

	<p>सीमा शुल्क के आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, <u>Email-adj-mundra@gov.in</u></p>	
A. File No.	:	GEN/ADJ/COMM/771/2023-Adjn-O/o Pr. Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-45-25-26
C. Passed by	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	19.12.2025 19.12.2025
E. SCN No. & Date	:	GEN/ADJ/COMM/771/2023-Adjn-O/o Pr. Commr-Cus-Mundra, dated 24.12.2024.
F. Noticee(s) / Party / Importer	:	M/s. Indian Farmers Fertiliser Cooperative Ltd.,
G. DIN	:	20251271MO000000DC16

- यहअपीलआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
- उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

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

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.

BRIEF FACTS OF THE CASE-

M/s. Indian Farmers Fertiliser Cooperative Ltd., SMO GUJ, NP Patel Bhawan, First Floor, Shivranjani Cross Road, Satellite, Ahmedabad – 380015 (IEC -0588034096) (hereinafter referred to as “the importer” for the sake of brevity) filed various Bills of Entry at Mundra Port for clearance of ‘Sulphur Bentonite (Granular) Fertilizer for Agriculture Use’, classifying the same under CTH No. 25030090 of the First Schedule of the Customs Tariff Act, 1975 availing benefit of concessional rate of BCD @2.5% under Notification NO. 050/2017-Customs dated 30.06.2017.

2.1. Whereas, an analysis of data in respect of Import of goods for the period 01.12.2020 to 10.11.2022, with regard to the payment of Basic Custom Duty on the Import of Sulphur Bentonite falling under Heading No. 2503 on payment of BCD @ 2.5% Adv by claiming Sr. No. 121 of Notification -50/2017 dated 30.06.2017 vis-à-vis on payment of BCD @, 5 % Adv by claiming Sr. No.120 of Notification -50/2017 dated 30.06.2017, was carried out by the Data Analytics Cell of Chief Commissioner of Customs, Ahmedabad in light divergent practice being followed at Mundra port.

2.2. The Customs Notification 50/2017 dated 30.06.2017 exempts the goods of the description specified in column (3) of the Table below, as the case may be, and falling within the sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table;

Column-1	Column 2	Column 3	Column 4
Sr. No.	Ch. Heading	Description of Goods	Standard rate of BCD
120	25 (except 2515, 2516, 2523, 2524)	All Goods	5%
121	2503 00	Crude or Unrefined Sulphur	2.5%

The Heading 2503 of Customs Tariff Act, 1975 is reproduced below.

Prior to 01.05.2022:

2503 SULPHUR OF ALL KIND OTHER THAN SUBLIMED SULPHUR, PRECIPITATED SULPHUR AND COLLODIAL SULPHUR

2503 00 – Sulphur of all kinds, other than sublimed Sulphur, precipitated Sulphur and colloidal sulphur:

2503 00 10 ---Sulphur recovered as by-product in refining of crude oil	Kg.	10%
2503 00 90 ---Other	Kg	10%

After 01.05.2022:

2503 SULPHUR OF ALL KIND OTHER THAN SUBLIMED SULPHUR, PRECIPITATED SULPHUR AND COLLODIAL SULPHUR

2503 00 – Sulphur of all kinds, other than sublimed Sulphur, precipitated Sulphur and colloidal sulphur:

2503 00 10 ---Sulphur recovered as by-product in refining of crude oil	Kg.	2.5%
2503 00 90 ---Other	Kg	5%

2.3. It can be seen from the above table that rate of BCD is reduced from 10% Adv to 2.5% Adv in respect of CTH 25030010 and from 10% Adv to 5% Adv in respect of CTH 25030090. Whereas, prior to 01.05.2022, Sulphur recovered as by-product in refining of crude oil classified under CTH 2503 00 10 attracted Basic Customs duty @ 10 % Adv and with effect from 01.05.2022 (as per Finance Act, 2022), it attracts Basic Customs duty @ 2.5 % Adv.

2.4. It is pertinent to mention here that the Importer Indian Farmers Fertilizer Cooperative Ltd (IFFCO) used to classify their imported product “**SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY**” under **CTH 25030090** i.e. "other" till 01.05.2022. After 01.05.2022, they have suddenly changed the classification from CTH 25030090 to CTH 25030010 for the very same imported product.

