stated that **"they used to import Calcium Borate (Colemanite from M/s. Mario Pilato Blat, s.a. Spain and M/s. Mario Pilato Blat, s.a. Spain purchase the same from M/s. Etimaden, Turkey. He alongwith his Director had visited the plant of M/s. Mario Pilato Blat, s.a. Spain earlier and after satisfying with the quality of Calcium Borate (Colemanite) and treatment made at their plant, they had undergone into a contract with them and started import of Calcium Borate (Colemanite)"**.

30.1.12 I find that Shri Gopal Krishna Tripathi, Head of R&D and Authorized person of M/s. Nahar Colour & Coatings Pvt. Ltd during his statement recorded on 25.08.2020 have submitted Flow Chart of "Ground Colemanite" production of supplier **M/s. Mario Pilato Blat, s.a. Spain which is reproduced at Para No. 10.3 of the Show Cause Notice. On the perusal of the said Flow Chart "Ground Colemanite" production, it is established that M/s. Mario Pilato Blat, s.a. Spain had purchased 'Concentrate Colemanite Ore' from M/s. Etimaden, Turkey.**

30.1.13 Further, I find that from the print out taken from website of M/s Etimaden (<http://www.etimaden.gov.tr/en>) which stated that *"The B₂O₃ content of the colemanite Ore mined from open quarry is between %27-%32"* and the print out of 'product technical data sheet' of Colemanite (calcium Borate) taken from website of M/s Etimaden and categorized at their website as **"Refined Product"** wherein it was mentioned that *"The Ore is enriched in concentrator plant to*

obtain **concentrated product**. The **Concentrated product is passed through crushing and grinding processes respectively to obtain milled product**.

Thus, from the website of the supplier M/s Etimaden, and product technical data sheet, it is crystal clear that supplier M/s Etimaden has processed the Ore in their **concentrator plant** and Boron Ore has been enriched to obtain concentrated product and further it was passed through **crushing and grinding process** to obtain **concentrated product**. Thus, at no stretch of imagination, it can be considered as **Natural Boron Ore** rather it is '**Concentrate of Boron Ore**'.

30.1.14 Further, I find that M/s. Nahar has produced the Certificate dated 15.02.2021 issued by the overseas supplier M/s Etimaden wherein they have specifically mentioned as under:

"After subtracting the mineral, as you may know, it is not possible to sell extracted mass together with the stones and other unwanted material since any of the customers do not want to pay for these unwanted stones, clay and other impurities which are physically separated. Then the lumps are subjected to pulverization to make 75 micron powder and here there is no chemical treatment done. Even calcination is not done. The Boron lumps having B₂O₃ content ranging from 38-42% are simply powdered wherein crystallographic structure is never changed."

As per definition of 'Concentration of Ore' (obtained from askiitians.com), the process of removal of gangue (unwanted impurities such as earth particles, rocky matter, sand limestone etc.) from the Ore itself is technically known as concentration or Ore dressing and the purified Ore is known as 'Concentrate'. Thus the goods imported by the Noticee are nothing but 'Concentrate of Natural Calcium Borate' or 'Concentrate of Boron Ore' and not 'Boron Ore' as contended by the Noticee.

30.1.15 I find that although M/s. Etimaden have clarified in their certificate dated 15-2-2021 that the Boron content of each zone varies from 22-44% and that B₂O₃ contents of their natural borates are not updated frequently in their website; they have mentioned in the said certificate that the unwanted stones, clay and other impurities are physically separated; that thereafter the boron lumps are subjected to pulverization, then powdered wherein the crystallographic structure does not change. As per definition of 'Concentration of Ore' (obtained from askiitians.com), the process of removal of gangue (unwanted impurities such as earth particles, rocky matter, sand limestone etc.) from the Ore itself is technically known as concentration or Ore dressing and the purified Ore is known as 'concentrate'. Thus, irrespective of the content of B₂O₃ in the Ore, the goods imported by the Noticee are nothing but 'Ore Concentrate' of Natural Calcium Borate OR 'Boron Ore Concentrate' and not 'Boron Ore' as contended by the Noticee.

30.1.16 I find that M/s. Nahar has contended that the Department had erroneously placed reliance on the proceedings in case of another importer viz. Indo Borax and Chemicals. The goods imported by the said importer were Ulexite which were not the goods imported by them in the present case and therefore no reliance can be placed on the proceedings in the said case of import of Ulexite even though the supplier and producer were the same as in the assessee's case

In this regard, I find that the Department has rightly relied upon the said case as the product imported by M/s. Indo Borax and Chemicals Ltd. namely "ULEXITE BORON ORE" was manufactured by same producer M/s Etimaden, Turkey and supplied through same trader M/s Asian Agro Chemicals Corporation, UAE and it was found that said product i.e., "ULEXITE" was a concentrated

product of natural boron Ore despite having much less B₂O₃ content than that of the product of the Noticee. M/s Pegasus Customs House Agency Pvt. Ltd., CHA of M/s Indo Borax and Chemicals Ltd vide letter dated 03.07.2020 had submitted copies of import documents of M/s Indo Borax which included the test report of 'ULEXITE' supplied by M/s Etimaden, Turkey showing the description of the goods supplied as "Ulexite, Concentrated, Granular, In Bulk 3_125mm".

30.1.17 Further, I find that M/s. Nahar have contended that Certificate dated 15th February 2021, EtiMaden have clarified that the B₂O₃ content of their natural borates are not updated frequently on their website since it changes with the nature of the ore vein operated. I find that it may be true that supplier may have not updated their website. However, even today on browsing the website www. of overseas supplier M/s. EtiMaden, in Technical Data Sheet of Product "Ground Colemanite", they mention "The ore is enriched in concentrator plant to obtain **concentrate product. The concentrated product is passed through crushing and grinding processes respectively to obtain milled product**". Thus, there is no dispute that overseas supplier to protect their business interest have issued aforesaid Certificate whereas, the fact is that the impugned goods is 'concentrated Ground Colemanite' and exporter himself mentions as '**concentrated product**' in the Technical Data Sheet of "Ground Colemanite" even after issuance of aforesaid Certificate dated 15.02.2021.

