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प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

सीमा शुल्क भवन, आल इंडीया रेडीऑ के बाजु मे, नवरंगपुरा, अहमदाबाद 380009

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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं. / F.No.: VIII/10-07/Pr.Commr /O&A/2021-22

DIN- 20240771MN0000717253

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-30-2024-25
dated 09.07.2024 in the case of M/s Raj Borax Pvt. Ltd. located at
C-1-2402/1, GIDC, Sarigam, Tal. Umbergaon, Valsad, Gujarat**

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, दुसरी मंजिल, कहुगाती भवन, गिरिधर नगर पुल के बाजु मे, 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, Balurajji Bhavan, Nr. Gurdhar Nagar Bridge, Gurdhar Nagar, Asarwa, Ahmedabad - 380004.

3. उक्त अपील ग्राउप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियन्त्रण 3 के उप नियम (2) में विनिर्दिष्ट व्यवितरणों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों 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 दस्तावेज़ भी चार प्रतियों में अंग्रेज़ित 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 किसी 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. केंद्रिय सीमा शुल्क अधिनियम, 1962 की धारा 129 ए 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 मॉग ड्राफ्ट के जरिए अदा की जाएगी तथा यह मॉग 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 जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमें विवाद है उसका भुकतान करके अपील की जा शक्ती 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 संलग्न 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 No. VIII/10-07/Pr.Commr/O&A/2020-21 dated 28.12.2020 issued by the Principal Commissioner, Customs, Ahmedabad to **M/s Raj Borax Pvt. Ltd.** located at C-1-2402/1, GIDC, Sarigam, Tal. Umbergaon, Valsad, Gujarat and others.

Brief facts of the case:

M/s Raj Borax Pvt. Ltd. situated at C-1-2402/1, GIDC, Sarigam, Tal. Umbergaon, Valsad, Gujarat, having registered office at 803, Hubtown Solaris, 8th Floor, N.S. Phadke Marg, Near East West Flyover, Andheri [East], Mumbai-400 069 (IEC No. 0307024423) [hereinafter referred to as 'the Noticee' or 'M/s. Raj Borax' for sake of brevity] had imported Ground Colemanite B₂O₃ 40% Natural Boron Ore. The Noticee had classified the same under CTH 25280090 of Customs Tariff Act, 1975 and availed exemption from payment of Basic Customs duty in terms of Sr. 130 of Notification No. 50/2017-Cus dated 30.06.2017 and Sr. 113 of Notification No. 12/2012-Cus dated 17.03.2012 as applicable for the period from 01.07.2017 to 15.10.2020 and 01.04.2015 to 30.06.2017 respectively.

2. An intelligence was gathered to the effect that some importers are importing Ground Colemanite 40% B₂O₃ by classifying the same CTH 25280090 and wrongly claiming exemption under Sr. No. 130 of Notification No. 50/2017-Cus dated 30.06.2017 by mis-declaring the product as Natural Bore Ore. Acting on the intelligence, necessary details were verified from ICES regarding import of said item and it was noticed that one consignment under Bill of Entry No 6280505 dated 30.12.2019 of M/s Raj Borax Pvt. Ltd. was under process for clearance from CFS-Seabird, Hazira. Accordingly, the Deputy Commissioner, Adani Hazira Port, Hazira was requested to put the consignment, declared under Bill of Entry No 6280505 dated 30.12.2019, on hold for drawal of sample and further investigation.

3. The officers of SIIB, Customs, Surat visited CFS-Seabird, Seabird Marine Services Pvt. Ltd, Hazira, Surat on 14.01.2020 wherein it was observed that CHA viz. **M/s Steadfast Impexp** had filed the said Bill of Entry bearing No. 6280505 dated 30.12.2019 on behalf of **M/s Raj Borax Pvt. Ltd.** covering eight containers of Ground Colemanite 40% B₂O₃. Representative samples were drawn under panchnama dated 14.01.2020 (**RUD-1**) in presence of two independent panchas, **Shri Milind Mukadam**, Dy. Manager, CFS-Seabird, Hazira and **Shri Harish Kumar**, H-Card Holder of **M/s Steadfast Impexp** from one of the containers bearing No. PONU0040272 covered under Bill of Entry No. 6280505 Dated 30.12.2019. The representative sample was sent to CRCL, Vadodara vide Test Memo No 03/2019-20 dated 16.01.2020 to ascertain following test/parameter to confirm whether the goods declared is Boron Ore or otherwise:

- (i) Whether the sample is of goods which are found naturally on the earth or is processed;
- (ii) The nature & composition of the goods and whether the composition 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.

4. The Test report dated 21.01.2020 of sample submitted under Test Memo No 03/2019-20 dated 16.01.2020 in respect of sample drawn under panchnama dated 14.01.2020 was received from CRCL, Vadodara which is reproduced here-under:

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

B_2O_3 = 41.6% by wt.

CaO = 27.3 % by wt.

Loss on ignition at 900 degree C = 28.9% by wt.

Loss on drying at 105 degree C = 0.8% by wt.

Above analytical findings reveal that it is processed borate mineral colemanite.

5. The above test report revealed that goods imported under said Bill of Entry were processed Borate Mineral Colemanite. Resultantly, it appeared that the Noticee had 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. 6280505 dated 30.12.2019. Thus, goods declared in Bill of Entry No. 6280505 dated 30.12.2019, totally weighing 192000.000 kgs., valued at Rs. 64,19,232/- were seized under panchnama dated 23.01.2020 in terms of the provisions of Section 110(1) of Customs Act, 1962 on the reasonable belief that the same were liable to confiscation under Section 111(m) of Customs Act, 1962. The said goods were subsequently released provisionally, by the competent authority, in terms of the provisions of Section 110A of the Customs Act, 1962 on the request of Noticee.

6. The Noticee did not agree with the Test report given by CRCL, Vadodara and 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. 12/2019-20 dated 02.03.2020 with the following test queries/parameters:

- (i) Whether the sample is of goods which 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) If, 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-42/219-20 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 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	=0.78
2. % Loss on ignition at (900 degree C) by TGA	= 28.9
3. % B_2O_3 (Dry Basis)	= 37.62
4. % Acid insoluble	= 6.13
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, requested the Head Chemical Examiner, CRCL, New Delhi, to send detailed report covering all the points of test memo since the re-test report received from CRCL, New Delhi did not cover all queries/questionnaires given in the Test memo. In response of 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 is Boron Ore or Boron Ore Concentrate and the nature of 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_2O_3 contents of the Colemanite Ore mined are 27% to 32% whereas the technical data sheet of Ground Colemanite shows the B_2O_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.
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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, sent the para-wise reply, which as 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_2O_3 contents of the Colemanite Ore mined are 27% to 32% whereas the technical data sheet of Ground Colemanite shows the B_2O_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_2O_3 .

9.2 The test report issued by CRCL, Vadodara in respect of sample of Ground Colemanite imported by the Noticee confirmed that Ground Colemanite was processed borate mineral colemanite, found in powder form, having B_2O_3 content as 41.6% by wt. The re-test report provided by CRCL, Delhi also

confirmed the form of sample as powder which was crushed and grinded, however, details of the processes undertaken were not commented upon.

10. 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:

10.1 Details and literature available on website of M/s Etimaden:

10.1.1 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. indicated that **M/s ETiMADEN** were categorizing their products under two heads namely Refined Product and Final Product. Ground Colemanite is one of the products listed under Refined Products. The Product Technical Data Sheet of Ground Colemanite has also been found available on their website which is downloaded and scanned image of relevant pages are reproduced hereunder:

Scan Image No:1

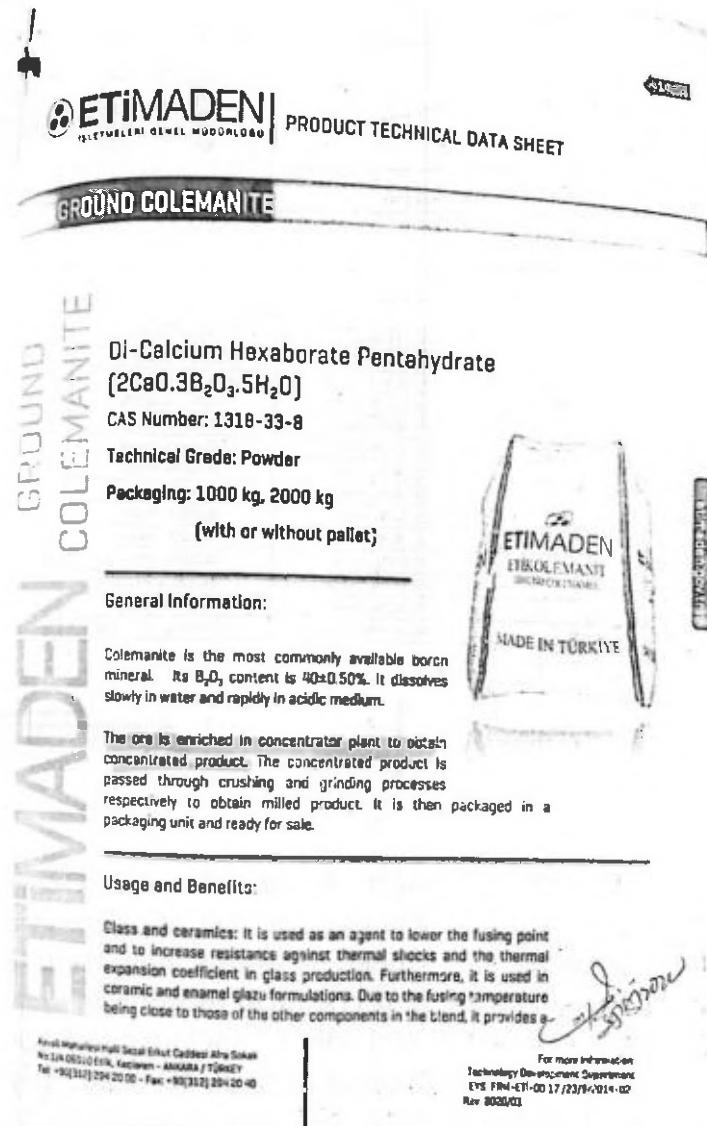


Image No:2

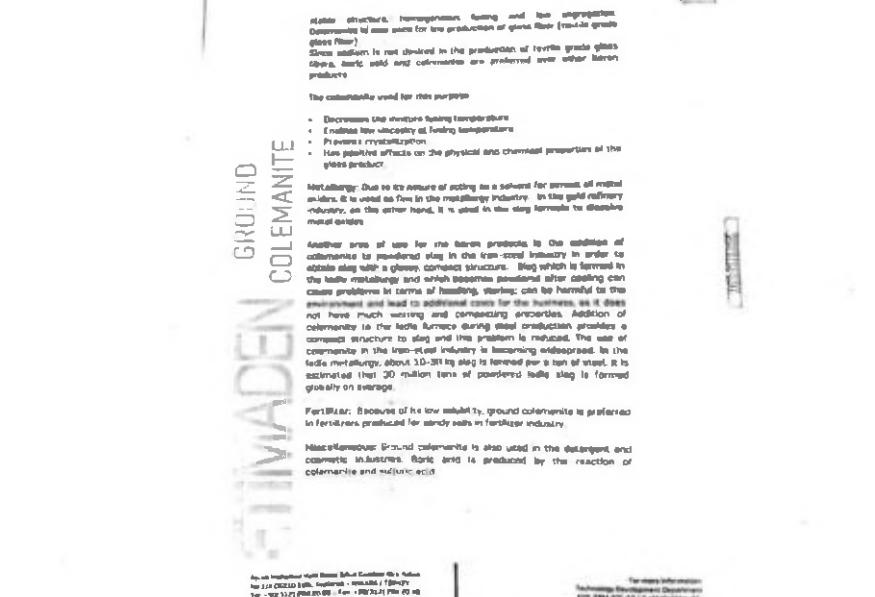
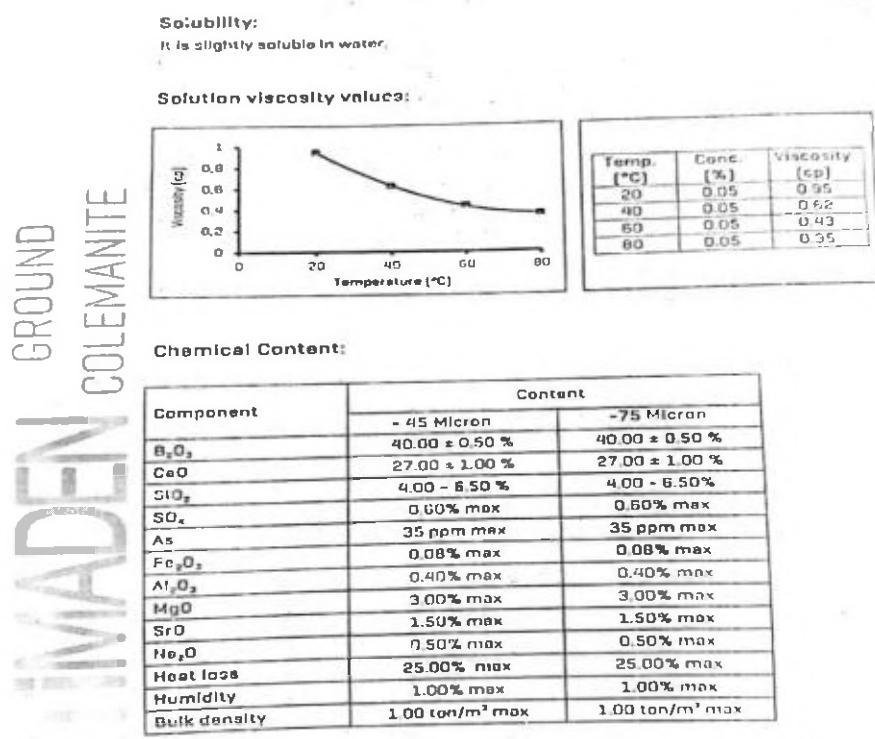