2.5. Whereas, the subject goods i.e. Sulphur Bentonite is a mixture of pure Sulphur and Bentonite clay. Its Chemical Composition is Sulphur 90% Minimum(WT) (CAS: 7704-34-9), Bentonite 10% Maximum(WI)(CAS: 1302-78-9), Moisture 0.5% Maximum(WT). It is prepared by adding dry clay dust to molten Sulphur at an elevated temperature to provide a molten Sulphur-clay mixture which leads to forming of droplets of the mixture. Then the droplets of mixtures so formed are passed through liquid fertilizer coolant for a time sufficient to anneal the droplets into pellets. The pellets so obtained after separating from the Coolant are called pellets of Sulphur Bentonite. The subject goods merit classification under CTH 25030090 which was correctly

adopted by M/s. IFFCO till 01.05.2022.

2.6. In the imports till 01.05.2022, they have adopted dual stand and claimed the benefit of Notification CUS-50/2017 dated 30.06.2017 at S. No. 120 as well as S.No. 121. At S. No. 120 of notification, the rate of duty for goods of heading 2503 is 5% Adv and at S. No. 121 of notification, the rate of duty for goods "Crude and Unrefined Sulphur" of heading 2503 is 2.5 % Adv. In some instances, the duty paid on import of Sodium Bentonite is 5% Adv availing s. no. 120 of Notification and in other instances on exactly same product the rate of duty paid on import is 2.5% Adv by claiming S. No.121 of Notification. The details of B/E are as below:

Table-1(BE @ 5 % BCD)

Imports upto 01.05.2022

BE No.	Description of Goods	Sum of Assessable Value
3578626	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (OMASULF-90) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (OMASULF-90)	18277975
3659407	- do--	18633905
3663240	SULPHUR BENTONITE (OMASULF-90)	18770975
3868504	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (NCSP 600 SB90) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (OMASULF-90)	9657819
3963846	-do --	8779836
4148956	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (NCSP 600 SB90)	9138664
4428801	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (NCSP 600 SB90) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (NCSP 600 SB90)	8756344
9030483	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (OMASULF-900) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (OMASULF-90)	9983000

9193857	SULPHUR BENTONITE (OMASULF-90)	12741300
9283474	SULPHUR BENTONITE (OMASULF-90)	10617750
9347246	SULPHUR BENTONITE (OMASULF-90)	10617750
9465039	SULPHUR BENTONITE (OMASULF-90)	8494200
Grand Total		144469519

Table-2(BE @ 2.5 % BCD)
Imports upto 01.05.2022

BE No.	Description of Goods	Sum of Assessable Value
2863742	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR)	7531807
2882112	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR)	7531807
3050984	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	7664265
3138660	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR)	7664265
3138763	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR)	7664265
3149570	SULPHUR BENTONITE FERTILIZER FOR AGRICULTURE USE	4598559
3266812	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	9050400
6313314	SULPHUR BENTONITE (GRANULAR) FERTILIZER	22438350

	FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	
6389673	SULPHUR BENTONITE (FOR AGRICULTURE USE ONLY)	11152350
6502670	SULPHUR BENTONITE (FOR AGRICULTURAL USE ONLY) (GRANULES)	11152350
6502754	SULPHUR BENTONITE (FOR AGRICULTURAL USE ONLY) (GRANULES)	11152350
6938485	SULPHUR BENTONITE (GRANULAR FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	12671887
7212883	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	13554000
7214030	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	13554000
7376146	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	14316750
7588235	SULPHUR BENTONITE (GRANULAR FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	14373450
7764480	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	14486850
8749075	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	19416600
8817487	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	19807200

Grand Total	229781506
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2.7. The B/E covered in Table 1 are those BEs where BCD being paid on import is 5% Adv and BEs covered in Table 2 are the ones where duty being paid on imports is 2.5 % Adv, The goods being imported in all the B/E is Table 1 and Table 2 is "SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY « where "OMASULF” is one of the Brand Name of Sodium Bentonite. While comparing the description of goods in import documents available with BE each taken from Table -1 and Table -2 for comparison of Exporter, Description of Imported Item, HS Code on the basis of Country-of-Origin Certificate, Packing List and Certificate of Analysis, it is evident that both the products are one and same as per details below