30.1.18 Thus, from the above discussion mentioned in Para **30.1.1 to 30.1.17**, on harmonious reading of the Test Results of CRCL, Vadodara, Delhi, definition of 'Ore' and 'Concentrate' and the details mentioned in Technical Data of the overseas supplier M/s. EtiMaden, Flow Chart "Ground Colemanite" production of supplier M/s. Mario Pilato Blat, s.a. Spain and statement of Shri Gopal Krishna Tripathi, Head of R&D and Authorized person of M/s. Nahar, I find that product "Boron Ore (Colemanite-44%)" imported by M/s. Nahar is actually 'Concentrate of Calcium Borate' or 'Concentrate of Boron Ore' and not 'Boron Ore' as claimed by M/s. Nahar.

30.2 Whether the Noticee is eligible for exemption of Basic Customs Duty under (i) Notification No. 12/2012-Cus dated 17.03.2012, as amended (Sr. No. 113) (till 30.06.2017) and (ii) Notification No.50/2017-Cus dated 30.06.2017, as amended (Sr. No. 130) (01.07.2017 onwards).

30.2.1 I find from the discussion made in Para 30.1.1 to 30.1.17 hereinabove that product "Boron Ore (Colemanite-44)" imported by the noticee is actually 'Concentrate of Calcium Boron Ore'. The same are covered under Chapter Heading 2528 of the First Schedule to the Customs Tariff Act, 1975 which reads as under:

Chapter Head	Description	Unit	Rate of Duty
2528	NATURAL BORATES AND CONCENTRATES THEREOF (WHETHER OR NOT CALCINED), BUT NOT INCLUDING BORATES PREPARED FROM NATURAL BRINE; NATURAL BORIC ACID CONTAINING NOT MORE THAN 85% OF H ₃ BO ₃ CALCULATED ON THE DRY WEIGHT		
252800	Natural borates and concentrates thereof (Whether or not calcined), but not including borates separated from natural brine; natural boric acid containing not more than 85 % of H ₃ BO ₃ calculated on the dry weight		
25280010	Natural Sodium Borates and Concentrates Thereof	KG	10%

	(Whether or not Calcined)		
25280020	Natural boric acid containing not more than 85% of H ₃ BO ₃ (calculated on the dry weight)	KG	10%
25280030	Natural calcium borates and concentrates thereof (whether or not calcined)	KG	10%
25280090	Others	KG	10%

I find that there is specific mention of Natural Calcium Borates and concentrates thereof (whether or not calcined) at Tariff Item 25280030. The Noticee has also not raised any dispute so far as the classification of the goods is concerned. Further, CRCL, Vadodara as well CRCL, Delhi have also stated that the sample were of Calcium Borate. Hence, I find and hold that the product/goods imported by M/s. Nahar is 'Concentrates of Calcium Borates' which falls under Tariff Item 25280030 of the Customs Tariff Act, 1975(51 of 1975).

30.2.2 I find that vide Finance Act, 2011, there is vital substitution in Chapter Head 2528 of First Schedule to the Customs Tariff Act, 1975 and the wording of Chapter 2528 has been specifically mentioned as "NATURAL BORATES AND CONCENTRATES THEREOF (WHETHER OR NOT CALCINED), BUT NOT INCLUDING BORATES SEPA-RATED FROM NATURAL BRINE; NATURAL BORIC ACID CONTAINING NOT MORE THAN 85% OF H₃BO₃ CALCULATED ON THE DRY WEIGHT" Thus with clear intent to consider the Natural Borate and Concentrate thereof two different products (goods), conjunction 'AND' is employed between 'NATURAL BORATES' and 'CONCENTRATES THEREOF'.

To fortify my stand that Natural Borates and Concentrates thereof are two different product, I rely on the ratio of decision of Hon'ble Tribunal of Mumbai rendered in case of Star Industries Vs. Commissioner of Cus. (Imports), NhavaSheva reported in 2014 (312) ELT 209 (Tri. Mumbai) upheld by the Hon'ble -Supreme Court reported in 2015 (324) E.L.T. 656 (S.C.) wherein it has been interalia held as under:

"5.5 It is a settled legal position that it is not permissible to add words or to fill in a gap or lacuna; on the other hand effort should be made to give meaning to each and every word used by the Legislature. "It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute" [Aswini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369]. In Rao Shiv Bahadur Singh v. State of U.P. [AIR 1953 SC 394] it was held that "it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which render a part of the statute devoid of any meaning or application". Again in the case of J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. [AIR 1961 SC 1170] it was observed that "in the interpretation of statutes, the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute to have effect". The Legislature is deemed not to waste its words or to say anything in vain [AIR 1920 PC 181] and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons [AIR 1964 SC 766].

5.6 In *Balwant Singh v. Jagdish Singh* [2010 (262) E.L.T. 50 (S.C.)] while interpreting the provisions of Section 15 of the Haryana Urban Rent (Control of Rent and Eviction) Act, 1973, the Apex Court laid down the following principle :-

"It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected

object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious.”

5.7 From the principles of statutory interpretation as explained by the Hon’ble Apex Court and applying these to the facts of the present case, the only reasonable conclusion that can be reached is that the legislature intended to treat ‘ores’ and ‘concentrates’ distinctly and differently. Otherwise, there was no need for the legislature to employ these two terms with a conjunctive ‘and’ in between. If one treats ores and concentrates synonymously, as argued by the ld. Counsel for the appellant, that would render the term “concentrate” redundant which is not permissible.”

I find that in the present case, the overseas supplier himself declares in the Sheet of Technical Data Sheet of Product “Ground Colemanite”, that “The ore is enriched in concentrator plant to obtain **concentrate product**. The **concentrated product** is passed through crushing and grinding processes respectively to obtain **milled product**”. Thus, the supplier himself considers the Ore and Concentrate two different products which is in consonance with the Tariff Heading 2528 of the First Schedule to the Customs Tariff Act, 1985.