Image No:3



10.1.2 On going through the details and General Information available in scanned Image No 1, it is noticed that the details are in respect of Ground Colemanite wherein the Chemical Name has been depicted as Di-Calcium Hexaborate Pentahydrate and chemical formula is $2\text{CaO} \cdot 3\text{B}_2\text{O}_3 \cdot 5\text{H}_2\text{O}$. Technical Grade is in Powder form and sold in packaging of 1000 Kg and 2000 Kg (with or without pallet). The content of B_2O_3 is $40 \pm 0.50\%$. Further, M/s **ETiMADEN** also described the aspect regarding concentration of Colemanite Ore under General Information which is reproduced below:

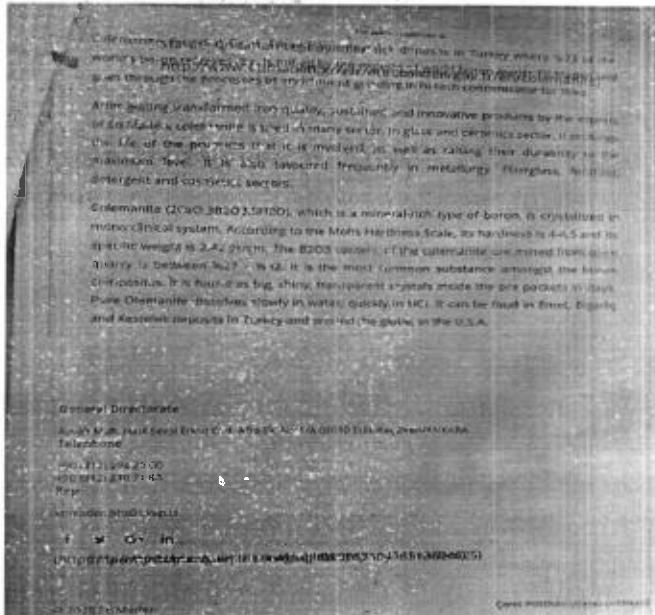
"The Ore is enriched in concentrator plant to obtain concentrated product. The Ground Concentrated product is passed through crushing and grinding processes respectively to obtain milled product. It is then packaged in a packaging unit and ready for sale"

10.1.3 The details available on Website of **M/s ETiMADEN**, as discussed above, indicates that Ground Colemanite is a concentrated product of Colemanite which contains B_2O_3 40+/- 0.50% and is derived by enrichment of Colemanite in concentrator plant. Thereafter, such Ground Concentrated product is passed through crushing and grinding processes respectively to obtain milled product and packaged in a packaging unit to attain the status of ready for sale.

10.1.4. The Boron Element and its major Boron Minerals, availability in Turkey and its uses have been described in detail on the website of **M/s ETiMADEN** wherein it has been mentioned that Boron minerals are natural compounds containing boron oxide in different proportions. The most important boron minerals in commercial terms are Tincal, Colemanite, Kernite, Ulexite, Pandermite, Boracite, Szaybelite and Hydroboracite. The main boron minerals transformed by **M/s ETiMADEN** are Tincal, Colemanite and Ulexite.

10.1.5 Boron minerals are enhanced in value by **M/s ETiMADEN** by using various mining methods, enriched by physical processes and converted into concentrated boron products. Subsequently, by refining and transforming into highly efficient, profitable and sustainable boron products, it is used in many fields of industry especially in glass, ceramics, agriculture, detergent and cleaning industries, etc. **M/s ETiMADEN** has currently 17 refined boron products in its product portfolio. Primary refined boron products are 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 are Tincal and Colemanite. In the facilities in 4 Works Directorates under **M/s ETiMADEN**, mainly Borax Pentahydrate, Borax Decahydrate, Boric Acid, Etidot-67, Boron Oxide, Zinc Borate, Calcine Tincal, Anhydrous Borax, Ground Colemanite and Ground Ulexite are produced and supplied to domestic and international markets.

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



10.2 Thus, from details available on website of **M/s ETiMADEN** in respect of mining of Colemanite and production of Ground Colemanite, it is very clear that:

1. Colemanite is one of most important Boron minerals in commercial terms which are 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 is between 27%-32%. However, the text " *B_2O_3 content of the Colemanite ore mined from open quarry is between %27-%32*" has been deleted from the website of **M/s ETiMADEN** after initiation of inquiry while the remaining details are the same.
3. Boron minerals i.e. Colemanite are made usable and valuable by **M/s ETiMADEN** by using various mining methods which enrich the goods by physical processes and conversion into concentrated boron products.
4. Mined Colemanite is subjected to the processes of enrichment by grinding in hi-tech concentrator facilities available with **M/s ETiMADEN** and concentrated Colemanite is produced. By this process the mined Colemanite ore having B_2O_3 ranging between 27%-32% has been enhanced to Colemanite Ore Concentrate which is sold as Ground Colemanite having B_2O_3 40%. Ground Colemanite is a concentrated product of Colemanite produced by enrichment in concentrator plant.
5. Thereafter such Ground Concentrated product is passed through crushing and grinding processes respectively to obtain Ground Colemanite.
6. Ground Colemanite is sold in Powder form in packaging of 1000 Kg and 2000 Kg.
7. Ground Colemanite is used in many fields of industry especially in glass, ceramics, agriculture, detergent and cleaning industries, etc

11. **Discussion about Ore and Ore Concentrates:** The various literature available on website in respect of Ore and Ore Concentrates has been studied and some of them are discussed here-under:

11.1 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

11.2 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

11.3 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

11.4 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

11.5 Definition of Ore as per Britannica:

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-metallics.

11.6 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.

12. The terms 'Ores' and 'Concentrates' have been defined in the Explanatory Notes of Chapter 26 of the HSN which mentions 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 shows that the term "Ore" is a naturally occurring raw and native mineral which are produced by mines and contain various foreign material and impurities. Ore is 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 physic-chemical operation viz. cleaning, washing, drying, separation, crushing, grinding, etc. Natural Ore which is extracted from the mines though, might have predominance of a particular

minerals but do not consist of any particular mineral alone. It is a naturally occurring raw and native mineral which are produced by mines and contain various foreign material, impurities and other substances and not suitable for further operations. Ore is extracted from the earth through mining and treated or refined to extract the valuable metals or minerals. The "Concentrate" is 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 appears from the above that Natural Ore consist of various minerals and other minerals and substances and therefore as such it cannot be directly used for any further manufacturing. Whereas concentrate is the form from which part or all of the foreign matters have been removed.

13. From the data available in EDI system of Customs, it is observed that the Noticee is importing Ground Colemanite, B₂O₃ 40%, Natural Boron Ore from United Arab Emirates, supplied by **M/s Asian Agro Chemical Corporation** by classifying under CTH. 25280090 of Customs Tariff Act, 1975 and availing exemption from payment of Basic Customs duty under Sr. 130 of Notification No. 50/2017-Cus dated 30.06.2017 by declaring Ground Colemanite, B₂O₃ 40% as Boron Ore. Prior to inception of Notification No. 50/2017-Cus, the Noticee were availing exemption from payment of Basic Customs duty under Sr. 113 of Notification No. 12/2012-Cus dated 17.03.2012 as amended. The details of Ground Colemanite, B₂O₃ 40%, Natural Boron Ore imported by the Noticee and cleared through Adani Port Hazira and ICD, Tumb, falling within the jurisdiction of the Commissioner of Customs, Ahmedabad, from April, 2015 has been prepared and attached as Annexure-A/1, A/2, A/3, A/4, A/5 and A/6 for Financial year 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 & 2020-21 [Up to 15.10.2020] respectively to the Show Cause Notice.

14. From the data available in EDI system of Customs, it is noticed that the Noticee classified Ground Colemanite (B₂O₃ 40%) Natural Boron Ore as "**Others**" under CTH 25280090 of Customs Tariff Act, 1975. The CTH 25280090 of Customs Tariff Act, 1975 under which the Noticee declared the goods i.e. "Ground Colemanite (B₂O₃ 40%) Natural Boron Ore" 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%

15. Statements recorded under Section 108 of Customs Act, 1962:

15.1 Statement dated 17.01.2020 of **Shri Dipankar Mahto**, G card Holder bearing No. G/138/2018 of **M/s Stead Fast Impexp** (CHA) was recorded before the Superintendent of Customs (SIIB), Surat, of which the relevant text is reproduced under:

Question No.1 : Please go through the Panchnama dated 14.01.2020 drawn at CFS-Seabird, M/s Seabird Marine Services Pvt. Ltd, Choryasi, Hazira, Surat, under which representative samples of goods declared as "Ground Colemanite, B_2O_3 40%, Natural Boron Ore", imported by M/s Raj Borax Pvt. Ltd under B/E No 6280505 dated 30.12.2019, has been drawn for further examination?

Ans: Sir, I have gone through the Panchnama dated 14.01.2020 drawn at CFS-Seabird, M/s Seabird Marine Services Pvt. Ltd, Choryasi, Hazira, Surat, under which representative samples of goods declared as "Ground Colemanite, B_2O_3 40%, Natural Boron Ore", imported by M/s Raj Borax Pvt. Ltd under B/E No 6280505 dated 30.12.2019, has been drawn for further examination. I am fully agree with the facts recorded under Panchnama dated 14.01.2020. I want to submit that I was informed by the officers of SIIB to remain present at the time of Panchnama on 14.01.2020 for drawl of representative sample from the consignment covered under the said Bill of Entry but due to some medical emergencies, I was unable to present myself at the scheduled time. However, I have informed Shri Harish Kumar, H card holder of M/s Stead Fast Impexp to remain present at the time of drawl of sample. I have to state that I also agree with the manner in which the samples were drawn by the officers under the said Panchnama. I also want to state that since Jan 2018, I am handling all the processes related to filing of Bill of Entry, Customs clearance etc in respect of M/s Raj Borax Pvt. Ltd and the said B/E No 6280505 dated 30.12.2019 was also filed by me.

15.2 Statement dated 23.01.2020 of **Shri Girish Mehta**, Director of **M/s Raj Borax Pvt. Ltd** was recorded before the Superintendent of Customs (SIIB) of which the relevant text is reproduced under:

Question No.1 : Please go through the Panchnama dated 14.01.2020 drawn at CFS-Seabird, M/s Seabird Marine Services Pvt. Ltd, Choryasi, Hazira, Surat, under which representative samples of goods declared as "Ground Colemanite, B_2O_3 40%, Natural Boron Ore", imported by M/s Raj Borax Pvt. Ltd under B/E No 6280505 dated 30.12.2019, has been drawn for further examination?

Ans: Sir, I have gone through the Panchnama dated 14.01.2020 drawn at CFS-Seabird, M/s Seabird Marine Services Pvt. Ltd, Choryasi, Hazira, Surat, under which representative samples of goods declared as "Ground Colemanite, B_2O_3 40%, Natural Boron Ore", imported by M/s Raj Borax Pvt. Ltd under B/E No 6280505 dated 30.12.2019, has been drawn for further examination. I am fully agree with the facts recorded under Panchnama dated 14.01.2020. I also agree with the manner in which the samples were drawn by the officers under the said Panchnama. I also want to state that since 2017, M/s Raj Borax Pvt. Ltd has been importing similar goods declared as "Ground Colemanite, B_2O_3 40%, Natural Boron Ore" from the same supplier under similar description. I also want to state that our company cleared most of the goods imported as such whereas some of the goods imported are only repacked and relabeled, as per our customer's requirement.

15.3 Further statement dated 11.03.2020 of **Shri Dipankar Mahto**, G card Holder bearing No. G/138/2018 of CHA **M/s Stead Fast Impexp** was recorded before the Superintendent of Customs (SIIB), Surat which is reproduced under:

Question No. 01:- What is the business and address of M/s Steadfast Impexp?

Ans:- M/s Steadfast Impexp, A-301/302, Siddharth Annexe-3, Nr Plaza Hotel, NH-8, Vemali, Dist-Vadodara-3917410 is a Custom Broker License holder and working as an agent on behalf of importers/exporters for clearance of import and export of goods and filing Bill of Entry, Shipping Bill, etc. on behalf of importers/exporters. We maintain detailed, itemized and up-to-date accounts. M/s Steadfast is a proprietorship firm and Shri Prashantha S Hegde is proprietor of the firm and having F-card. I am employee and G card holder of M/s Steadfast Impexp. M/s Steadfast Impexp is authorized by M/s Raj Borax Pvt. Ltd. to represent them before customs and other allied agencies to complete all the documentation formalities up to delivery of the Import consignment or Export of their export shipment on their behalf. I am producing the copy of authorization letter for your ready reference.

Question No. 02:- Please produce the bills/invoice raised by M/s Steadfast Impexp to M/s Raj Borax Pvt. Ltd. for the clearing/forwarding services provided to M/s Raj Borax Pvt. Ltd.