Table 3

Item of Comparison	BE No. 6313314 dated 18.11.2021 for imported goods @2.5%	BE No. 3659407 dated 22.04.2021 for imported goods @5%
Manufacturer	Sohar Sulphur Fertilizers LLC	Sohar Sulphur Fertilizers LLC
Country of Origin of Goods	Sultanate of Oman	Sultanate of Oman
Description of goods (as per Certificate of Origin, Certificate of Analysis Packing List)	Sulphur Bentonite for Agriculture use only	Sulphur Bentonite for Agriculture use only
Chemical Analysis	Sulphur 90.50% (WT), Bentonite 9.50% (WT), Maximum (WT) Moisture 0.25% (WT)	Sulphur 90.50% (WT), Bentonite 9.50% (WT), Maximum (WT) Moisture 0.25% (WT)
Physical-Chemical Characteristics properties	Aspect: Pastille Granule, Color: Gray Green, Density: 76 lbs/ft3, Granular size: SGN260, Angle of Repose: 29 degree	Aspect: Pastille Granule, Color: Gray Green, Density: 76 lbs/ft3, Granular size: SGN260, Angle of Repose: 29 degree
Seller	Kisan International	Sohar Sulphur Fertilizers

	Trading FZE, Dubai	LLC
Rate per MT	297.00USD	244.70USD
HSN	2503 0090	25030090

2.8. From the above Table-3, it can be seen that the imported products through two different B/E "6313314" and 3659407" are exactly same "Sulphur Bentonite for Agriculture use (Granular)", however the rate of BCD being paid in two imports are different 2.5% Adv and 5% Adv, respectively. Whereas, the product "Sulphur Bentonite for Agriculture use" is altogether different from the product "crude or unrefined Sulphur". Sulphur Bentonite is a compound which is mixture of pure Sulphur and Bentonite clay. Its Chemical Composition is Sulphur 90% Minimum (WT) (CAS: 7704-34-9, Bentonite 10% Maximum (WT) (CAS: 1302-78-9), Moisture 0.5% Maximum (WT). Which is different from "Unrefined Sulphur or Crude Sulphur" mentioned at s. no. 121 of Notification 50/2017-dated 30.06.2017.

3.1 The Notification 50/2017-dated 30.06.2017 at Sr. No. 121 provide the concessional duty to the product "Unrefined Sulphur or Crude Sulphur" and Sulphur Bentonite for Agriculture use by no stretch of imagination can be termed as "Unrefined Sulphur or Crude Sulphur". Further, it is relevant to mention here that Larger Bench of Hon'ble Supreme Court of India in the case of Commissioner of Customs (Import), Mumbai versus Dilip Kumar & Company in order dated 30.07.2018 in the Civil Appeal No. 3327 of 2007 ruled as below:

- (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
- (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.
- (3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands over-ruled.

3.2. Therefore, it is very clear that if the import product is other than "Unrefined Sulphur or Crude Sulphur", the benefit of concessional BCD cannot be available. Therefore, the availment of benefit of S. No. 121 of Notification 50/2017-dated 30.06.2017 for payment of BCD @2.5 % Adv on imported item "Sulphur Bentonite for Agriculture use" vide B/Es mentioned in Table 2 appears incorrect and resulting in short payment of BCD duty as per Annexure

1 to this Note.

4. In view of above discussions, it can be inferred that The Importer Indian Farmers Fertiliser Cooperative Ltd have wrongly claimed the benefit of S. No. 121 of Notification 50/2017-dated 30.06.2017 attracting BCD @2.5 % instead of correct claim under of S. No. 120 of Notification 50/2017-dated 30.06.2017 attracting BCD @ 5 % in respect of imports of "Sulphur Bentonite for Agriculture use" till 01.05.2022 and wrongly classified their import product "Sulphur Bentonite for Agriculture use" under CTH 25030010 and paying BCD @ 2.5% Adv instead of correct classification under CTH 25030090 which attracts BCD @ 5% Adv in respect of imports took place after 01.05.2022. The importer by paying BCD@2.5% instead of BCD@5% as applicable, has short paid total duty amounting to **Rs. 82,01,264/- (Rupees Eighty Two lakhs One Thousand Two Hundred & Sixty Four only)** during the period upto 31.10.2023 by such mis-classification and wrong availment of duty rate benefits. Whereas, the details of the BE(s) and the duty short paid by the importer is attached as Annexure-A to this Show Cause Notice.