30.2.3 I find that had it been the intention of Statute to consider the Boron Ore and Concentrate thereof as same, it would have been simply worded as “Boron Ore” and no conjunction “AND” would have been inserted in between ‘Boron Ore and Concentrate’. Therefore, if it is considered as Natural Boron Ore and concentrate thereof are the same, it will amount to cutting down the intendment of the provisions of the statute. In this regard, I rely on the ratio of the decision of Hon’ble Supreme Court rendered in the case of VVF (India) Ltd. Vs. State of Maharashtra reported in 2023 (72) G.S.T.L.444 (S.C.), wherein, it has been held as under;

*“12. The High Court, while rejecting the petition, placed reliance on the fact that there has to be a proof of payment of the aggregate of the amounts, as set out in clauses (a) to (d) of Section 26(6A). The second reason which weighed with the High Court, is that any payment, which has been made albeit under protest, will be adjusted against the total liability and demand to follow. Neither of these considerations can affect the interpretation of the plain language of the words which have been used by the legislature in Section 26(6A). **The provisions of a taxing statute have to be construed as they stand, adopting the plain and grammatical meaning of the words used.** Consequently, the appellant was liable to pay, in terms of Section 26(6A), 10 per cent of the tax disputed together with the filing of the appeal. There is no reason why the amount which was paid under protest, should not be taken into consideration. It is common ground that if that amount is taken into account, the provisions of the statute were duly complied with. Hence, the rejection of the appeal was not in order and the appeal would have to be restored to the file of the appellate authority, subject to due verification that 10 per cent of the amount of tax disputed, as interpreted by the terms of this judgment, has been duly deposited by the appellant.”*

Further, I find that Hon’ble Supreme Court in the case of V.N. Mutto Vs. T.K. Nandi reported in (1979) 1 SCC261,368 has inter alia stated as under:

“ The court has to determine the intention as expressed by the words used. If the words of a statute are themselves precise and unambiguous then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver”

30.2.4 I find that there is no dispute that vide Finance Act, 2011, vital substitution has been made in Chapter heading 2528 and with clear intent to distinguish/differentiate the 'NATURAL BORATES' from the 'CONCENTRATES THEREOF' conjunction 'AND' has been inserted /employed between 'NATURAL BORATES' and 'CONCENTRATES THEREOF'.

In view of the aforesaid finding, I find that goods viz. "Ground Colemanite B2O3 40% Natural Boron Ore" imported by the importer is not 'Natural Boron Ore' and it is Concentrate of Boron Ore and it merits classification under Customs Tariff Item No. 25280030 and not under Customs Tariff Item No. 25280090 as declared by the Noticee.

30.2.5 I find that the importer has heavily relied on the decision of Hon'ble Supreme Court rendered in case of Mineral & Metals Trading Corporation of India Vs. Union of India and Others - reported in 1983.(13) E.L.T. 1542 (S.C.).

I find that the ratio of the aforesaid decision of Hon'ble Supreme Court is not applicable to present case as in the said case it was held that "wolfram ore which was imported by the appellants was never subjected to any process of roasting or treatment with chemicals to remove the impurities" whereas in present case, the supplier M/s.EtiMaden their Technical Data Sheet of 'Ground Colemanite' clearly says that "the ore is enriched in concentrator plant to obtain concentrated product" Further, the said decision is rendered in context of import of Wolfram Concentrate in the year January 1964 and during the material time, the relevant entries in the Customs Tariff contained were set out as under:

Item No.	Name of Article	Nature of duty	Standard rate
of duty			
(1)	(2)	(3)	(4)
MINERAL PRODUCTS			
26.	Mettalicores all sorts except ochres and other pigments ores and antimony ore	X Free	X

Whereas, there was huge change in First Schedule to the Customs Tariff Act, 1975 vide Finance Act, 2011 whereby certain entries in respect of Chapter heading 2528 were substituted as already mentioned at Para 30.2.1 herein above. Therefore, in view of the comparison of Tariff entry prevailing in the year 1964 and post 2011, there is vital change. In 1964 there was only mention of 'Mettalic ores of all sorts' and there is no mention of 'concentrate thereof' whereas post 2011 'Natural Borate' as well as 'Concentrate thereof' are in existence. Therefore, the ratio of the decision of Hon'ble Supreme Court rendered in context of 'Ores of all short' cannot be made applicable to the case on hand.

30.2.6 I find that the importer has availed the benefit of Sr. No. 113 of Notification No. 12/2012-Cus dated 17.03.2012 upto 30.06.2017 and thereafter Sr. No. 130 of said Notification No. 12/2012-Cus dated 17.03.2012 amended vide Notification No. No.50/2017-Cus dated 30.06.2017 for the clearance of imported goods viz. **"Boron Ore (Colemanite-44)"** classified under Customs Tariff Item No. 25280030. On perusal of the said Notification No.12/2012-Cus dated 17.03.2012 and amended Notification No. No.50/2017-Cus dated 30.06.2017, I find that the said Notification No.12/2012-Cus dated 17.03.2012 exempts the goods of the description specified in column (3) of the Table or column (3) of the Table of said Notification No.12/2012-Cus dated 17.03.2012 and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified

in the corresponding entry in column (2) of the Table of the said Notification No.12/2012-Cus dated 17.03.2012. Thus, twin parameters needs to be satisfied to avail the benefit of exemption from Basic Customs Duty. One the description specified in column (3) of the Table to the Notification should be matched with imported goods and other tariff item should also matched with the tariff item specified in Column (2) of the Notification.