Ans:- Sir, presently, I am not in the possession of the bills/invoice raised by M/s Steadfast Impexp to M/s Raj Borax Pvt. Ltd. for the clearing/forwarding services provided to M/s Raj Borax Pvt. Ltd. I will submit the same by tomorrow.

Question No.3: Please go through the B/E No 6280505 dated 30.12.2019 under which goods declared as "Ground Colemanite, B₂O₃ 40%, Natural Boron Ore", was imported by M/s Raj Borax Pvt. Ltd?

Ans: Sir, I have gone through the B/E No 6280505 dated 30.12.2019 under which goods declared as "Ground Colemanite, B₂O₃ 40%, Natural Boron Ore, was imported by M/s Raj Borax Pvt. Ltd. I will accept that the said bill of entry was filed by M/s Steadfast Impexp on behalf of M/s Raj Borax Pvt. Ltd.

Question No.4 : Please give the details of suppliers from which M/s Raj Borax Pvt. Ltd have imported the consignment for which bills of entry filed by you since 2017-18?

Ans:- Sir, since Jan 2018, I am handling all the processes related to filing of Bill of Entry, Customs clearance etc on behalf of M/s Raj Borax Pvt. Ltd. Since Jan 2018, I have filed Bills of Entry on behalf of M/s Raj Borax Pvt. Ltd. for the consignment imported from the supplier M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemicals Corporation. M/s Raj Borax Pvt. Ltd. had imported consignment declared as 'Borax Pentahydride' and 'Ground Colemanite' from M/s Borochemie (International) Pvt. Ltd. as well as from M/s Asian Agro Chemical Corporation.

Question No. 5 : Please give the details of directors of M/s Raj Borax Pvt. Ltd, M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemical Corporation?

Ans:- M/s Raj Borax Pvt. Ltd has 05 Directors namely, Shri Alakh N Shah, Shri Girish Mehta, Shri Suresh Chandra Shukla, Shri Ahmet Yakal and Shri Ismail Algan. I also want to state that as per my knowledge Shri Girish Mehta is also holding position of director in M/s Borochemie (International) Pvt. Ltd. as well as in M/s Asian Agro Chemical Corporation. I have been requested earlier to submit the name of all the directors in respect of M/s Borochemie (International) Pvt. Ltd. as well as in M/s Asian Agro Chemical Corporation to your office. I will submit

the name of all the directors in respect of M/s Borochemie (International) Pvt. Ltd. as well as in M/s Asian Agro Chemical Corporation by tomorrow.

Question No. 06 : On going through your answer to question no. 5 stated above, it is noticed that M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemical Corporation are related business entity to importer M/s Raj Borax Pvt. Ltd. Whether you have mentioned/declared the said facts during filing of Bills of Entry in respect of import of goods by M/s Raj Borax Pvt. Ltd from suppliers M/s Borochemie (International) Pvt. Ltd. or M/s Asian Agro Chemical Corporation?

Ans:- Sir, I have gone through my answer to question no 05 stated above. I agreed with the facts that M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemical Corporation are related business entity to importer M/s Raj Borax Pvt. Ltd. I have wrongly mentioned/declared the said facts during filing of Bills of Entry in respect of import of goods by M/s Raj Borax Pvt. Ltd. from suppliers M/s Borochemie (International) Pvt. Ltd. or M/s Asian Agro Chemical Corporation. I also want to admit that I have filed the said Bills of entry on the basis of documents provided by M/s Raj Borax Pvt. Ltd. and they have not provided any information or documents to us in respect of related party before this point of time.

Question No. 07:- Please go through your answer to question No. 06 stated above and produce the supporting documents/check list approved by M/s Raj Borax Pvt. Ltd, on the basis of which you have filed Bills of entry since Jan 2018.

Ans:- Sir, presently, I am not in the possession of the supporting documents/check list approved by M/s Raj Borax Pvt. Ltd., on the basis of which we have filed Bills of entry since Jan 2018. Your office has already requested to submit the same earlier. I will submit the same by tomorrow.

Question No. 08:- Please state when you came to know that M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemical Corporation are related business entity to importer M/s Raj Borax Pvt. Ltd.

Ans:- Sir, at the time of drawl of sample under panchnama dated 14.01.2020, I was came to know that M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemical Corporation are related business entity to importer M/s Raj Borax Pvt. Ltd.

Question No. 09:- When you came to know that the importer M/s Raj Borax Pvt. Ltd. and M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemical Corporation are related business entity whether you have pointed out to M/s Raj Borax Pvt. Ltd. regarding wrong declaration made in bills of entry and advised to file bill of entry by showing related party.

Ans: Sir, we have not communicated/advised the importer M/s Raj Borax Pvt. Ltd. to declare the correct fact in their Bills of entry and other documents that M/s Raj Borax Pvt. Ltd. and M/s Borochemie (International) Pvt. Ltd and M/s Asian Agro Chemical Corporation are related business entity. We have advised the importer to declare the correct fact today.

Question No. 10:- Please go through your answer to question No. 08 stated above and go through the check list for Bill of Entry No. 6656504 dated 27.01.2020, 6749355 dated 04.02.2020, 6902058 dated 15.02.2020 and 7083183 dated 02.03.2020 produced by you after 14.01.2020 where you have even after knowing wrongly mentioned/declared the facts during filing of Bills of Entry said above that M/s Raj Borax Pvt. Ltd. is not related to M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemical Corporation.

Ans:- Sir, I have gone through my answer to question No. 08 stated above and I have gone through the check list for Bill of Entry No. 6656504 dated 27.01.2020, 6749355 dated 04.02.2020, 6902058 dated 15.02.2020 and 7083183 dated 02.03.2020 produced by us after 14.01.2020 where we have even after knowing wrongly mentioned/declared the facts during filing of Bills of Entry said above that M/s Raj Borax Pvt. Ltd. not is related to M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemical Corporation. I accept that it is a fault on our part and I will discuss this issue with the importer and after taking their approval, we will declare the correct fact in Bills of entry and related documents to be filed in future.

Question No. 11:- Please go through the Para 10 of Customs Brokers Licensing Regulations, 2018 (Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018) and your answer to question no. 05, 06 and 07. It was also observed that on several times you have not made compliance to this office timely and not co-operated the investigation properly. Please also go specifically through your answer to question No. 09 & 10. It appears that you not fulfilled the obligation mentioned in Para 10 of Customs Brokers Licensing Regulations, 2018 (Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018). Please submit your comments.

Ans:- Sir, I have gone through the Para 10 of Customs Brokers Licensing Regulations, 2018 (Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018) and my answer to question no. 05, 06 and 07. I also accept that on several times I have not made compliance to this office timely and not co-operated the investigation properly. I have also gone specifically through my answer to question No. 09 & 10. I accept that we have not fulfilled the obligation mentioned in Para 10 of Customs Brokers Licensing Regulations, 2018 (Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018). I assure that we will always fulfill the obligation mentioned in Para 10 of Customs Brokers Licensing Regulations, 2018 (Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018) in future.

15.4 Statement dated 13.03.2020 (RUD-15) of **Shri Dipankar Mahto**, G card Holder bearing No. G/138/2018 of CHA M/s **Stead Fast Impexp** was recorded before the Superintendent of Customs (SIIB), Surat and the same is reproduced under:

Question No. 01:- Please go through your statement dated 11.03.2020 recorded under Section 108 of the Customs Act, 1962 before the Superintendent, SIIB, Customs, Surat and offer your comments?

Ans:- Sir, I have gone through my statement dated 11.03.2020 recorded under Section 108 of the Customs Act, 1962 before the Superintendent, SIIB, Customs, Surat. I agree with the facts recorded in my said statement dated 11.03.2020 and in token of agreeing with the same, I put my dated signature on it.

Question No. 02:- Please go through your answer to question no. 05 of statement dated 11.03.2020 recorded under Section 108 of the Customs Act, 1962 before the Superintendent, SIIB, Customs, Surat, wherein you have assured that you will submit the details of directors of M/s Raj Borax Pvt. Ltd., M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemical Corporation. Please produce the same.

Ans:- Sir, I have gone through my answer to question no. 05 of statement dated 11.03.2020 recorded under Section 108 of the Customs Act, 1962 before the Superintendent, SIIB, Customs, Surat, wherein I have assured that I will submit

the details of directors of M/s Raj Borax Pvt. Ltd., M/s Borochemie (International) Pvt. Ltd. and M/s Asian Agro Chemical Corporation by 12.03.2020. I am producing herewith list of directors of M/s Raj Borax Pvt. Ltd. and M/s Asian Agro Chemical Corporation and M/s Borochemie International Pvt. Ltd. As per the list, there are 05 directors in M/s Raj Borax Pvt. Ltd. namely Shri Girish D. Mehta, Shri Suresh B. Shukla, Shri Alakh N. Shah, Shri Ahmet Korkut Yakal and Shri Ismail Enes Algan whereas there are 04 directors in M/s Asian Agro Chemicals Corporation namely Shri Alakh Natwarlal Shah, Shri Girish D Mehta, Shri Ahmet Korkut Yakal and Shri Ismail Enes Algan; there are 09 directors of M/s Borochemie International Pvt. Ltd. namely Shri Ismail Enes Algan, Shri Ahmet Korkut Yakal, Shri Nareshchandra Balchandra Shukla, Shri Suresh B Shukla, Shri Sylvia Yakal, Shri Tiong Hin Won, Shri Girish D Mehta, Shri Alakh Natwarlal Shah, and Shri Beril Behire Algan. From the said list of directors of all three company, I find that Shri Girish D Mehta, Shri Alakh Natwarlal Shah, Shri Ahmet Korkut Yakal, Shri Ismail Enes Algan are common directors in all the above mentioned companies.

Question No. 03:- Please go through the definition of “related” as per Rule 2(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, reproduced as under:-

Persons shall be deemed to be “related” under Rule 2(2), if –

- i) They are officers or directors of one another’s businesses;
- ii) They are legally recognized partners in business;
- iii) They are employer and employee;
- iv) Any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
- v) One of them directly or indirectly controls the other;
- vi) Both of them are directly or indirectly controlled by a third person;
- vii) Together they directly or indirectly control a third person;
- viii) They are members of the same family.

Please go through your answer to question no. 02 of stated above and definition of “related” as per Rule 2(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, reproduced as above and Please offer your comments.

Ans:- Sir, I have gone through my answer to question no. 02 of stated above and definition of “related” as per Rule 2(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, reproduced as above. I accept that as per Rule 2(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, that M/s Asian Agro Chemical Corporation as well as M/s Borochemie International Pvt. Ltd. are related business entity to importer M/s Raj Borax Pvt. Ltd. I again accept that we have wrongly mentioned/declared the said facts during filing of Bills of Entry in respect of import of goods by M/s Raj Borax Pvt. Ltd. from supplier M/s Asian Agro Chemical Corporation M/s Borochemie International Pvt. Ltd. I also want to admit that I have filed the said Bills of entry on the basis of documents provided by M/s Raj Borax Pvt. Ltd. and they have provided us wrong information in respect of related party before this point of time.

I am also producing Annexure to Form No. 3CEB furnished under Section 92E of the Income Tax Act-1961 by M/s Raj Borax Pvt. Ltd., it is clear that M/s Asian Agro Chemical Corporation as well as M/s Borochemie International Pvt. Ltd. are related business entity to importer M/s Raj Borax Pvt. Ltd.

Question No. 04:- You are requested to go through your answer to question no. 07 of statement dated 11.03.2020 recorded under Section 108 of the Customs Act, 1962 before the Superintendent, SIB, Customs, Surat, wherein you have

assured that you will submit the supporting documents/check list approved by M/s Raj Borax Pvt. Ltd., on the basis of which you have filed Bills of entry since Jan 2018 by 12.03.2020. Please produce the same.

Ans:- I have gone through my answer to question no. 07 of statement dated 11.03.2020 recorded under Section 108 of the Customs Act, 1962 before the Superintendent, SIIIB, Customs, Surat, wherein I have assured that I would submit the supporting documents/check list approved by M/s Raj Borax Pvt. Ltd., on the basis of which I have filed Bills of entry since Jan 2018 by 12.03.2020. I wants to submit that M/s Antrans Logistics India Pvt. Ltd., Mumbai is mainly authorized by M/s Raj Borax Pvt. Ltd. for Customs documentation and clearance. As M/s Antrans Logistics India Pvt. Ltd. is not registered as CHA at Adani Hazira Port, Surat therefore they have outsourced M/s Steadfast Impexp for customs documentation and clearance to in respect of M/s Raj Borax Pvt. Ltd. at Adani Hazira Port. Accordingly, any communication to M/s Raj Borax Pvt. Ltd. is sent via M/s Antrans Logistics India Pvt. Ltd. and vice versa. Accordingly, we used to sent the check list before filing of Bills of entry to M/s Antrans Logistics India Pvt. Ltd. and M/s Antrans Logistics India Pvt. Ltd. used to sent the same to M/s Raj Borax Pvt. Ltd. for approval. Similarly M/s Raj Borax Pvt. Ltd. used to sent the approved check list to M/s Antrans Logistics India Pvt. Ltd. and thereafter, M/s Antrans Logistics India Pvt. Ltd. used to sent the same to us and on the basis of which we used to file Bill of Entry on behalf of M/s Raj Borax Pvt. Ltd. I am producing the print out of the samples of communication made for the approval of check list for your reference. I am also producing check list which was sent for approval for the period 2018-19.