5. Therefore, it appears that duty amounting to **Rs. 82,01,264/- (Rupees Eighty Two lakhs One Thousand Two Hundred & Sixty Four only)** has been short paid by the importer in respect of the impugned goods against the said Bills of Entry, which appears to be recovered from the importer under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

6. Whereas, letter dated 28.12.2022 (DIN-20221271MO0000444D2] has been issued to the importer for payment of differential duty; however, the importer did not agreed to the departmental view and vide letter dated 09.01.2023 submitted that they have correctly availed the benefit of Sr. No. 121 of the Exemption Notification 50/2017-Cus dated 30.06.2017 stating that Sulphur Bentonite is nothing but crude or unrefined Sulphur. The importer has relied upon the judgment of Hon'ble Supreme Court in the case of M/s. Deepak Agro Solution Limited v. Commissioner of Customs [2008(5)TMI8] wherein, it is held that Brimstone 90 is Crude Sulphur and the product is classifiable under Heading 2503 as crude/ unrefined Sulphur. Whereas, the claim of the importer appears non relevant as they themselves were declaring their product i.e. Sulphur Bentonite under CTH 25030090 and thereafter suddenly change the CTH to 25030010 as discussed in the above paras.

7. In view of the discussions made in the foregoing paras, it appears that the said importer has wrongly paid BCD @ 2.5% and accordingly short paid SWS & IGST on the import of Sulphur Bentonite instead of applicable BCD@5% as applicable. Thus it appears that the Importer has contravened the

provisions of sub section (4) of Section 46 of the Customs Act, 1962, in as much as, they had mis-declared basic customs duty rate in the declaration in the form of Bill of Entry filed under the provisions of Section 46(4) of the Customs Act 1962 with an intention to evade IGST amount. Thus, the said importer also appears liable for penal action under the provisions of Section 114A of the Customs Act, 1962 for importing the impugned goods knowingly and intentionally based upon improper documents.

8. Further, it appeared that though the importer was aware that exemption of payment of BCD @2.5% on the imported goods i.e. 'Sulphur Bentonite' under Sr. No. Sr. 121 of Notification No. 50/2017-Cus 30.06.2017 is not correct and the exemption is available for crude sulphur only. However, the importer mis-declared the duty leviable on the goods and mis-stated the facts intentionally and willingly with intend to avoid applicable payment of import duties as applicable; thus made short Payment of customs duty amounting **Rs. 82,01,264/- (Rupees Eighty-Two Lakhs One Thousand Two Hundred & Sixty-Four only)**. From the advent of self-assessment, it is the responsibility of the importer while presenting the bills of entry under section 46 of the Customs Act, 1962, shall make and subscribe to a declaration as to the truth and correctness of the contents of the bills of entry and to classify the goods under appropriate tariff item & correct avilment of Notification. In the instant case, the importer had wilfully declared the wrong under Sr. No. 121 of Notification No. 50/2017-Cus 30.06.2017. Thereby, the importer has contravened the provisions of Section 17(1) of the Customs Act, 1962 and have rendered themselves liable to penalty under Section 117 of the Customs Act, 1962.