30.2.7 I find that as per Sr.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No.28/2015-Cus dated 30.04.2015 and Sr. No.130 of Customs Notification No.50/2017 dated 30.06.2017, the NIL rate of Basic Customs Duty had been prescribed on the goods i.e. '**Boron Ore**' falling under Chapter heading 2528 of the Customs Tariff Act, 1975. From the Chapter heading 2528 of the Customs Tariff Act, 1975 it is observed that Natural borates and concentrates thereof fall under the said Chapter heading. Thus, from simultaneous reading of Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr. No. 130 of Customs Notification No.50/2017 dated 30.06.2017 and corresponding description of goods, it is noticed that exemption has been given only to 'Boron Ore' and not to 'concentrate of Boron Ore'. It is a well settled law that an exemption Notification is to be interpreted as per the plain language employed in the same and no stretching, addition or deletion of any words is permissible while interpreting the Notification. **The Hon'ble Supreme Court in the case of M/s Dilip Kumar & Co. reported at 2018 (361) ELT 577 (SC) has laid down the principle** wherein it has been observed as under:

*"The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. **If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense.**The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*

In the instant case, the entry at Sr. No.130 of Notification No. 50/2017-Cus is very **plain and unambiguous** and is applicable to 'Boron Ores'. In light of the specific entry, there is no scope for insertion of the word 'Concentrate' to the entry. Had it been the intention of the legislature to grant exemption to both, Boron Ores and Boron Ore Concentrates, the same would have been explicitly mentioned in the Notification as has been in the case of Gold Ore at Sr. No.133 and Nickel Ore at Sr. No. 135 in the said Notification No.12/2012-Cus dated 17.03.2012. Both the entries at Sr. Nos. 133 & 135 clearly describe the goods as 'Ores and Concentrates'. As opposed to such entries, the entry Sr. No. 113 of Notification No. 12/2012-Cus dated 17.03.2012 upto 30.06.2017 and thereafter Sr. No. 130 of said Notification No. 12/2012-Cus dated 17.03.2012 amended vide Notification No. No.50/2017-Cus dated 30.06.2017 is limited to 'Boron Ores' and therefore, it is clear that the said entries are not applicable to 'Concentrate of Boron Ore'. The principles of interpretation as laid down by the Hon'ble Supreme Court fortifies my finding that the word 'Concentrate' cannot be added to entry at Sr. No.130 and the same has to be restricted only to 'Boron Ore'.

30.2.8 M/s. Nahar has contended that the expression "Boron Ores" appearing in the said Sr. Nos. 113 and 130, must be confined and restricted to Natural Boron

Ores i.e. Ore in the state and condition in which it is mined without removing the impurities/ foreign particles; the Show Cause Notice has committed the error of reading into the Notification additional words and conditions which are absent in the Notification. They placed reliance on the following judgments which hold that it is not permissible to read into the Notification, any additional words or conditions/ restrictions which are not stipulated in the Notification:

- Inter Continental (India) v UOI - 2003 (154) ELT 37 (Guj)
- Affirmed in UOI v Inter Continental (India) - 2008 (226) ELT 16 (SC)
- KantilalManilal& Co v CC - 2004 (173) ELT 35.

I find that definitions of 'Ore', 'Ore concentrate' and 'Concentration of Ore' as discussed in Para **30.1 to 30.1.17**, above distinguishes 'Ore' from 'Ore concentrate'. As per definition of 'Concentration of Ore' (obtained from askiitians.com), the process of removal of gangue (unwanted impurities such as earth particles, rocky matter, sand limestone etc.) from the Ore itself is technically known as concentration or Ore dressing and the purified Ore is known as 'concentrate'. Thus 'Ore' ceases to be 'Ore' for which exemption has been prescribed in the Notification once the unwanted impurities such as earth particles, rocky matter, sand limestone etc. are removed from it to make it an 'Ore concentrate'. This distinction can be further illustrated from the fact that after the refining process has been undertaken, the resultant product i.e. 'Ore concentrate' has been directly used in the manufacturing industry without any additional processes undertaken on the same. Therefore, the contention of the Noticee that the Department was reading into the Notification additional words and conditions in the Notification is unjustified and without any basis since the allegation in the SCN is mainly based on the definitions of 'Ore' and 'Ore concentrate' available in various popular dictionaries and on websites, the data available on the Website of M/s. Etimaden as well as the test reports of the samples of the Noticee, of M/s. Raj Borax Pvt.Ltd. and M/s. Indo Borax by CRCL, Vadodara and CRCL, New Delhi as well as the statement of Shri Gopal Krishna Tripathi, Head of R&D and Authorised Signatory of M/s. Nahar and Flow Chart of 'Ground Colemanite' Production of M/s. Mario Pilato Blat, s.a. from who M/s. Nahar imported impugned goods. Further, the issues involved in the judgements relied upon by the Noticee pertains to availability of benefit of concessional rate of Customs Duty in respect of a particular entry of a Notification, but, circular issued subsequent to the issuance of the said Notification laid down conditions for availment of the said benefit in respect of that particular entry. Also the principles laid down by the Hon'ble Supreme Court, as discussed above, expressly clarify that no addition or deletion is permissible. In the instant case the entry exempts 'Boron Ore' and the same cannot be stretched to include Concentrate of Boron Ore. Thus, I find that the ratio of the case laws cited by M/s. Nahar are not applicable to the facts of the case at hand.

30.2.9 Further, I find that it is settled law that onus of proving that the goods fall within four corners of exemption is always on the claimant. Hon'ble Supreme Court in case of Meridian Industries Ltd. v. Commissioner — 2015 (325) E.L.T. 417 (S.C.) has held as under:

"13. The appellant is seeking the benefit of exemption Notification No. 8/97-C.E. Since it is an exemption notification, onus lies upon the appellant to show that its case falls within the four corners of this notification and is unambiguously covered by the provisions thereof. It is also to be borne in mind that such exemption notifications are to be given strict interpretation and, therefore, unless the assessee is able to make out a clear case in its favour, it is not entitled to claim the benefit thereof. Otherwise, if there is a doubt or two interpretations are

possible, one which favours the Department is to be resorted to while construing an exemptionnotification."

I find that the noticee have not adduced any evidence to consider that the goods viz. **"Boron Ore (Colemanite-44)"** imported by them were Boron Ore and not 'Concentrate of Boron Ore'. Therefore, I am of the view that M/s. Nahar is not eligible for the benefit of Sr. No. 113 of Notification No. 12/2012-Cus dated 17.03.2012 upto 30.06.2017 and thereafter Sr. No. 130 of said Notification No. 12/2012-Cus dated 17.03.2012 amended vide Notification No. No.50/2017-Cus dated 30.06.2017.