15.5 Statement dated 16.03.2020 of **Shri Prashantha S Hegde**, Proprietor and F card Holder bearing No. F/09/2016 of CHA **M/s Stead Fast Impexp** was recorded before the Superintendent of Customs (SIIIB), Surat which is reproduced under:

Question No. 01:- Please go through the statement dated 11.03.2020 of Shri Dipankar Mahato, G Card Holder (G/138/2018) of M/s Steadfast Impexp recorded under Section 108 of the Customs Act, 1962 before the Superintendent, SIIIB, Customs, Surat and offer your comments?

Ans:- Sir, I have gone through the statement dated 11.03.2020 of Shri Dipankar Mahato, G Card Holder (G/138/2018) of M/s Steadfast Impexp recorded under Section 108 of the Customs Act, 1962 before the Superintendent, SIIIB, Customs, Surat. I agree with the facts recorded in the said statement dated 11.03.2020 of Shri Dipankar Mahato and in token of agreeing with the same, I put my dated signature on it.

Question No. 02:- Please go through the statement dated 13.03.2020 of Shri Dipankar Mahato, G Card Holder (G/138/2018) of M/s Steadfast Impexp recorded under Section 108 of the Customs Act, 1962 before the Superintendent, SIIIB, Customs, Surat and offer your comments?

Ans:- Sir, I have gone through the statement dated 13.03.2020 of Shri Dipankar Mahato, G Card Holder (G/138/2018) of M/s Steadfast Impexp recorded under Section 108 of the Customs Act, 1962 before the Superintendent, SIIIB, Customs, Surat. I agree with the facts recorded in the said statement dated 13.03.2020 of Shri Dipankar Mahato and in token of agreeing with the same, I put my dated signature on it.

I admit that M/s Borochemic (International) Pvt. Ltd and M/s Asian Agro Chemical Corporation are related business entity to importer M/s Raj Borax Pvt. Ltd. We have wrongly mentioned/declared the said facts during filing of Bills of Entry in respect of import of goods by M/s Raj Borax Pvt. Ltd. from suppliers M/s

Borochemie (International) Pvt. Ltd. or M/s Asian Agro Chemical Corporation. I also want to admit that we have filed the said Bills of entry on the basis of documents provided by M/s Raj Borax Pvt. Ltd. and they have not provided any information or documents to us in respect of related party to us.

15.6 Statement dated 14.10.2020 of **Shri Ankur Shah**, Business Head, Authorized person & Son of Shri Alakh Shah, Director of **M/s Raj Borax Pvt. Ltd.** was recorded before the Superintendent of Customs, SIIB, Surat in question-answer form which is produced as under:

Question No.1 : Please explain in details of business activity of M/s Raj Borax Pvt. Ltd., C-1-2402/1, GIDC, Sarigam, Tal. Umbergaon, Valsad, Gujarat?

Answer: Sir, M/s Raj Borax Pvt. Ltd., C-1-2402/1, GIDC, Sarigam, Tal. Umbergaon, Valsad, Gujarat are engaged in manufacturing of Boron based chemicals, viz. Borax Decahydrate, Disodium, Octaborate, Tetrahydrate, Potassium Tetraborate etc. I also state that M/s Raj Borax Pvt. Ltd. is also engaged in trading activity of Ground Colemanite and Borax Penta hydrate and operating from same premises. We used to import goods declared as Ground Colemanite, in pack of 1200 kgs. of Eti-Maden, Turkey from M/s Asian Agro Chemicals Corporation 11F-09, Amenity Center Tower-2, Al-Jazzra Al-Hamra, RAS Al Khaimah, United Arab Emirates and Borax Penta Hydrate from Boro Chemie International PTE Ltd, Singapore. We sell the Ground Colemanite as such without any further processing and without change in packing. In some cases as per customer's requirement only we repack the same without any processing in pack of 25 kgs and 50 kgs in bag of M/s Raj Borax Pvt. Ltd. and cleared in name of Colemanite Powder to customers. I further state that Ground Colemanite has been imported only for trading purpose however Borax Penta Hydrate has been used in trading as well as also used as raw material for manufacturing having manufacturing facility at M/s Raj Borax Pvt. Ltd., C-1-2402/1, GIDC, Sarigam, Tal. Umbergaon, Valsad, Gujarat

Question No. 02 Please give the details Ground Colemanite imported since April, 2015 from Adani Port, ICD, Tumb and ICD, Ankleshwar.

Answer:- I have regularly imported Ground Colemanite since 2015 from Adani Port, two/three consignment have been imported through ICD, Tumb and no consignment of Ground Colemanite has been imported through ICD, Ankleshwar. The details of such import are available in your EDI System. I further state that we imported Ground Colemanite (Calcium Borate) B_2O_3 40% of M/s Etimaden, Turkey by declaring it in export documents as "Ground Colemanite, B_2O_3 40%, Natural Boron Ore" from only supplier M/s Asian Agro Chemicals Corporations, U.A.E. under similar description since Apr 2015 and I further state that all the consignments of Ground Colemanite imported since 2015 are similar in all respect.

Question No. 03:- Please state applications and use of Ground Colemanite and also provide the name of your customers who used to purchase Ground Colemanite?

Answer:- Sir, major use of Ground Colemanite is in Ceramic Industry for manufacture of Ceramic Glaze Mixture commonly known as Frit and little quantity are used in agriculture as micro-nutrient for plant growth. In both cases Ground Colemanite are used as such without any processing. Our prime customers of Ground Colemanite are manufacturer of 'Ceramic Glaze Mixture commonly known as Frit and manufacturer of fertilizers. M/s Sunshine Glass Company Pvt. Ltd, Anand, M/s Dakshinamurti Glass & Ceramics Pvt. Ltd, Kheda, M/s SVM CERA Pvt. Ltd, Ankleshwar, M/s Dayal Fertilizers Pvt. Ltd, Meerut and M/s Oswal Agrochemicals & Fertilizers Pvt. Ltd., Pune are our main customers.

Question No.04: Please give under which CTH you are declaring under Customs for payment of Customs duty.

Answer : We are declaring Ground Colemanite, B_2O_3 40%, Natural Boron Ore under 25280090 and are availing exemption from payment of Basic Customs duty as Sr. 130 of Customs Notification No. 50/2017 dated 30.06.2017 by considering Ground Colemanite, B_2O_3 40% as Boron Ore and before this we were availing exemption from payment of Basic Customs duty as 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

Question No. 05: Please go through CTH 25280090 of Customs Tariff Act which 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_3BO_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_3BO_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_3BO_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%

As stated above that you have declared Ground Colemanite under CTH 25280090. As the Ground Colemanite imported by you is a form of Calcium Borate, it is correctly classifiable under CTH 25280030 instead of 25280090. Please offer your comments.

Answer:- Sir, I have gone through the CTH 2528 of Customs Tariff Act, reproduced as above. I do not agree with the fact that the goods, i.e. Ground Colemanite (Natural Boron Ore) imported by us falls under "Natural Calcium Borate and concentrates thereof" and therefore correct classifiable under CTH 25280090.

Question No.06:- Please state what is definition of 'Ore'. Whether Ore can be used directly without any processing on it.

Answer:- Since I am not a technical person, I cannot comment.

Question No.07:- Please go through your answer to Question No. 02 of this statement wherein you have stated that supplier of imported Ground Colemanite [Ground Colemanite (B_2O_3 40%) Natural Boron Ore] is M/s Asian Agro Chemicals Corporation and producer is 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. 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"

Please offer your comments.

Answer:- Sir, We understand from our supplier M/s Asian Agro Chemical Corporation that M/s Etimaden has many mining sites all over Turkey, different grades and types of Boron Minerals with varying percentages of B_2O_3 content are mined. Ground Colemanite (Natural Boron Ore) having 40% B_2O_3 content is imported by us. We are not aware about the process followed by M/s Etimaden mentioned on their website.

Question 08: Whether there is any difference between Colemanite and Ground Colemanite?

Answer:- Ground Colemanite is a natural Boron Ore obtained after carrying out some physical process like crushing and grinding. We have no idea about washing done on it.

Question 09:- Is there any relation between M/s Asian Agro Chemical Corporation and M/s Raj Borax Pvt. Ltd.

Answer:- Yes, there are 04 common directors namely Shri Alakh Natwarlal Shah, Shri Girish D Mehta, Shri Ahmet Korkut Yakal and Shri Ismail Enes Algan in M/s Asian Agro Chemical Corporation and M/s Raj Borax Pvt. Ltd.

Question No. 10:- Please go through the statement of Shri Dipankar Mahto, G card Holder bearing No. G/138/2018 of CHA M/s Stead Fast Impexp, recorded on 11.01.2020, dated 13.03.2020, statement of Shri Prashantha S Hegde, Proprietor and F card Holder bearing No. F/09/2016 of CHA M/s Stead Fast Impexp, recorded on 16.03.2020 before the Superintendent, SIIB, Surat under Section 108 of Customs Act, 1962. Please also go through the definition of "related" as per Rule 2(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, reproduced as under and offer your comments:-

Persons shall be deemed to be "related" under Rule 2(2), if -

- i) They are officers or directors of one another's businesses;
- ii) They are legally recognized partners in business;
- iii) They are employer and employee;
- iv) Any person directly or indirectly owns, controls or holds 5% or more of the

outstanding

voting stock or shares of both of them;

v) One of them directly or indirectly controls the other;

vi) Both of them are directly or indirectly controlled by a third person;

vii) Together they directly or indirectly control a third person;

viii) They are members of the same family.

Answer:- Sir, I have gone through the statement of Shri Dipankar Mahto, G card Holder bearing No. G/138/2018 of CHA M/s Stead Fast Impexp, recorded on 11.01.2020, dated 13.03.2020, statement of Shri Prashantha S Hegde, Proprietor and F card Holder bearing No. F/09/2016 of CHA M/s Stead Fast Impexp, recorded on 16.03.2020 before the Superintendent, SIIB, Surat under Section 108 of Customs Act, 1962 and I agree with the facts recorded in the said statements and in token I put my dated signature on these. I have also gone through definition of "related" as per Rule 2(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, reproduced as

above. I accept that as per **Rule 2(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007**, that M/s Asian Agro Chemical Corporation are related business entity to importer M/s Raj Borax Pvt. Ltd. I again accept that we have wrongly mentioned/declared the said facts during filing of Bills of Entry in respect of import of goods by M/s Raj Borax Pvt. Ltd. from supplier M/s Asian Agro Chemical Corporation during the period from 2015 to Apr-2020.

Question 11: Please go through the description of goods under CTH 25280030 of Custom tariff under CTH 25280030, 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		
25280030	Natural calcium borates and concentrates thereof (whether or not calcined)	KG	10%

Please also go through the Sr. No. 130 of Customs Notification No. 50/2017 dated 30.06.2017, wherein benefit of Customs Notification No. 050/2017 dated 30.06.2017, which provides for NIL Basic Customs Duty is available only for the import of Natural Borates (Boron Ore) and not available for its concentrates falling under heading 2528 of Customs Tariff and offer your comments.

Answer:- I have also gone through the description of goods under CTH 25280030 of Custom tariff under CTH 25280030, reproduced as above. I also gone through the Sr. No. 130 of Customs Notification No. 50/2017 dated 30.06.2017, wherein benefit of Customs Notification No. 050/2017 dated 30.06.2017.

We understand that the goods imported by us is "Ground Colemanite (B₂O₃ 40%) Natural Boron Ore" is not a concentrate and falls under Natural Borates (Boron Ore) classifiable under 25280090. Hence, the benefit of Customs Notification No. 050/2017 dated 30.06.2017, which provides for NIL Basic Customs Duty is available

Question 12: Whether the goods imported by you i.e. Ground Colemanite (B₂O₃ 40%) Natural Boron Ore is Calcium Borate or Not?

Answer:- I am not aware that goods imported by us i.e. Ground Colemanite (B₂O₃ 40%) Natural Boron Ore is Calcium Borate or Not.

15.7 Inquiry was extended to the manufacturer of Ceramic Glaze Mixture (frit) and statement of **Shri Gopal Krishna Triphati**, Head R&D, **M/s Nahar Colour and Coating Pvt. Ltd.** was recorded on 25.08.2020 wherein he *inter-alia* stated that they directly used Calcium Borate (Colemanite) having 40% to 44% B₂O₃ as melting agent without any processing for production of Ceramic Glaze Mixture. He further stated that they required only examining the percentage of oxides present in Colemanite (Calcium Borate) and according to variation in oxides present they used the Colemanite. It means if it contains higher percentage of oxides they used less quantity of Colemanite and if it contains less percentage of oxides they used more quantity of Colemanite.

15.8 During investigation in 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 same trader **M/s Asian Agro Chemicals Corporation**, UAE, it has been 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 as per Testing report of **M/s ETiMADEN (RUD -18)** (RUD-7 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"

The Show Cause Notice issued by DRI also mentions 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'. **(RUD-19)** (RUD- 6 of the Show Cause Notice No. DRI/AZU/SRU-06/2020/Indo-Borax dated 16/12/2020)

It is pertinent to mention that as per the literature available on the website of **M/s ETiMADEN**, ULEXITE Granular is a refined product having lesser concentration of B_2O_3 i.e., 30% in comparison to their product "Ground Colemanite" which is having minimum concentration of B_2O_3 at 40%. Hence, it is clear that "Ground Colemanite" is 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 B_2O_3 makes it more concentrated. However, no such test report of the producer **M/s ETiMADEN** has been disclosed by the Noticee in the present case through e-sanchit portal/customs department.