9. Now, therefore, **M/s. Indian Farmers Fertiliser Cooperative Ltd.**, SMO GUJ, NP Patel Bhawan, First Floor, Shivranjani Cross Road, Satellite, Ahmedabad – 380015 are hereby, called upon to show cause to **the Pr. Commissioner of Customs**, Custom House, Mundra having office at 5B, First Floor, PUB Building, Adani Port, Mundra, as to why:-

- (i) The Benefit availed by the importer on import of Sulphur Bentonite as per Sr. No. Sr. 121 of Notification No. 50/2017-Cus 30.06.2017 should not be rejected.
- (ii) The Bills of Entry as detailed in Annexure-A to the SCN for the import of goods i.e. 'Sulphur Bentonite' should not be re-called and re-assessed.
- (iii) The amount of IGST to the tune of Rs. 82,01,264/- (Rupees Eighty Two lakhs One Thousand Two Hundred & Sixty Four only) Short levy

on the said imported goods as detailed in Annexure-A to the SCN for the import of goods i.e. 'Sulphur Bentonite' should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with applicable interest at appropriate rate under Section 28 AA of the Customs Act, 1962.

- (iv) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.
- (v) Penalty should not be imposed on them under section 117 of the Customs Act, 1962.

PERSONAL HEARING-

10. Shri Kshirod Nayak, Finance Head, M/s. Indian Farmers Fertilisers Co-operative Ltd. and Shri Manoj Sharma, Manager, M/s. Indian Farmers Fertilisers Co-operative Ltd. appeared for personal hearing on 24.11.2025 on behalf of M/s. Indian Farmers Fertilisers Co-operative Ltd. During the course of personal hearing, they reiterated the submissions and contentions already placed on record in their written reply dated 13.05.2025 and requested that the case be considered in a fair and judicious manner based on the said written submissions.

SUBMISSION-

11. M/s. Indian Farmers Fertilisers Co-operative Ltd., in their submission dated 13.05.2025, interalia, submitted that-

- (i) The Impugned SCN alleges that the Noticees have willfully mis-stated the facts and wrongly classified the goods under CTH 25030010 without specifying any cogent reasons as to why the classification adopted by the Noticees is incorrect. Thus, the Noticees submit that the whole proceedings get vitiated for want of proper and reasoned SCN.
- (ii) The Noticees submit that the importance of a proper and detailed show cause notice cannot be stressed upon enough. The Hon'ble Supreme Court in the case of CCE, Nagpur v. Ballarpur Industries Ltd. – 2007 (215) ELT 489 (SC) has held that the show cause notice is the foundation in the matter of levy and recovery of tax, penalty and interest.
- (iii) Further, in the case of CCE v. Brindavan Beverages (P) Ltd. reported at 2007 (213) E.L.T. 487 (S.C.), the Hon'ble Supreme Court held that SCN is foundation on which the Department has to build up its case. If allegations in show cause notice are not specific and on the contrary are vague, lack details and/or unintelligible, then it is sufficient to hold that Noticees have not been

given proper opportunity to meet allegations indicated in show cause notice.

(iv) It is submitted that the SCN is vague and is contrary to the settled legal position that allegations and proposals made in SCN must be clear so as to provide opportunity to an assessee to defend his case. Further, in absence of any specific and/or proper case been made out against the Noticees, the Noticees are unable to effectively respond to the same. Reliance is placed on the following judgments in this regard:

- Royal Oil Field Pvt. Ltd. V. UOI 2006 (194) E.L.T. 385 (Bom.)
- B. Lakshmidhara Vs. Government of India 1983 (12) ELT 322.
- Collector of Central excise Vs. H.M.M Ltd. 1995 (76) ELT 497 (SC)
- Amrit Foods Vs. CCE 2005 (190) ELT 433 (SC)
- Madhur Hosiery INDS. Vs. CCE 2006 (200) ELT 147

(v) It is submitted that the Impugned SCN lacks material facts and evidence so as to establish that the imported goods are wrongly classified with intention to evade payment of duty. The Impugned SCN is vague as it is issued without examining the nature, use and composition of the imported goods and thus, the demand proposed is erroneous and unsustainable.

(vi) The show cause notice is invalid in the absence of valid appeal against the out of charge/bills of entry. The Hon'ble Supreme Court in the case of ITC Limited vs. Commissioner of Central Excise, 2019 (368) ELT 216 (SC) has held that the order of self-assessment is also an assessment order appealable by any person, the Revenue as well as assessee.

(vii) the Hon'ble Tribunal in the case of Ashok Khetrapal vs. Commissioner of Customs, Jamnagar, 2014 (304) ELT 408 (Tri.-Ahmd.) has held that once the BoEs have been assessed, they gain finality and assessment cannot subsequently be reopened by the Department by way of demand under Section 28 of the Customs Act by invoking extended period.