30.3 Whether M/s. Nahar Colour & Coatings Pvt. Ltd are liable to pay the differential amount of Customs Duty of Rs.5,16,41,838/- (Rupees Five Crore, Sixteen Lakh, Forty One Thousand, Eight Hundred and Thirty Eight Only), as detailed in Annexure A/1, A/2, A/3, A/4, A-5 & consolidated Annexure-A-6 of the Show Cause Notice under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962?

30.3.1 I find that the imported goods declared as "Boron Ore (Colemanite-44)" by M/s. Nahar is a 'concentrate of Natural Calcium Borate. However, M/s. Nahar had mis-declared the description as **"Boron Ore (Colemanite-44)"** instead of "Concentrates of Natural Calcium Borate " or "Concentrates of Boron Ore" and wrongly availed the benefit of exemption knowingly and deliberately with intent to evade Customs Duty from payment of Basic Customs Duty as per Sr. No.113 of Customs Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr. No.130 of Customs Notification No.50/2017 dated 30.06.2017 for the period from 01.04.2015 to 30.06.2017 and 01.07.2017 to 26.11.2020 respectively by declaring 'Boron Ore(Colemanite-44)' as 'Boron Ore' as the exemption was available only to 'Boron Ore' and thereby evaded Customs Duty amounting to **Rs.5,16,41,838/-** for the period 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 [up to 11.01.2021] respectively. The fact that 'Boron Ore (Colemanite-44)' imported by them were actually 'concentrate of Natural Calcium Borate' was clearly evident from the discussion held hereinabove. I find that Shri Gopal Krishna Tripathi, Head of R&D and Authorized person of M/s. Nahar Colour & Coatings Pvt. Ltd in his statement dated 25.08.2020 has specifically admitted they have imported Colemanite (Calcium Borate) of concentration of 40% to 44% and no process is required before using it for production of 'Ceramic Glaze Mixture (Frit)'. Further, he has specifically stated that "they used to import Calcium Borate (Colemanite from M/s. Mario Pilato Blat, s.a. Spain and M/s. Mario Pilato Blat, s.a. Spain purchase the same from M/s. Etimaden, Turkey. He alongwith his Director had visited the plant of M/s. Mario Pilato Blat, s.a. Spain earlier and after satisfying with the quality of Calcium Borate (Colemanite) and treatment made at their plant, they had undergone into a contract with them and started import of Calcium Borate (Colemanite)".

Further, during the recording of Statement on 25.08.2020, Shri Gopla Krisha Tripathi Head of R&D and Authorized person of M/s. Nahar Colour & Coatings Pvt. Ltd has submitted the Flow Chart of Ground Colemanite of supplier M/s. Mario Pilato Blat, s.a. Spain. From the perusal of the said Flow Chart is clear that M/s. Mario Pilato Blat, s.a. Spain had purchased "Concentrare Colemanite Ore" from M/s. Etimaden, Turkey, the original supplier.

Further, I find that original supplier M/s. EtiMaden, in Technical Data Sheet of Product "Ground Colemanite", they mention "The ore is enriched in concentrator plant to obtain **concentrate product. The concentrated product is passed through crushing and grinding processes respectively to obtain**

milled product". Thus, on conjointly reading the said Technical Data Sheet and Flow Chart of production of 'Ground Colemanite' of supplier M/s. Mario Pilato Blat, s.a. Spain, it confirms that the impugned goods were 'concentrate of Boron Ore'. Further, I find from the Product Technical Data Sheet of "Ground Colemanite", that nowhere it has been mentioned as 'Boron Ore', however in spite of having the knowledge that impugned goods were actually 'Concentrate of Boron Ore' they have mentioned/declared the description of the imported goods as "**Boron Ore** (Colemanite-44)" with clear intent to evade the payment of Customs duty which invokes the provision of demand of duty for extended period under Section 28 (4) of the Customs Act, 1962.

Therefore, I find that M/s. Nahar despite knowing that the goods declared as 'Boron Ore (Colemanite-44)' imported by them were actually 'Concentrate of Boron Ore', by the aforesaid acts of willful mis-statement and suppression of facts, M/s. Nahar had short-paid the applicable Customs Duties by way of deliberate mis-representation, willful mis-statement and suppression of facts in order to evade the differential Duty leading to revenue loss to the government exchequer. I find that it was not the case where importer M/s. Nahar was not aware of the nature and appropriate classification of goods. However, the importer M/s. Nahar had willfully mis-declared the description to evade payment of Custom Duty and also mis-classified and mis-declared the goods to evade payment of Customs Duty by self-assessing the same as 'Boron Ore (Colemanite-44)' claiming the benefit of Customs Notification No.12/2012-Cus dated 17-3-2012(Sr.No.113) and Notification No.50/2017-Cus dated 30.06.2017 (Serial No. 130), paying NIL BCD, as the said goods are 'Concentrates of Natural Calcium Borate' instead of 'Natural Boron Ore'. Hence, the provisions of Section 28(4) of Customs Act, 1962 for invoking extended period to demand the short paid Duty are clearly attracted in this case. I, therefore, hold that the differential Duty of **Rs.5,16,41,838/-** are required to be demanded and recovered from M/s. Nahar invoking the provisions of extended period under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962. I find that the noticee have paid/deposited Rs.1,22,05,123/- under protest. Since I have found that M/s. Nahar is required to pay differential duty along with interest, the protest lodged by M/s. Nahar Colour & Coatings Pvt. Ltd., need to be vacated and Customs Duty of Rs.1,22,05,123/- paid under protest towards their differential Duty liability is required to be appropriated and adjusted against the above confirmed Duty liabilities of Rs.5,16,41,838/-.