16. OUTCOME OF INVESTIGATION:

16.1. In view of the discussions in the aforesaid paras, it appeared that the Noticee were engaged in import and trading of Ground Colemanite, B_2O_3 40% produced by **M/s ETiMADEN**, Turkey. The said product was imported from United Arab Emirates, supplied by **M/s Asian Agro Chemical Corporation**. The Noticee classified Ground Colemanite, B_2O_3 40% under CTH 25280090 of Customs Tariff Act, 1975 and availed exemption by declaring as Natural Boron Ore from payment of Basic Customs duty under Sr. 130 of Notification No. 50/2017-Cus dated 30.06.2017 and Sr. 113 of Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 for period from 30.06.2017 to 15.10.2020 and 01.04.2015 to 30.06.2017 respectively.

16.2 It further appeared that the Noticee imported Ground Colemanite B_2O_3 40% for trading purpose and generally the same has been sold as such without any further processing and without change in packing. In some cases, as per customer's requirement, they have only repacked without any processing in pack of 25 kgs and 50 kgs in bag and sold in name of Colemanite Powder to customers. Ground Colemanite is mainly used as such without further process in Ceramic Industry for manufacture of Ceramic Glaze Mixture commonly known as Frit and some quantity are used in agriculture as micro-nutrient for plant growth. The inquiry made from manufacturer of Ceramic Glaze mixture also

shows that Ground colemanite having B_2O_3 40% are utilized directly without further process in manufacture of Ceramic Glaze Mixture (frit).

16.3 It further appears that the term "Ore" is a naturally occurring raw and native mineral which are produced by mines and contain various foreign material and impurities. Ore is 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 is extracted from the mines though might have predominance of a particular minerals but do not consist of any particular mineral alone. It is a naturally occurring raw and native mineral which are produced by mines and contain various foreign material, impurities and other substances and as such not suitable for further operations. Ore is extracted from the earth through mining and treated or refined to extract the valuable metals or minerals to make it usable. The "Concentrate" is 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 appears from the above that Natural Ore consist 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.

16.4 In view of the foregoing discussions and details available on website of **M/s ETiMADEN**, Turkey, it appears that Colemanite is one of most important Boron minerals in commercial terms which are found in Emet, Bigadiç and Kestelek deposits of Turkey and mined by **M/s ETiMADEN**. The B_2O_3 content of the Colemanite ore mined by **M/s ETiMADEN** from open quarry is between 27%-32%. Boron minerals i.e. Colemanite are made usable and valuable by **M/s ETiMADEN** by using various mining methods which are enriched by physical processes and converted into concentrated boron products. Mined Colemanite is subjected to the processes of enrichment grinding in hi-tech concentrator facilities available with **M/s ETiMADEN** and by this process concentrated Colemanite is obtained. Further, by this process the mined Colemanite ore having B_2O_3 ranging between 27%-32% has been enhanced to produce Colemanite Ore Concentrate which is sold as Ground Colemanite having B_2O_3 40%. The content of B_2O_3 has also been confirmed as 41.6% and 37.62% by CRCL, Vadodara and CRCL, New Delhi respectively. Thus, Ground Colemanite is a concentrated product of Colemanite produced by enrichment in concentrator plant and after passing through crushing and grinding processes packed in bag and sold in Powder form. The CRCL, Vadodara and CRCL, New Delhi also confirmed the form of sample grinded and crushed powder. Further, **M/s ETiMADEN** also categorized Ground Colemanite as refined product at their website. Thus, Ground Colemanite B_2O_3 40% produced by **M/s ETiMADEN** is Ore Concentrate.

16.5 It also appears from the above discussions at para 15.8 that if the producer's test report (for their product 'ULEXITE') described their product of lesser concentration as 'concentrated,' then the test reports which are being supplied by **M/s ETiMADEN** with all its consignments, have not been disclosed to this Customs department with intent to claim the consignment as 'Natural Boron Ore' for availing the exemption benefits under Sr. No. 113 of the Not. No. 12/2012-Cus dtd. 17.03.2012 (till 30.06.2017) and Sr. no. 130 of the Not. No. 50/2017-Cus dtd. 30.06.2017 (from 01.07.2017 onwards).

16.6 It appears that the Noticee classified Ground Colemanite (B_2O_3 40%) Natural Boron Ore as "**Others**" under CTH 25280090 of Customs Tariff Act,

1975. Further, it also appears that Ground Colemanite is Natural Calcium Borate and separate entry of item having description Natural Calcium Borates and concentrates thereof is available at CTH 25280030 of Customs Tariff Act, 1975. Hence, appropriate classification of Ground Colemanite is CTH 25280030 of Customs Tariff Act, 1975. Thus, the Noticee has wrongly classified Ground Colemanite (B_2O_3 40%) under CTH 25280090 of Customs Tariff Act, 1975 and the same is required to be re-classified under CTH 25280090 of Customs Tariff Act, 1975.

16.7 It also appears that as per Sr. No. 130 of Notification No. 50/2017-Cus dated 30.06.2017 and Sr. 113 of Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 the NIL rate of Basis Customs duty has been prescribed on the goods i.e. Boron Ore falling under chapter heading 2528 of Customs Tariff Act, 1975. From the Chapter Heading 2528 of Customs Tariff Act, 1975 it is noticed that Natural borates and concentrates thereof fall under the said chapter heading. Thus, conjoint reading of Sr. No. 130 of Notification No. 50/2017-Cus dated 30.06.2017 and Sr. 113 of Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and corresponding description of goods indicates that the exemption has been extended only to Boron Ore not to concentrate of Boron Ore.

16.8 It further appears that Ground Colemanite imported under Bill of Entry No. 6280505 dated 30.12.2019 totally weighing 192000.000 Kgs., valued at Rs. 64,19,232/- has been seized under Section 110(1) of Customs Act, 1962 being liable for confiscation under Section 111(m) of Customs Act, 1962 which was subsequently released provisionally by the competent authority on request of the Noticee under provisions of Section 110A of the Customs Act, 1962.

16.9 It also appears that the Noticee imported Ground Colemanite, B_2O_3 40% by declaring the same as Natural Boron Ore and cleared it through Adani Port Hazira and ICD, Tumb falling within the jurisdiction of the Commissioner of Customs, Ahmedabad from April, 2015. The Bills of Entry filed by the Noticee for the period from 01.04.2015 to 16.12.2019 have been assessed finally. After initiation of inquiry, the Bills of Entry filed by the Noticee from 01.04.2020 have been assessed provisionally and the Noticee paid Basic Customs duty @ 5% as per Sr. No 120 of Notification No. 50/2017-Cus dated 30.06.2017.

17. DEMAND OF DUTY: -

17.1 It appears that imported goods declared as "Ground Colemanite (B_2O_3 40%) Natural Boron Ore" by the Noticee are concentrate of Natural Calcium Borate, however, the Noticee had mis-declared the description as "Ground Colemanite (B_2O_3 40%) Natural Boron Ore" 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 intent to evade Customs duty from payment of Basic Customs duty under Sr. No. 130 of Notification No. 50/2017-Cus dated 30.06.2017 and Sr. No 113 of Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 for period from 01.04.2015 to 30.06.2017 and 01.07.2017 to 15.10.2020 respectively by wrongly declaring Ground Colemanite, B_2O_3 40% as Boron Ore with intention to evade Customs duty amounting to Rs. 2,57,73,384/- as detailed in **Annexures A-1, A-2, A-3, A-4, A-5 & A-6** to the Show Cause Notice for the period 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 [up to 15.10.2020] respectively. The fact that Ground Colemanite B_2O_3 40% imported by them are in fact concentrate of Natural Calcium Borate is clearly evident from the process and literature discussed by **M/s ETiMADEN** on their website in respect of Ground Colemanite

wherein they have clearly stated that after mining from open quarry, enrichment in concentrator plant has been done and enhanced content of B_2O_3 from 27%-32% to make it useable and after passing through crushing and grinding processes and packing sold in Powder form. Therefore, the Noticee, despite knowing that the goods declared as Boron Ore imported by them are in fact Ore Concentrate, wrongly claimed and availed the benefit of the above mentioned notification which is available only to Boron Ore. By the aforesaid acts of willful mis statement and suppression of facts, the Noticee had short-paid the applicable Customs Duty and other allied duties/taxes 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. Also, the subject imported goods appear to be classifiable under tariff item No. 25280030 whereas the Noticee appears to have willfully mis-classified the same under tariff item no. 25280090. It appears that it is not the case where the Noticee was not aware of the nature and appropriate classification of goods. However, the Noticee has willfully mis-declared the description to evade payment of Custom Duty and also mis-classified the goods to evade payment of Customs duty. The Noticee have willfully suppressed material facts and nowhere in the Customs document mentioned the fact that they are related business entity to the supplier of goods **M/s Asian Agro Chemical Corporation** as per Rule 2(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007. The Noticee has been regularly importing these goods and importing company and supplying company are also related business entity and thus, they are very well aware about the nature and condition of the said goods which 'Concentrates of Calcium Borate'. Therefore, the Noticee suppressed these vital facts from the department and cleared these goods by self-assessing the same under CTH 25280090 claiming the benefit of Notification No. 50/2017-Cus dated 30.06.2017 (Serial No. 130), paying NIL BCD, as the said goods appear to be 'Concentrates of Natural Borate' instead of 'Natural Boron Ore'. Hence, the provisions of Section 28(4) of Customs Act, 1962 for invoking extended period is clearly attracted in this case. The differential Duties on imports are liable to be demanded and recovered from them under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962.

18. It appears that the Noticee classified Ground Colemanite (B_2O_3 40%) as Natural Boron Ore under "**Others**" CTH 25280090 of Customs Tariff Act, 1975 whereas Ground Colemanite is Natural Calcium Borate. A separate entry of item having description of Natural Calcium Borates and concentrates thereof is available at CTH 25280030 of Customs Tariff Act, 1975. Hence, appropriate classification of Ground Colemanite is CTH 25280030 of Customs Tariff Act, 1975. Thus, the Noticee have wrongly classified Ground Colemanite (B_2O_3 40%) under CTH 25280090 of Customs Tariff Act, 1975, which is required to be rejected and appropriately to be classified under CTH 25280090 of Customs Tariff Act, 1975.

19. Section 114A of Customs Act, 1962 provides for penalty for short levy or non-levy of duty in certain cases. In the instant case, the mis-declaration of description and classification is intentionally made and the Noticee also appears liable to penalty under Section 114A of the Customs Act as short payment of duty is on account of /due to reason of willful mis-statement or suppression of facts on their part. The Noticee also appears liable for penalty under Section 114AA of the Customs Act, 1962 as they have intentionally suppressed material facts and nowhere in the customs document mentioned the fact that the importer are related business entity to the supplier of goods **M/s Asian Agro Chemical Corporation** as per Rule 2(2) of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007.

19.1 The Noticee have imported 13986 MTS of Boron Ore Concentrate, totally valued at Rs. 46,28,40,366/-, and wrongly claimed and availed the benefit of exemption from payment of Customs duty under Sr. No. 130 of Notification No. 50/2017-Cus dated 30.06.2017 and Sr. No 113 of Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 for period from 01.04.2015 to 30.06.2017 and 01.07.2017 to 15.10.2020 respectively by mis-declaring Ground Colemanite, B_2O_3 40% as Boron Ore. Out of said goods, goods totally weighing 192 Mts., totally valued at Rs. 64,19,232/-, imported under Bill of Entry No. 6280505 dated 30.12.2019, had been seized on the reasonable belief that the same were liable for confiscation under Section 111(m) of Customs Act, 1962 and the same were subsequently released provisionally by the competent authority. Further, balance goods weighing 13794 MTS, totally valued at Rs. 45,65,46,606/-, which are not available for seizure have 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 meaning the Section 2(39) of the Customs Act, 1962 and hence appear liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 in as much as wrongly claiming and availing the benefit of Sr. No. 130 of Notification No. 50/2017-Cus dated 30.06.2017 and Sr. No 113 of Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015. The Noticee have wrongly claimed the goods imported to be ores and the importer is liable for penalty under Section 112(a) & (b) of the said Act for such acts of contravention.

20. **Shri Girish Mehta**, Director of the Noticee 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 Sr. No. 130 of Notification No. 50/2017-Cus dated 30.06.2017 and Sr. No 113 of Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015. Thus, it appeared that **Shri Girish Mehta** had contravened the provisions of Customs Act and failed to comply with provision of Customs Act and thereby rendered himself liable for penalty under Section 112(a) & (b), Section 114AA & 117 of Customs Act, 1962.

21. It appears that the Customs House Agent **M/s. Steadfast Impexp** made wrong declaration at the time of filing the Bills of Entry on behalf of the Noticee and suppressed the correct description of the goods and the material fact that the overseas supplier i.e. **M/s. Asian Agro Chemical Corporation**, UAE and the importer i.e. **M/s. Raj Borax Private Limited** are related business entity. Therefore, **M/s Steadfast Impexp** have failed to fulfill their obligation prescribed under Customs Brokers Licensing Regulations, 2013 and Customs Brokers Licensing Regulations, 2018. Such acts of omission and commission on part of **M/s. Steadfast Impexp** have rendered them liable to penalty under Section 112(a) & (b) of the Customs Act, 1962.