(viii) the noticees have rightly classified the impugned goods under CTH 2503 00 10 and thus, the benefit of exemption under Sr.no. 121 of Notification no. 50/2017-cus is available to the noticees.

(ix) It is submitted that the impugned goods comprise of 90% Sulphur and 10% Bentonite clay wherein Bentonite clay is added to Sulphur only to make Sulphur dissolvable with water. It is submitted that the addition of Bentonite doesn't alter the chemical composition of sulphur. In the present case, the Sulphur is in an unrefined form which is received as a by-product in the process of refining the crude oil. Therefore, the impugned goods are squarely covered by the HSN Explanatory Notes to CTH 2503. The relevant extract of the

HSN Explanatory Notes is reproduced below:

"25.03 Sulfur of all kinds, other than sublimed Sulfur, precipitated Sulfur and colloidal Sulfur.

The heading include:-

(4) Unrefined sulfurs recovered as by products in the purification of coal gas, by the scrubbing of sulfurous furnace gases, from sour natural gas and from the refining of sour crude mineral oils, etc. These recovered sulfurs, sometimes referred to as "purified sulfur" or "precipitated sulfur". Must not be confused with the precipitated sulfur dined in the Explanatory Note to heading 28.02 The unrefined sulfurs in the last three paragraphs are sometimes fairly pure. This is especially true of the sulphur produced by the Frasch process which contains such small proportions of impurities that it is practically never refined; it is usually presented in rough lumps or as dust."

Thus, it is clear that Sulphur in unrefined crude form is covered by Note 4 of the Sub-Heading Notes to CTH 25.03.

(x) In this regard, the Noticees would like to place reliance on the decision of the Hon'ble Apex Court in the case of Deepak Agro Solution Ltd. vs. Commissioner of Customs, Maharashtra, 2008 (227) E.L.T. 52 (S.C.) wherein the Hon'ble Supreme Court had upheld the classification of similar goods comprising of 90% Sulphur and 10% Bentonite clay under CTH 2503. Relevant portion of the decision is produced below:-

"27. The dictionary meaning of Brimstone is 'crude sulfur'.

28. The description in the tariff entry not only covers refined but also unrefined Sulphur. Sub-notes to the tariff entry on the HSN prescribe the scope of the goods falling thereunder, the relevant part whereof is reproduced hereto below: -

"(4). Unrefined sulphurs recovered as by-products in the purification of coal gas by the scrubbing of sulphurous furnace gases, from sour, natural gas and from the refining of sour crude miner oils, etc. These recovered sulphurs, sometimes referred to as "purified sulphur" or precipitated sulphur", must not be confused with the precipitated sulphur desired in the Explanatory Notes to heading 28.02"

29. Keeping in view the aforementioned background, we may have an analytical look at tariff entry No. 2808. It principally deals with insecticides, fungicides, herbicides etc. The same is to be put up in forms or packings for retail sale or as preparations of articles. What has been stated by way of example is sulphur treated bands, wicks, candles and fly-papers and not Sulphur itself. Sulphur treated bands etc. would be different from crude Sulphur or Brimstone 90."

(xi) It is submitted that it is clear fact that bentonite clay does not alter the chemical properties of the sulphur particles and thus, the impugned goods would fall under CTH 2503 and are covered by the Note 4 of the HSN Explanatory Notes to CTH 2503 as "unrefined sulphur".

(xii) The fact that the impugned goods fall under CTH 2503 has also not been disputed by the Department. The only allegation of the Department is that the impugned goods cannot be classified under CTH 2503 00 10 because sulphur bentonite cannot be considered as a byproduct of refining of crude oil.

(xiii) As stipulated in the facts (supra), the manufacturers of Sulphur Bentonite, purchase molten sulphur from crude oil refineries that use the claus process to recover sulphur from the by-product gases produced during refining of crude oil. Thus, the sulphur used in the manufacture of the impugned goods is recovered as by-product by refining of crude oil and are therefore, in crude and unrefined form.