30.3.2 I find that the M/s. Nahar have contended that number of Bills of Entry were assessed by the proper officer of Customs after examination of the goods and ; that it would be evident from the Examination Order in respect of such Bills of Entry that one of the Mandatory Compliance Requirements was to verify that the goods are Boron Ores for the purpose of exemption under Sr.No.113 of Customs Notification No.12/2012-Cus dated 17-3-2012 and under Sr.No.130 of Customs Notification No.50/2017-Cus dated 30.06.2017 and it is therefore clear that the issue whether the goods are Boron Ores or not was specifically examined in the case of number of Bills of Entry and the exemption benefit was extended by the proper officer of Customs after such verification/examination and therefore larger period of limitation cannot apply merely because the Department subsequently entertains a different view on the scope of the Notification.

I find that there is no merit in M/s. Nahar's contention. The case was booked, based on an intelligence received by the officers of ICD, Ankleshwar and it was only then that this irregularity came to light. I also find that the Noticee had suppressed certain material facts from the Department which came to light, only when DRI booked a case against M/s. Indo Borax and Chemicals Ltd., Mumbai (in 2020) who also imported 'Ulexite Concentrated Granular' (supplied by M/s. Etimaden, Turkey through same trader M/s Asian Agro Chemicals

Corporation, UAE) declaring it as 'Ulexite Boron Ore'. CHA of M/s Indo Borax and Chemicals Ltd vide letter dated 03.07.2020 submitted copies of import documents of M/s Indo Borax which included the test report of 'ULEXITE' supplied by M/s Etimaden, Turkey showing the description of the goods supplied as "Ulexite, Concentrated, Granular, In Bulk 3_125mm". Similar test reports in respect of goods imported by M/s. Vishwa Glass may also have been supplied by M/s. Etimaden, Turkey. However, no such test report of the producer M/s Etimaden had been disclosed by M/s Nahar Colour & Coatings in present case through e-sanchit portal/Customs Department.

30.4 Whether the goods having assessable value of Rs.92,57,19,562/-, imported by wrongly claiming as "Boron Ore" as detailed in Annexure A/1, A/2, A/3, A/4, A/5 & consolidated at Annexure-A-6 to Show cause Notice should be held liable for confiscation under Section 111 (m) of the Customs Act, 1962?

30.4.1 I find that M/s. Nahar had imported total 26114.2 Mts totally valued at **Rs.92,57,19,562/-** of 'Boron Ore Concentrate' and wrongly availed the benefit of exemption from payment of Customs Duty as per Sr.No.113 of Customs Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 for period from 2017-18 to 2020-21 (Upto 15.01.2021) by declaring 'Boron Ore (Colemanite-44%)' as 'Boron Ore' as the exemption was available only to 'Boron Ore'. Out of said goods, goods totally weighing 240 Mts totally valued at 85,96,434/- [Assessable Value] imported under Bills of Entry Nos. 6525531 dated 18.01.2020 had been seized being liable for confiscation under Section 111(m) of the Customs Act, 1962 which was subsequently released provisionally by the competent authority. Further, balance goods weighing 25874.2 MTS totally valued at Rs. 91,71,23,128/- which were not available for seizure had been imported in contravention of the provisions of Section 46(4) of the Customs Act, 1962. For these contraventions and violations, the aforementioned goods fall under the ambit of smuggled goods within meaning of Section 2(39) of the Customs Act, 1962 and hence I hold them liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 in as much as by wrongly availing the benefit of Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017, M/s. Nahar had wrongly claimed the goods imported to be Boron Ores.

30.4.2 As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 can be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) of the Customs Act, 1962 reads as under: -

"125 Option to pay fine in lieu of confiscation -

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit..."

30.4.5 I find that M/s. Nahar has wrongly availed the benefit Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017. I rely on the decision in the matter of Weston Components Ltd. v. Collector reported as 2000 (115) E.L.T. 278 (S.C.) wherein Hon'ble Supreme Court has held that:

"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine".

In view of the above, I find that seized 240 Mts of goods viz. Boron Ore (Colemanite-44%' imported vide Bill of Entry No. 6525531 dated 18.01.2020 valued at **Rs. 85,96,434/- (Rupees Eighty Five Lakh, Ninety Six Thousand, Four Hundred and Thirty Fouronly)** which was subsequently provisionally released are liable for confiscation under Section 111(m) of the Customs Act, 1962.

30.4.6 I further find that even in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

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....
....
23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is infact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

30.4.7 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held *inter alia* as under: -

“.

174. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of *M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)]*, wherein the following has been observed in Para-23;

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act...”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.”

In the present case, it is clearly apparent that M/s. Nahar has wrongly availed the benefit Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 with clear intent to evade the payment of duty. Therefore, the contention of the Noticee that in absence of availability of goods, cannot be confiscated is not tenable.

In view of the above, I find that 25874.2 MTs of goods viz. 'Boron Ore (Colemanite-44%)' appearing in Annexure A-1 to A-5 (except goods imported vide Bill of Entry No. 6525531 dated 18.01.2020) totally valued at **Rs. 91,71,23,128/- (Rupees Ninety One Crore, Seventy One Lakh, Twenty Three**

Thousand, One Hundred and Twenty Eight only) though not available are liable for confiscation under Section 111(m) of the Customs Act, 1962.

30.4.8 In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods having total assessable value of Rs. 92,57,19,562/-, as detailed in Annexure A-1 to A-5 of the Show cause Notice.

30.5 Whether M/s. Nahar Colour & Coatings Pvt. Ltd are liable for penalty under the provisions of Section 114A, of the Customs Act, 1962?

30.5.1 I find that demand of differential Customs Duty amounting to Rs.5,16,41,838/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in 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. In the instant case, the ingredient of suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A *ibid*.

30.6 Whether M/s. Nahar Colour & Coatings Pvt. Ltd are liable for penalty under the provisions of Section 112(a)/112 (b), of the Customs Act, 1962?

30.6.1 I find that fifth proviso to Section 114A stipulates that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114" Hence, I refrain from imposing penalty on the importer under Section 112 of the Customs Act, 1962 as penalty has been imposed on them under Section 114A of the Customs Act, 1962.

30.7 Whether M/s.Nahar Colour & Coatings Pvt. Ltd are liable for penalty under the provisions of Section 114AA of the Customs Act, 1962?