22. In view of the above, Show Cause Notice No. VIII/10-07/Pr.Commr/O&A/2020-21 dated 28.12.2020 was issued wherein the Noticee were called upon to show cause as to why:

- (i) The classification of tariff item 25280090 declared as "Ground Colemanite (B_2O_3 40%) Natural Boron Ore" given in the Bills of Entry, as mentioned in Annexures A-1, A-2, A-3, A-4, A-5 & A-6 to this Show cause Notice should not be rejected and the goods be correctly classified under tariff item No. 25280030 as "Natural Calcium Borate and concentrates thereof";

- (ii) 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;
- (iii) Differential Customs duty amounting to **Rs. 2,57,73,384/- (Rupees Two Crore Fifty Seven Lakh Seventy Three Thousand Three Hundred Eighty Four Only)** as detailed in Annexure A-1, A-2, A-3, A-4, A-5, A-6 and consolidated in A-7 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;
- (iv) The goods having assessable value of **Rs. 46,28,40,366/-** imported by wrongly claiming the same as Boron Ore as detailed in Annexure A-1, A-2, A-3, A-4, A-5, A-6 and consolidated in A-7 to the Show Cause Notice should not be held as liable to confiscation under Section 111(m) of the Customs Act, 1962;
- (v) Interest should not be recovered from them on the differential Customs duty as at (ii) above, under Section 28AA of the Customs Act, 1952;
- (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. 26,48,444/-** paid under protest towards their differential duty liability should not be adjusted against their total differential duty liabilities.

23. Penalty in terms of the provisions of Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962 was proposed on **Shri Girish Mehta**, Director of **M/s Raj Borax Pvt. Ltd.** Penalty in terms of the provisions of Section 112(a) & (b) of the Customs Act, 1962 was proposed on **M/s. Steadfast Impexp.**

24. Defence submissions: The Advocate filed written submission of the Importer M/s. Raj Borax and its Director Shri Girish Mehta on 01.03.2024 wherein they interalia stated as under:

24.1 Imported goods are Boron ores and not concentrates:

24.1.1 That according to the *Hawley's Condensed Chemical Dictionary*, the term 'Colemanite' means 'the ore of calcium borate' which is mined in Turkey. Therefore, the term 'Colemanite' has a specific connotation; that the use of this

term by the Exporter in the invoices clearly signifies that the imported goods are ores and nothing else;

24.1.2 Budget changes issued for Customs vide Circular No. 334/5/2015-TRU dated 30.04.2015 clarified that the BCD on Colemanite and other Boron ores has been reduced from 2.5% to Nil and necessary amendment has been made in Notification No. 12/2012-Cus in this regard. This also shows that the Board itself treats Colemanite as a Boron Ore; that in view of the above, the imported goods are nothing but boron ores.

24.2 Process to which the imported goods are subjected show that they are ores:

24.2.1 That after extraction, the ores are physically separated from the unwanted stones, clay, etc; the ores are not subjected to chemical treatment, including calcination; thus, the ore as extracted, and the ore as imported are one and the same. Further, the increase in B₂O₃ content is not because of any process of concentration and it is only on account of the removal of unwanted stones, clay, etc.

24.2.2 That the processes of sizing, screening and pulverizing does not convert ore into a concentrate. This has been clarified vide Board Circular No. 332/1/2012-TRU dated 17.02.2012 . Reliance is also placed on Case laws ;

24.3 Test report of CRCL, New Delhi certifies that the imported goods are 'Ores'

24.3.1 That the CRCL, New Delhi vide Test Report dated 04.06.2020 certified that the imported goods are '*Mineral Colemanite- a Natural Calcium Borate (Commonly known as Boron Ore)*'. Vide subsequent clarifications dated 24.06.2020 and 08.07.2020, CRCL, New Delhi reiterated that the imported goods are boron ores; that the findings of the Test Reports remain unchallenged and thus, ought to be accepted;

24.4 Test Reports of identical imports conclude that the imported goods are 'Ores': That the Test Reports issued by the Assistant Commissioner of Customs, JNCH for import of identical goods from the very same Supplier during the subsequent period, conclude that the imported goods are Boron Ores;

24.5 Department has misconstrued the terms 'concentrate' and 'concentrator plant': That the Department has misconstrued the usage of the terms 'concentrate' and 'concentrator plant' used in the website / technical data sheet. In fact, even after considering the technical data sheet / website, the CRCL, New Delhi concluded that the imported goods are boron ores;

24.6 Certificate issued by the Supplier clarifies the process of 'concentration': That the Supplier, vide Certificate dated 15.02.2021, has clarified that the process of concentration is solely physical in nature and involves physical removal of stones/ impurities/ other substances. Supplier's certificate is the best evidence and puts the matter to rest. Thus, the imported goods are boron ores and not concentrates and thereby, eligible for the benefit of the Notification;

24.7 Without prejudice, exemption benefit is available to boron concentrates also: That the term 'ore' includes 'concentrate' as well. Ore is nothing but an enriched and prepared ore. Reliance is placed on Case laws;

that for this reason as well, the benefit of Notification No. 12/2012-Cus / Notification No. 50/2017-Cus will be available to the imported goods;

24.8 In the absence of challenge to finally assessed bills of entry, demand is invalid: That as held in *ITC Ltd. - 2019 (368) ELT 216 (SC)*, in the absence of any challenge to the finally assessed bills of entry, recourse to Section 28 for raising the demand is incorrect; that in the absence of finalisation of assessment, demand is invalid; that the assessments for the period from 1.4.2020 to 15.10.2020 are provisional. Thus, issuance of demand notice under Section 28 of the Act for duty demand of Rs. 26,48,444/- prior to finalization of assessment, is premature and incorrect;

24.9. Extended period is not invokable: That extended period of limitation cannot be invoked in the absence of suppression or mis-declaration; that the imported goods have been correctly declared in the Bills of Entry as "Ground Colemanite (B203 40%) Natural Boron Cre" and the same tallies with the description given in the invoices issued by the Exporter; that the imported goods were routinely examined by the customs officers and the same can be verified by the Department. The examination orders in the bills of entry clearly show that the imported goods were ordered for examination, to verify whether the imported goods are boron ores of Tariff Heading 2528 and eligible for the benefit of Notification; that for the said reasons, the imported goods cannot be held liable for confiscation under Section 111(m) and imposition of redemption fine is also not tenable and Penalties cannot be imposed on the Company as well as Mr. Girish Mehta. Interest is also not recoverable.

25. M/s. Steadfast Impexp vide their letter dated 01.03.2024 filed their written submission dated 01.03.2024 wherein they interalia stated as under:

25.1 That the re-test by CRCL, New Delhi is in favour of the importer and hence, the proceedings were liable to be dropped in view of the Board's Circular No. 30/2017-Customs dated 18.07.2017;

25.1 That the Bill of Entry was prepared on the basis of documents like invoice, bill of lading etc. placed in their hands by the importer and they did not have any prior knowledge that the importer and overseas supplier were related; that even otherwise, there was no bearing on the price which is evident from the fact that it is not proposed to be rejected the declared value; that there was mens rea on their part;

25.3 That acting as Customs Broker, there is no allegation and evidence that they have done or omitted to do any act or abetted the doing or omission of such an act, which rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962; that without alleging and holding that the appellant had a direct or indirect role in rendering the goods liable to confiscation under Section 111, provision of Section 112 cannot be invoked against them; that they relied on decision of Moriks Shipping and Trading Pvt. Ltd. 2008 (227) ELT577 (Tri. Chennai);

25.4 That SCN was issued by disagreeing with even CRCL, New Delhi and not on the basis of statement of Customs Broker, importer or anybody else to show that acting as Custom Broker, the appellant has any knowledge or information or connivance about superstitious import of goods bearing any other description than the description declared in the Bill of Entry;

25.5 That it is settled law that Custom Broker is not liable to penalty when he has prepared the document on the basis of documents like invoice received by him from the client; they place reliance on the following case laws:

- (a) S. Rajendra & Co, 2008 (227)ELT 224 (Tri. Mumbai);
- (b) Prime Forwarder, 2008 (222)ELT 137 (Tri. Ahmd);
- (c) Somaia Shipping Clearing Pvt. Ltd 2006 (197)ELT 552 (Tri. Mumbai) and
- (d) Kunal Travels, 2005 (183) ELT 299 (Tri. Del)

25.6 That Section 112 (a) (ii) and Section 112 (b) (ii) of the Customs Act, 1962 operate in an entirely different situation and is separated by "or" from sub-section (a), hence penalty proposed by making reference to sub-section (b) of Section 112 is not maintainable in the eyes of law.

26. Personal Hearing: Personal Hearing was fixed on 01.03.2024 for 'M/s. Raj Borax' Pvt. Ltd. its Director Shri Girish Mehta and Customs Broker M/s. Steadfast Impexp. Shri Manish Jain, Advocate, on behalf of the importer 'M/s. Raj Borax' Pvt. Ltd. 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 certain provisions and case laws. Further, Shri Milind Kedia, G Card Holder of Custom Broker attended Personal Hearing for M/s. Steadfast Impexp wherein he reiterated the submission as detailed in their written submission dated 01.03.2024.

27. Findings: I have carefully gone through the Show Cause Notice dated 28.12.2020, 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. Raj Borax Pvt. Ltd. and its Director Shri Girish Mehta and Custom Broker M/s. Steadfast Impexp and records of personal hearing held on 01.03.2024.

28. This denovo proceeding has been initiated consequent to the CESTAT's Final Order No A/10118-10134/2023 dated 25.01.2023 in respect of Appeal No. C/10123/2022, C/10124/2022 and 10162/2022 filed by M/s. Raj Borax Pvt. Ltd. and its Director Shri Girish Mehta and Customs Broker M/s. Steadfast Impexp, respectively. Relevant Para of CESTAT's Final Order No A/10118-10134/2023 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."

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

29.1 Whether the goods imported by M/s. Raj Borax Pvt. Ltd under their Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4, A-5, A-6 of the Show cause Notice, declared by them as "Ground Colemanite (B2O3 40%) Natural Boron Ore" classified under Customs Tariff Item No. 25280090 should be rejected and the goods be classified under tariff item No. 25280030 as "Natural Calcium Borate and concentrates thereof"?

29.2 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?

29.3 Whether the goods imported by M/s. Raj Borax Pvt. Ltd under their 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?

29.4 Whether M/s. Raj Borax 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 & A-6 of the Show Cause Notice under Section 28(4) of the Customs Act, 1962 and whether they are also liable to penalty under the provisions of Section 112(a)/112 (b), 114A, 114AA and Section 117 of the Customs Act, 1962?

29.5 Whether, Penalty under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962 should be imposed on Shri Girish Mehta, Director of M/s. Raj Borax Pvt. Ltd or otherwise?

29.6 Points at Sr. No. 29.2 to 29.5 supra, viz. Eligibility of Exemption Notification, Duty liability with interest and penal liabilities on importer as well as its Director would be relevant only if the main point stated at Sr. No. 29.1 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.Raj Borax Pvt. Ltd under Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4, A-5 & A-6 of the Show cause Notice, declared by them as "Ground Colemanite (B2O3 40%) Natural Boron Ore" classified under Customs Tariff Item No. 25280090 should be rejected and the goods be classified under tariff item No. 25280030 as 'Concentrate of Natural Calcium Borate' or 'Concentrate of Boron Ore'?

30.1.1 I find that Hon'ble Tribunal in their Order dated 25.01.2023 have interalia 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 on 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.6280505 dated 30.12.2019 by M/s. Raj Borax. The sample drawn was sent to CRCL, Vadodara vide Test Memo No. 03/2019-20 dated 16.01.2020 which reported Test Report dated 21.01.2020 received from CRCL, Vadodara as under :

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

B2O3 = 41.6% by wt.

Cao = 27.3 % by wt.

Loss on ignition at 900 degree C = 28.9% by wt.

Loss on drying at 105 degree C = 0.8% by wt."

30.1.3 M/s. Raj Borax 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. 12/2019-20 dated 02.03.2020 . The Joint Director, CRCL, New Delhi vide letter F.No.25-Cus/C-42/2019-20 dated 04.06.2020 submitted Re-Test report in respect of above mentioned Test Memo No. 12/2019-20 dated 02.03.2020 as under:

"The sample is in the **form of 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	=0.78
2. % Loss on ignition at (900 degree C) by TGA	= 28.9
3. % B₂O₃ (Dry Basis)	= 37.62
4. % Acid insoluble	= 6.13
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	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.

on earth		
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 B2O3 contents of the Colemanite Ore mined are 27% to 32% whereas the technical data sheet of Ground Colemanite shows the B2O3 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 B2O3 contents of the Colemanite Ore mined are 27% to 32% whereas the technical data sheet of Ground Colemanite shows the B2O3 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. Laboratory Cannot comment on the starting material and process undergone. It can give the final value of % B2O3.

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 37.62 %**. 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 40.5% by weight. CRCL, Delhi, also stated that sample was in powder form (crushed/grinded). Further sample of M/s. Raj Borax 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. Raj Borax 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 interalia 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 "The sample is in the form of greyish powder. It is mainly composed of oxides of Boron & Calcium alongwith siliceous matter B2O3 was 41.6% by weight. The CRCL, Delhi interalia stated that "sample is in form of white powder.(Crushed/Grinded) and B2O3 was 37.62 % dry basis. 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 Taghar Vasudeva Ambrish v. Appellate Authority for Advanced 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 11 to 11.6 of the SCN, I find that 'Boron Ore' and 'Concentrate' thereof are two different and distinct products. 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 or Ores from which part or all of the foreign matters have been removed and obtained by passing through the physical or physic-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 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 Ankur Shah, Business Head and Authorised Person of M/s. Raj Borax Pvt. Ltd in his statement dated 14.10.2020 has specifically stated that they imported good viz. 'Ground Colemanite' is used in manufacture of Ceramic Glaze Mixture commonly known as Frit as such without any processing. 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.

30.1.12 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'.

30.1.13 Further, I find that M/s. Raj Borax 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 crystalline 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.

30.1.14 Further, I find that M/s. Raj Borax 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 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.

30.1.15 Thus, from the above discussion mentioned in **Para 30.1.1 to 30.1.14**, 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, I find that product "Ground Colemanite B2O3 40% Natural Boron Ore" imported by M/s. Raj Borax is actually 'Concentrate of Natural Calcium Borate' or 'Concentrate of Boron Ore' and not 'Boron Ore' as contended by the Noticee.

30.2 Whether the goods "Ground Colemanite B2O3 40% Natural Boron Ore" imported by the Noticee merit classification under Customs Tariff Item No. 25280090 or Customs Tariff Item No. 25280030? Further 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) (til 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 30.1.14** hereinabove that product "Ground Colemanite B2O3 40% Natural Boron Ore" imported by M/s. Raj Borax 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 (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%

I find that there is specific mention of Natural Calcium Borates and concentrates thereof (whether or not calcined) at Tariff Item 25280030. M/s. Raj Borax 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. Raj Borax is 'Concentrates of Natural Calcium Borates' which falls under Tariff Item 25280030 of the Customs Tariff Act, 1975(51 of 1975).

30.2.2 I find that M/s. Raj Borax has declared their impugned goods under Customs Tariff Item No. 25280090. On perusal of the above Para 30.2.1 it is clear that Customs Tariff Item No. 25280090 is for 'others' and importer is declaring their import goods as "Ground Colemanite B₂O₃ 40% Natural Boron Ore". I find that there is specific entry for 'Natural Borates and Concentrate'. If the imported goods is 'Natural sodium borates and concentrates thereof (whether or not calcined)' it merits classification under Tariff Item 25280010 and if the imported goods is 'Natural calcium borates and concentrates thereof (whether or not calcined)' it merits classification under Tariff Item 25280030. Whereas, M/s. Raj Borax has classified under Customs Tariff Item No. 25280090. I find that all the Test Reports as mentioned above state that 'it is oxides of Boron & Calcium'. Thus, its merit classification would be '25280030' whereas M/s. Raj Borax has mis classified under Customs Tariff Item No. 25280090.

30.2.3 I find that it is well established that when a general entry and a special entry dealing with same aspect are in question, the rule adopted and applied is one of harmonious construction, whereby the general entry to the extent dealt with by the special entry, would yield to the Special Entry. In this regard, I would like to rely on the ratio of the decision of Hon'ble Supreme Court rendered in the case of *Moorco (India) Ltd. v. Collector of Customs*, 1994 Supp (3) SCC 562 reported in 1994 (74) E.L.T. 5 (S.C.) wherein the Hon'ble Supreme Court has interalia held as under:

" 4....The specific heading of classification has to be preferred over general heading. The clause contemplates goods which may be satisfying more than one description. Or it may be satisfying specific and general description. In either situation the classification which is the most specific has to be preferred over the one which is not specific or is general in nature. In other words, between the two competing entries the one most nearer to the description should be preferred. Where the class of goods manufactured by an assessee falls say in more than one heading one of which may be specific, other more specific, third most specific and fourth general. The rule requires the authorities to classify the goods in the heading which satisfies most specific description...."

Thus, in view of the aforesaid findings, I find that M/s. Raj Borax has mis classified their imported goods under Customs Tariff Item No. 25280090 which instead of merit classification under Custom Tariff Item No. 25280030.

30.2.4 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 SEPARATED FROM NATURAL BRINE; NATURAL BORIC ACID CONTAINING NOT MORE THAN 85% OF H_3BO_3 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), Nhava Sheva 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.

30.2.5 I find that had it been the intention of Statue 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. Naridi reported in (1979) 1 SCC 261, 368 has interalia 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"

30.2.6 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 M/s. Raj Borax 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 M/s. Raj Borax.

30.2.7 I find that M/s. Raj Borax 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. EtiMadenin 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. of duty	Name of Article	Nature of duty	Standard rate
(1)	(2)	(3)	(4)
MINERAL PRODUCTS			
25.	Metallic ores 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 'Metallic 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.

30.2.8 I find that M/s. Raj Borax 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. "Ground Colemanite B2O3 40% Natural Boron Ore" classified under Customs Tariff Item No. 25280090. 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 be matched with the tariff item specified in Column (2) of the Notification.

30.2.9 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'.

30.2.10 M/s. Raj Borax has contended that that the expression "Boron Ore's" 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.

I find that definitions of 'Ore', 'Ore concentrate' and 'Concentration of Ore' as discussed in **Para 30.1.1 to 30.1.15**, 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 M/s. Raj Borax 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 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 Ankur Shah, Business Head and Authorised person of M/s .Raj Borax stating that the product which they imported was directly used in the ceramic industry without any further processing. 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 the Noticee are not applicable to the facts of the case on hand.

30.2.11 I find that M/s. Raj Borax has contended that in context of dutiability of iron ores/concentrate, the Board vide Circular No. 332/1/2012-TRU dated 17.02.2012 clarified that the process of crushing and screening without any special treatment is not sufficient to convert an ore into a concentrate and the imported goods have only been subjected to the physical process of removal of stones, clay and other impurities and have not been subjected to any chemical treatment and thus remain ores and cannot be called as concentrate.

I find that said plea of M/s. Raj Borax is not tenable as the said clarification is with regard to 'Iron ore/concentrate' falling under Customs Tariff Chapter No. 26 whereas in the present case, the imported goods declared as 'Boron Ore' is falling under Customs Tariff Chapter No. 25. In Chapter, 26, the 'Ore' is defined and there is separate entry for 'Iron Ore Concentrate' as Customs Tariff Item No. 26011150 exist, whereas in Chapter,25 no such definition exist and further, no separate entry for concentrate is available. Further, I find 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.* Thus, I find that the goods imported by M/s. Raj Borax is 'Concentrate of Boron Ore'.

30.2.12 Further, I find that M/s. Raj Borax have contended that Budgetary changes issued for Customs vide Circular No. 334/5/2015-TRU dated 30.04.2015 clarified that the BCD on Colemanite and other Boron ores has been reduced from 2.5% to Nil and necessary amendment has been made in Notification No. 12/2012-Cus in this regard. This also shows that the Board itself treats 'Colemanite as a Boron Ore' and therefore the imported goods are nothing but boron ores.

I find that the said plea is not acceptable as the Circular No. 334/5/2015-TRU dated 30.04.2015 clarified reduction of BCD on Colemanite and other **Boron ores**. Even the Department is in confirmation with the said Circular as Sr. No. 113 of Notification No. 12/2012- Cus dated 17.03.2012 extends exemption of BCD only to 'Boron Ore' and 'Comenanite is also known as 'Boron Ore'. In the present case, the supplier has supplied the 'concentrate of Boron Ore' in guise of 'Ground Colemanite 40 % B₂O₃' as it is proved from the website, and Technical Data Sheet of impugned goods as discussed hereinabove. I find that M/s. Raj Borax have not adduced any evidence to consider that the goods viz. "Ground Colemanite B₂O₃ 40% Natural Boron Ore" imported by them were Boron Ore and not 'Concentrate of Boron Ore'. Therefore, I am of the view that M/s. Raj Borax 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.

30.2.13 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 exemption notification."

I find that M/s. Raj Borax have not adduced any evidence to consider that the goods viz. "Ground Colemanite B₂O₃ 40% Natural Boron Ore" imported by them were Boron Ore and not 'Concentrate of Boron Ore'. Therefore, I am of the view that Importer 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. Raj Borax Pvt. Ltd are liable to pay the differential amount of Customs Duty of Rs. 2,57,73,384/- (Rupees Two Crore, Fifty Seven lakh, Seventy Three Thousand, Three Hundred and Eighty Four Only), as detailed in Annexure A-1, A-2, A-3, A-4, A-5 & 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 "Ground Colemanite (B2O3 40%) Natural Boron Ore" by the Noticee is a 'concentrate of Natural Calcium Borate. However M/s. Raj Borax had mis-declared the description as "Ground Colemanite (B2O3 40%) Natural Boron Ore" 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 25.11.2020 respectively by declaring Ground Colemanite, B2O3 40% as Boron Ore as the exemption was available only to 'Boron Ore' and thereby evaded Customs Duty amounting to **2,57,73,384/-** for the period 2015-16 to 2020-21 [up to 15.10.2020] respectively. The fact that 'Ground Colemanite B2O3 40%' imported by them were actually 'concentrate of Natural Calcium Borate' was clearly evident from the discussion held hereinabove. Therefore, M/s. Raj Borax, despite knowing that the goods declared as 'Boron Ore' imported by them were actually 'Concentrate of Boron Ore', by the aforesaid acts of willful mis statement and suppression of facts, M/s. Raj Borax 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. Also, the subject imported goods is classifiable under Tariff item No. 25280030 whereas the importer have willfully mis-classified the same under Tariff item no. 25280090. I find that it was not the case where M/s. Raj Borax was not aware of the nature and appropriate classification of goods. However, the importer had willfully mis-declared the description to evade payment of Custom Duty and also mis-classified the goods to evade payment of Customs Duty by self-assessing the same under CTH 25280090 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.2,57,73,384/- are required to be demanded and recovered from M/s. Raj Borax 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 M/s. Raj Borax has paid/deposited Rs.26,48,444/- under protest. Since I have found that the Importer is required to pay differential duty alongwith interest, the protest lodged by M/s. Raj Borax Pvt. Ltd., need to be vacated and Customs Duty of Rs.26,48,444/- paid under protest towards their differential Duty liability is required to be appropriated and adjusted against the above confirmed Duty liabilities of Rs.2,57,73,384/-.

30.3.2 I find that the M/s. Raj Borax 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 the 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 the Raj Borax's contention. The case was booked, based on an intelligence received by the officers of SIIB, Surat and it was only then that this irregularity came to light. I also find that the Importer 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. Raj Borax 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. Raj Borax Pvt. Ltd. in present case through e-sanchit portal/Customs Department.

30.4 Whether the goods having assessable value of Rs.46,28,40,366/- imported by wrongly claiming as "Boron Ore" as detailed in Annexure A-1, A-2, A-3, A-4, A-5 & A-6 and consolidated in Annexure-A7 of the 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. Raj Borax had imported total 13986 Mts totally valued at **Rs. 46,28,40,366/-** 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 2015-16 to 2020-21 (Upto 15.10.2020) 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 192 Mts totally valued at Rs. 6419232/-/- [Assessable Value] imported under Bills of Entry Nos. 6280505 dated 30.12.2019 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 13794 MTS totally valued at Rs. 45,64,28,134/- 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. Raj Borax 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. Raj Borax 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 192 Mts of goods viz. Boron Ore (Colemanite-44%) imported vide Bill of Entry No. 6280505 dated 30.12.2019 valued at **Rs. 64,19,232/- (Rupees Sixty Four Lakh, Nineteen Thousand, Two Hundred and Thirty Two only)** 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:

"....

....

....

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 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).

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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. Raj Borax 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 Importer that in absence of availability of goods, cannot be confiscated is not tenable.

In view of the above, I find that 13794 MTs of goods viz. 'Boron Ore (Colemanite-44%)' appearing in Annexure A-1 to A-6 (except goods imported vide Bill of Entry No. 6280505 dated 30.12.2019) totally valued at **Rs. 45,64,21,134/- (Rupees Forty Five Crore, Sixty Four Lakh, Twenty One Thousand, One Hundred and Thirty Four 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 13986 Mts totally valued at **Rs. 46,28,40,366/-** as detailed in Annexure A-1 to A-6 of the Show cause Notice.

30.5 Whether M/s. Raj Borax 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.2,57,73,384/- 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 M/s. Raj Borax 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. Raj Borax Pvt. Ltd are liable for penalty under the provisions of Section 114AA of the Customs Act, 1962?

30.6.1 I also find that the Show Cause Notice proposes to impose penalty on the Importer M/s. Raj Borax 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."

30.6.2 I find that M/s. Raj Borax was well aware that goods viz. "Ground Colemanite, B2O3 40%" imported were actually 'concentrate of Boron Ore', however, they falsely mis classified under Customs Tariff Item No. 25280090 instead of merit classification 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 M/s. Raj Borax has knowingly and intentionally mis declared the false/incorrect description of goods and its Tariff Item No. and Notification No. in respect of imported goods. Hence, for the said act of contravention on their part, M/s. Raj Borax is liable for penalty under Section 114AA of the Customs Act, 1962.

30.6.3 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*".

30.7 Whether M/s. Raj Borax Pvt. Ltd are liable for penalty under the provisions of Section 112(a)/112 (b), of the Customs Act, 1962?

30.7.1 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 M/s. Raj Borax under Section 112 of the Customs Act, 1962 as penalty has been imposed on them under Section 114A of the Customs Act, 1962.