30.7.1 I also find that the Show Cause Notice proposes to impose penalty on the Noticee M/s. Nahar Colour & Coatings Pvt. Ltd. under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

*"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, **any declaration**, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

30.7.2 I find that M/s. Nahar was well aware that goods viz. 'Boron Ore (Colemanite-44)' " imported were actually 'concentrate of Boron Ore', however, they falsely declared the description of goods as 'Boron Ore (Colemanite-44)' under Customs Tariff Item No. under Tariff Item No. 25280030 and intentionally declared Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 in Bill of Entry with clear intent to evade the payment of duty and contravened the provision of Section 46 (4) of the Custom Act, 1962 by making *false declarations in the Bill of Entry*,.

Hence, I find that the importer has knowingly and intentionally mis declared the false/incorrect description of goods and Notification No. in respect of imported goods. Hence, for the said act of contravention on their part, M/s. Nahar is liable for penalty under Section 114AA of the Customs Act, 1962.

30.7.3 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority"*.

30.8 Whether M/s. Nahar Colour & Coatings Pvt. Ltd are liable for penalty under the provisions of Section 117 of the Customs Act, 1962?

30.8.1 I find that Show Cause Notice also proposes Penalty under Section 117 of the Customs Act, 1962. Section 117 of the Customs Act, 1962 reads as under:

117. Penalties for contravention, etc., not expressly mentioned.—Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees].

I find that this is a general penalty which may be imposed for various contravention and failures where no express penalty is elsewhere provided in the Customs Act, 1962. In present case, since express penalty under Section 114A of the Customs Act, 1962 for short payment of duty by reason of wilful mis-statement and suppression of facts, and penalty under Section 114AA of the Customs Act, 1962 for false declaration in Bills of Entry have already been found imposable as discussed herein above. Therefore, I hold that Penalty under Section 117 of the Customs Act, is not warranted and legally not sustainable.

31. Whether, Penalty Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962 should be imposed on Shri Rajkumar Surana, Managing Director of M/s Nahar Colour & Coatings Private Limited?

31.1 I find that Shri Rajkumar Surana, Managing Director of M/s. Nahar Colour & Coatings, was responsible for import and involved in mis-declaring the description of the imported good as 'Boron Ore (colemanite-44) in the Bills of Entry and thereby wrongly claimed the benefit of Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 treating the imported goods as "Boron Ore" inspite of having the knowledge that the subject goods was 'Concentrate of Calcium Boron Ore'. Thus his act and omission rendered the goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 and thereby Shri Rajkumar Surana, Managing Director rendered himself liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

31.2 I also find that the Show Cause Notice proposes to impose penalty on Shri Rajkumar Surana, Managing Director of M/s. Nahar Colour & Coatings Pvt. Ltd.. under Section 114AA of the Customs Act, 1962. I find that Shri Gopal Krishna Tripathi, Head of R&D and Authorized person of M/s. Nahar Colour & Coatings Pvt. Ltd in his statement dated 25.08.2020 has specifically admitted they have imported Colemanite (Calcium Borate) of concentration of 40% to 44% and no process is required before using it for production of 'Ceramic Glaze Mixture (Frit).

Further, he has specifically stated that "they used to import Calcium Borate (Colemanite) from M/s. Mario Pilato Blat, s.a. Spain and M/s. Mario Pilato Blat, s.a. Spain purchase the same from M/s. Etimaden, Turkey. He alongwith his Director had visited the plant of M/s. Mario Pilato Blat, s.a. Spain earlier and after satisfying with the quality of Calcium Borate (Colemanite) and treatment made at their plant, they had undergone into a contract with them and started import of Calcium Borate (Colemanite)".

Further, during the recording of Statement on 25.08.2020, Shri Gopla Krishna Tripathi Head of R&D and Authorized person of M/s. Nahar Colour & Coatings Pvt. Ltd has submitted the Flow Chart of Ground Colemanite of supplier M/s. Mario Pilato Blat, s.a. Spain. From the perusal of the said Flow Chart it is clear that M/s. Mario Pilato Blat, s.a. Spain had purchased "Concentrare Colemanite Ore" from M/s. Etimaden, Turkey. Therefore, I find that Shri Rajkumar Surana, Managing Director of M/s. Nahar despite knowing that the goods declared as 'Boron Ore (Colemanite-44)' imported by them were actually 'Concentrate of Boron Ore'. Further, I find that from the Product Technical Data Sheet of "Ground Colemanite", nowhere it has been mentioned as 'Boron Ore', however in spite of having the knowledge that impugned goods was actually 'Concentrate of Boron Ore' they have mentioned/declared the description of the imported goods as "Boron Ore (Colemanite-44)" with clear intent to evade the payment of Customs duty by wrong availment of benefit of Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 contravened the provision of Section 46 (4) of the Customs Act, 1962 by making *false declarations in the Bill of Entry*. Hence, I find that Shri Rajkumar Surana, Managing Director of M/s. Nahar Colour & Coatings Pvt. Ltd has knowingly and intentionally made, signed or caused to be made and presented to the Customs authorities such documents which he knew were false and incorrect in respect of imported goods. Hence, for the said act of contravention, Shri Rajkumar Surana, Managing Director of M/s. Nahar Colour & Coatings Pvt. Ltd is liable for penalty under Section 114AA of the Customs Act, 1962.

31.3 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on Shri Rajkumar Surana, Managing Director of M/s. Nahar Colour & Coatings Pvt. Ltd. From the findings as discussed in **Para 31.1 & 31.2** hereinabove, Penalty has been held imposable under Section 112 (a) (ii) of the Customs Act, 1962 for the act and omission on the part of Shri Rajkumar Surana, Managing Director of M/s. Nahar Colour & Coatings Pvt. Ltd. which rendered the goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 and Penalty under Section 114AA found imposable for false declaration in Bills of Entry. Since, specific penalty under Section 112 (a) (ii) of the Customs Act, 1962 & 114AA of the Customs Act, 1962 for contravention of Section 111 (m) and false declaration in Bills of Entry has found imposable, I do not find it worth to impose penalty under Section 117 of the Customs Act, 1962 which is for contravention not expressly mentioned.

32. In view of the discussions and findings in paras supra, I pass the following order:

::ORDER::

32.1 I disallow the benefit of the exemption of Basic Customs Duty (BCD) under (i) Notification No.12/2012-Cus dated 17.03.2012, as amended (Sr. No. 113) (till 30.06.2017) and (ii) Notification No.50/2017-Cus dated 30.06.2017, as amended (Sr. No. 130) (01.07.2017 onwards) to M/s. Nahar Colour & Coatings Pvt. Ltd.

32.2 I confirm the demand of Differential Customs Duty amounting to **Rs. 5,16,41,838/- (Rupees Five Crore, Sixteen Lakh, Forty One Thousand, Eight Hundred and Thirty Eight Only)** as detailed in Annexures A/1, A/2, A/3, A/4, A/5 & Consolidated Annexure-A/6 of the Show Cause Notice, leviable on 'Boron Ore Concentrate' imported by M/s. Nahar Colour & Coatings Pvt. Ltd. declaring as 'Boron Ore (Colemanite-44)' issued under Section 28 (4) of the Customs Act, 1962 under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same.

32.3 Interest at the appropriate rate shall be charged and recovered from M/s. Nahar Colour & Coatings Pvt. Ltd., under Section 28AA of the Customs Act, 1962 on the duty confirmed hereinabove at Para 32.2 above.

32.4. I vacate the protest lodged by M/s. Nahar Colour & Coatings Pvt. Ltd and Customs Duty of Rs.1,22,05,123/- paid under protest towards their differential Duty liability stands appropriated and adjusted against the above confirmed Duty liabilities.

32.5 I hold the seized 240 MTs of goods viz. 'Boron Ore (Colemanite-44)' imported vide Bill of Entry No. 6525531 dated 18.01.2020 valued at **Rs. 85,96,434/- (Rupees Eighty Five Lakh, Ninety Six Thousand, Four Hundred and Thirty Four only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Nahar Colour & Coatings Pvt. Ltd the option to redeem the goods on payment of Fine of **Rs. 4,50,000/- (Rupees Four Lakh and Fifty Thousand only)** under Section 125 of the Customs Act, 1962.

32.6 I hold the 25874.2 MTs of goods viz. 'Boron Ore (Colemanite-44)' appearing in A/1, A/2, A/3, A/4, A/5 (except goods imported vide Bill of Entry No. 6525531 dated 18.01.2020) totally valued at **Rs. 91,71,23,128/- (Rupees Ninety One Crore, Seventy One Lakh, Twenty Three Thousand, One Hundred and Twenty Eight only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Nahar Colour & Coatings Pvt. Ltd the option to redeem the goods on payment of Fine of **Rs.4,50,00,000/- (Rupees Four Crore and Fifty Lakh only)** under Section 125 of the Customs Act, 1962.

32.7 I impose penalty of **Rs. 5,16,41,838/- (Rupees Five Crore, Sixteen Lakh, Forty One Thousand, Eight Hundred and Thirty Eight Only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Nahar Colour & Coatings Pvt. Ltd., under Section 114A of the Customs Act, 1962 in respect of Bills of Entry detailed in Show Cause Notice. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the importer, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

32.8 I refrain from imposing any penalty on M/s. Nahar Colour & Coatings Pvt. Ltd., under Section 112(a)& (b) of the Customs Act, 1962.

32.9 I impose a penalty of **Rs.5,00,000/- (Rs. Five Lakh only)** on M/s. Nahar Colour & Coatings Pvt. Ltd., under Section 114AA of the Customs Act, 1962.

32.10 I refrain from imposing any penalty on M/s. Nahar Colour & Coatings Pvt. Ltd., under Section 117 of the Customs Act, 1962.

32.11 I impose a penalty of **Rs.2,00,000/- (Rupees Two Lakh only)** on Shri Rajkumar Surana, Managing Director of M/s Nahar Colour & Coatings Pvt. Ltd., under Section 112(a)(ii) of the Customs Act, 1962.

32.12 I impose a penalty of **Rs.2,00,000/- (Rs. Two Lakh only)** on Shri Rajkumar Surana, Managing Director of M/s. Nahar Colour & Coatings Pvt. Ltd., under Section 114AA of the Customs Act, 1962.

32.13 I refrain from imposing any penalty on Shri Rajkumar Surana, Managing Director of M/s. Nahar Colour & Coatings Pvt. Ltd., under Section 117 of the Customs Act, 1962.

33. This order is issued without prejudice to any other action that may be taken 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.

34. The Show Cause Notice No. VIII/10-30/Pr.Commr./O&A/2020-21 dated 28.03.2021 is disposed off in above terms.


(Shiv Kumar Sharma)
Principal Commissioner

DIN: 20240771MN000000B859

BY Speed Post /Hand Delivery

F.No. VIII/10-30/Pr.Commr./O&A/2020-21

Date: 09.07.2024

To,

1. M/s Nahar Colours and Coating Pvt. Ltd., 2, Survey No.154, Village-Jolwa, Dahej Road, Taluka- Vagra, Gujarat-394305 (Registered office at NCCL House, G-1, 90-93, Sukher Industrial Park, Udaipur-313004
2. Shri Rajkumar Surana,
Managing Director of M/s Nahar Colours and Coating Pvt. Ltd., 2,
Survey No.154, Village- Jolwa, Dahej Road, Taluka- Vagra, Gujarat-394305 (Registered office at NCCL House, G-1, 90-93, Sukher Industrial Park, Udaipur-313004

Copy to:-

- (i) The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad.
- (ii) The ADG, DRI, Zonal Unit, Ahmedabad.
- (iii) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
- (iv) The Deputy Commissioner of Customs, ICD, Ankleshwar.
- (v) The Superintendent, System, Customs, HQ (in PDF format) for uploading the order on the website of Ahmedabad Customs Commissionerate
- ✓ (vi) Guard File