30.8 Whether M/s. Raj Borax 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. I find that M/s. Raj Borax have contended that in the absence of finalisation of assessment, demand is invalid and the assessments for the period from 1.4.2020 to 15.10.2020 are provisional and therefore, issuance of demand notice under Section 28 of the Act for duty demand prior to finalization of assessment, is premature and incorrect;

I find that in the present case, it is not in dispute that Bills of Entry for the period from 1.4.2020 to 15.10.2020 are provisional. But after the finalisation of the investigations, it has been found that the M/s. Raj Borax has mis classified the imported goods and they are not eligible for the exemption

under Notn. No. 50/2017-Cus. The present Show Cause Notice seeks to put M/s. Raj Borax to Notice as to why classification of tariff item 25280090 declared as "Ground Colemanite (B2O3 40%) Natural Boron Ore" imported be correctly classified under Customs Tariff Item No. 25280030 and why the exemption under Notn. No. 50/2017-Cus should not be denied. This action is in the line of finalisation of the assessment and the action that follows such finalisation is demand and recovery of Customs Duty, if any, arising out of finalisation of assessment. Thus, the present Show Cause Notice proposes both the actions viz. finalisation of assessment as well as demand of Customs Duty and the demand is legally valid under the law. Thus, I find that the contention of the Notice fails the test of merit.

31.1 To sustain my above view, I rely on the ratio of decision of Hon'ble Gujarat High Court rendered in case of Gujarat Narmada Valley Fertilizers & Chem Ltd. Vs. Commr. of Customs reported in 2014 (305) ELT 72(Guj) wherein interalia it has been held as under:

"7. In the present case, facts are substantially different. The notice as reproduced hereinabove, first and foremost proposes to adopt certain classification which, in the opinion of the department, would be correct for the imported goods rejecting the classification canvassed by the petitioner. It is in this context that in para 24(1) of the notice calls upon the petitioner show cause why the classification of the imported goods under Heading 2701 19 20 should not be rejected and why the same should not be re-classified under the Heading 2701 12 00 of the First Schedule to the Customs Tariff Act, 1975. Further proposals are only consequential in nature and includes proposal for adopting correct classification and quantifying the differential customs duty on 37,000 MT of coal imported by the petitioner. Proposal is also for recovery of the differential customs duty with interest.

8. *In our opinion, this is not a case where recovery of duty under Section 28 of the Act is preceded the finalisation of the classification. As a matter of fact, the very notice issued is for finalization of the classification on the basis of the proposal and the *prima facie* opinion of the department rejecting the classification presented by the petitioner. We do not find that the same is without jurisdiction."*

32.2 Further, Hon'ble Bangalore Tribunal in the case of M/s. Alnco Kondapalli Power Ltd Vs CCe, ST & C, Visakhapatnam-II reported in 2015 (319) ELT 309 (Tri. Bang) wherein interalia it has been held as under:

"6(c)(3). Learned counsel has relied upon several decisions to support the submission that there cannot be any confiscation and penalty. The first submission was that without finalization of provisional assessment. Revenue could not have issued a show cause notice under Section 28 of the Customs Act, 1962. We have already discussed the relevant decisions cited by learned counsel and have come to the conclusion that in this case, the demand arises as a result of finalization of assessment. Therefore, finalization of provisional assessment under Section 18 of the Customs Act, 1962 and demand of differential duty under Section 28 of the Act, even though contained in the same order, are sustainable in view of the detailed examination of provisions of law as well as the decisions of the Tribunal in the cases of Dabhol Power Company and Mangalore Refinery & Petrochemicals Ltd. referred to supra."

Therefore, in view of the above, plea of the importer that in absence of final assessment of provisional Bills of Entry, demand raised under Section 28 (4) is premature and incorrect is not tenable.

32. Whether, Penalty under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962 should be imposed on Shri Girish Mehta, Director of M/s Raj Borax Private Limited or otherwise?

32.1 I find that Shri Girish Mehta , Director of M/s. Raj Borax Pvt. Ltd was responsible for import and involved in deciding the classification of the imported 'Ground Colemanite B2O3 40%'and also in approving misclassification of the same under Customs Tariff Item No.25280090 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' and its merit classification was 25280030. Thus his act and omission rendered the goods liable for confiscation under Section 111 (m) of the Customs Act. 1962 and thereby Shri Raj Borax Pvt. Ltd., Director rendered himself liable for penal action under Section 112 (a) (ii) of the Customs Act,1962.

32.2 I also find that the Show Cause Notice proposes to impose penalty on Shri Girish Mehta , Director of M/s. Raj Borax Pvt. Ltd. under Section 114AA of the Customs Act, 1962. I find that Shri Ankur Shah, Business Head and Authorised person of M/s. Raj Borax Pvt. Ltd. in his statement recorded on 14.10.2020 has specifically stated that 'Ground Colemanite' is used in manufacture of Ceramic Glaze Mixture commonly known as Frit as such without any processing . Further, he stated that they imported 'Ground Colemanite (Calcium Borate) B2O3 40%' of M/s Etimaden, Turkey by declaring it as "Ground Colemanite, B2O3 40%, Natural Boron Ore" as declared in all import documents of their supplier M/s Asian Agro Chemicals Corporations, U.A.E. since April 2015. Further, on being asked, he categorically stated that they classified under CTH 25280090 so because their supplier claimed as per all their documents that Ground Colemanite, B2O3 40%, Natural Boron Ore was to be classified under CTH 25280090 and they were simply classifying under the same heading since long and claiming the benefit of Notification. I find that from the Product Technical Data Sheet of "Ground Colemanite", no where it has been mentioned as 'Natural Boron Ore', however inspite of having the knowledge that impugned goods was actually 'Concentrate of Boron Ore' they have mentioned/declared the description of the imported goods as "Ground Colemanite, B2O3 40%, Natural Boron Ore" 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 Custom Act, 1962 by making false declarations in the Bill of Entry,. Hence, I find that the Shri Girish Mehta, Director of M/s. Raj Borax 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 Girish Mehta , Director of M/s. Raj Borax Pvt. Ltd. is liable for penalty under Section 114AA of the Customs Act, 1962.

32.3 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on Shri Girish Mehta , Director of M/s. Raj Borax Pvt. Ltd. From the findings as discussed in **Para 32.1 & 32.2** 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 Girish Mehta, Director of M/s. Raj Borax 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 (n); 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.

33. Whether, M/s Steadfast Impexp, Customs Broker is liable for penalty under Section 112(a) & (b) of the Customs Act, 1962 or otherwise?

I find that M/s. Steadfast Impexp has filed the Bills of entry with Customs Tariff Item No. 25280090 declaring description as "Ground Colemanite (B2O3 40%) Natural Boron Ore" on behalf of importer M/s. Raj Borax. M/s. Steadfast Impexp have contended that they had declared the description and classification of goods in Bill of Entry on the basis of the documents made available by the importer and the facts of the case did not reveal an element of *mens rea* on their part. I find that Custom Broker has made wrong declaration at the time of filing the Bills of Entry on behalf of M/s. Raj Borax and suppressed the correct description of the goods. Further, it is undisputed fact that overseas supplier i.e. M/s. Asian Agro Chemical Corporation, UAE and the importer i.e. M/s. Raj Borax Private Limited are related business entity. However, said Customs Broker failed to declare the transaction between related persons. Further, it is not in dispute that goods imported were 'concentrate of Calcium Borate' and there is specific Tariff Item No. 25280030 for "Calcium Borate and as well as for "Concentrate of Calcium Borate". However, M/s Steadfast Impexp, mis classified the goods under Customs Tariff Item No. 25280090. As per Regulation 10 (d), (e), (f) and (m) of CBLR,2018, it was the responsibility of the Custom Broker to advise their client to comply with the provisions of the Act, other allied Act and the rules and regulation thereof, and in case of non-compliance, bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be and exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage and also discharge his duties as Customs Broker with utmost speed and efficiency and without any delay. However, in the instant case, it is observed that the Custom Broker did not file the Bills of Entry correctly and abetted the importer in mis-classification of the goods and availing the lower rate of duty. Their such act and omission rendered the goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. Further, the Customs Broker did not fulfill the obligation laid down under Regulation 10 (d), (e), (f) and (m) of CBLR,2018 and by their act of omission and commission, the Customs Broker have rendered themselves liable for penal action under Section 112 (a)(ii) of the Customs Act, 1962.

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

::ORDER::

34.1 I reject the classification of tariff item 25280090 declared as "Ground Colemanite (B2O3 40%) Natural Boron Ore" imported by M/s. Raj Borax Pvt. Ltd., and given in the Bills of Entries, as mentioned in Annexures A-1, A-2, A-3, A-4, A-5 & A-6 of the Show Cause Notice and hold that the subject goods be correctly classified under Customs Tariff Item No. 25280030 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975) as "Concentrate of Calcium Borate".

34.2 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. Raj Borax Pvt. Ltd.

34.3 I confirm the demand of Differential Customs Duty amounting to **Rs.2,57,73,384/- (Rupees Two Crore, Fifty Seven Lakh, Seventy Three Thousand, Three Hundred and Eighty Four Only)** as detailed in Annexures A-1, A-2, A-3, A-4, A-5 & A-6 and consolidated in Annexure-A7 to the Show Cause Notice, leviable on Boron Ore Concentrate imported by M/s. Raj Borax Pvt. Ltd declaring as Natural Boron Ore 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.

34.4 Interest at the appropriate rate shall be charged and recovered from M/s. Raj Borax Pvt. Ltd., Bharuch, under Section 28AA of the Customs Act, 1962 on the duty confirmed hereinabove at Para 34.3 above.

34.5 I vacate the protest lodged by M/s. Raj Borax Pvt. Ltd and Customs Duty of **Rs.26,48,444/-** paid under protest towards their differential Duty liability stands appropriated and adjusted against the above confirmed Duty liabilities.

34.6 I hold the seized 192 Mts of 'Ground Colemanite' imported under the Bills of Entry bearing Nos. 6280505/30.12.2019 valued at **Rs. 64,19,232/- (Sixty Four Lakh, Nineteen Thousand, Two Hundred and Thirty Two only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Raj Borax Pvt. Ltd., the option to redeem the goods on payment of Fine of **Rs.3,20,000/- (Rupees Three Lakh and Twenty Thousand only)** under Section 125 of the Customs Act, 1962.

34.7 I hold the 13794 MTs of goods viz. "Ground Colemanite, B2O3 40%, Natural Boron Ore" appearing in Annexure A-1 to A-6 (except goods imported vide B/E. No.6280505/30.12.2019) totally valued at **Rs. 45,64,21,134/- (Rupees Forty Five Crore, Sixty Four Lakh, Twenty One Thousand, One Hundred and Thirty Four only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Raj Borax Pvt. Ltd., the option to redeem the goods on payment of Fine of **Rs. 2,25,00,000/- (Rupees Two Crore and Twenty Five Lakh only)** under Section 125 of the Customs Act, 1962.

34.8 I impose penalty of **Rs.2,57,73,384/- (Rupees Two Crore, Fifty Seven Lakh, Seventy Three Thousand, Three Hundred and Eighty Four 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. Raj Borax Pvt. Ltd. under Section 114A of the Customs Act, 1962 in respect of Bills of Entry detailed in Annexures A-1, A-2, A-3, A-4, A-5 & A-6 and consolidated in Annexure-A7 of the 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.

34.9 I refrain from imposing any penalty on M/s. Raj Borax Pvt. Ltd., under Section 112(a)& (b) of the Customs Act, 1962.

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

34.11 I refrain from imposing any penalty on M/s. Raj Borax Pvt. Ltd., under Section 117 of the Customs Act, 1962.

34.12 I impose a penalty of **Rs.3,00,000/- (Rupees Three Lakh only)** on Shri Girish Mehta, Director of M/s. Raj Borax Pvt. Ltd., under Section 112(a)(ii) of the Customs Act, 1962.

34.13 I impose a penalty of **Rs.2,00,000/- (Rupees Two Lakh only)** on Shri Girish Mehta, Director of M/s. Raj Borax Pvt. Ltd., under Section 114AA of the Customs Act, 1962.

34.14 I refrain from imposing any penalty on Shri Girish Mehta, Director of M/s. Raj Borax Pvt. Ltd., Bharuch under Section 117 of the Customs Act, 1962.

34.15 I impose a penalty of **Rs.1,00,000/- (Rupees One Lakh only)** on M/s. Steadfast Impexp, A/301-302, Sidharth Annex-3, Nr Plaza Hotel, NH 8, Vemali, Vadodara Customs Broker under Section 112 (a)(ii) of the Customs Act, 1962.

35. 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.

36. The Show Cause Notice No. VIII/10-07/Pr.Commr./O&A/2020-21 dated 28.12.2020 is disposed off in above terms.

OK *SL* *9.7.2024*

(Shiv Kumar Sharma)
Principal Commissioner

DIN:20240771MN0000717253

BY Speed Post / Email

F. No. VIII/10-07/Pr Commr/O&A/2020-21.

Date: 09.07.2024

To,

1. M/s Raj Borax Pvt Ltd,
C-1-2402/1, GIDC, Sarigam, Tal. Umbergaon,
Valsad, Gujarat.
2. Shri Girish Mehta, Director of M/s Raj Borax Pvt Ltd,
C-1-2402/1, GIDC, Sarigam, Tal. Umbergaon,
Valsad, Gujarat
3. M/s. Steadfast Impexp,
A/301-302, Sidharth Annex-3, Nr Plaza Hotel,
NH 8, Vemali, Vadodara

Copy to:-

1. The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad.
2. The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
3. The Deputy Commissioner of Customs, Customs House Hazira, Surat.
4. The Deputy Commissioner of Customs, SIIB, Surat.
5. The Superintendent, System, Customs, HQ (in PDF format) for uploading the order on the website of Ahmedabad Customs Commissionerate.
6. Guard File