(xiv) Moreover, as held by the Hon'ble Mumbai Tribunal in Deepak Fertiliser (supra), the addition of Bentonite Clay does not alter the composition of the sulphur. Thus, sulphur remains a by-product of refining process of crude oil thereby attracting classification under CTH 2503 00 10.

(xv) In view of the above, it is submitted that the correct rate of duty is 2.5%. For the period prior to 01.05.2022, the Noticees are eligible to claim exemption under Sr. No. 121 of Notification No. 50/2017- Cus as the subject goods are crude and unrefined sulphur. On this ground alone, the impugned Show Cause Notice is liable to be set aside.

(xvi) It is submitted that all kinds of Sulphur derived as a byproduct of refinery processing of crude are classifiable under CTH 2503 00 10. In the present case, molten Sulphur in crude or unrefined form is supplied by crude refineries with which 10% Bentonite clay is mixed to ensure that Sulphur gets dissolved in water without altering its chemical properties.

(xvii) The Department has wrongly claimed classification of 'Sulphur Bentonite' under CTH 2503 00 90 without considering the manufacturing process and relevant scientific literature. Further, in case of Coromandel Fertilizers Ltd. v. Commissioner of Customs & Central Excise [2006 (10) TMI 348] the Hon'ble Bangalore Tribunal while dealing with classification of Sulphur Bentonite has held that Bentonite is a filler and is mixed with Sulphur for the purpose of avoiding handling problems. The unrefined crude sulphur does not change its properties, and no new product comes into existence on mixing of bentonite clay with crude/unrefined sulphur. Thus, the impugned goods are a by-product of the refining process of crude oil.

(xviii) Further HSN Explanatory Notes to CTH 25.03 provides for seven kinds of sulphurs that can be included in the above two entries i.e. CTH 2503 00 10 and CTH 2503 00 90. It is submitted that from a perusal of the above Explanatory Notes, it becomes clear that only "unrefined sulphur" described in

Note 4 of the HSN Explanatory Notes can be classified under CTH 2503 00 10 i.e. "Sulphur recovered as a by-product in refining of crude oil". The remaining six kinds of sulphurs would fall under CTH 2503 00 90 as "Other".

(xix) The Appellants submit that the impugned goods do not fall under any of remaining six categories of sulphur and thus, the impugned goods cannot fall under the category of "Other" as alleged by the Department.

(xx) Section 28(4) of the Customs Act, 1962 is not invokable in the present case.

(xxi) Demand of interest under section 28AA of the customs act, 1962 is not sustainable.

(xxii) Penalties under Section 114A and 117 are not imposable.

DISCUSSION AND FINDINGS-

12. I have carefully gone through the Show Cause Notice dated 24.12.2024, Record of personal hearing dated 24.11.2025 and written submission dated 13.05.2025 and all the evidences placed on record.

13. The issues to be decided before me are the following:-

(i) Whether the benefit availed by the importer on the import of Sulphur Bentonite under Sr. No. 121 of Notification No. 50/2017-Cus dated 30.06.2017 is admissible or is liable to be rejected.

(ii) Whether the Bills of Entry detailed in Annexure-A to the Show Cause Notice in respect of imports of Sulphur Bentonite are liable to be recalled and re-assessed under the provisions of the Customs Act, 1962.

(iii) Whether the differential customs duty comprising Basic Customs Duty, Social Welfare Surcharge and Integrated Goods and Services Tax, amounting to Rs. 82,01,264/- (Rupees Eighty Two Lakhs One Thousand Two Hundred and Sixty Four only), short levied on the imported goods, namely Sulphur Bentonite, as detailed in Annexure-A to the Show Cause Notice, is liable to be demanded and recovered from the importer under Section 28(4) of the Customs Act, 1962, read with Section 5 of the Integrated Goods and Services Tax Act, 2017, along with applicable interest under Section 28AA of the Customs Act, 1962.

(iv) Whether the importer is liable to penalty under Section 114A of the Customs Act, 1962.

(v) Whether the importer is liable to penalty under Section 117 of the Customs Act, 1962.

14. M/s. Indian Farmers Fertiliser Cooperative Ltd. filed various Bills of Entry at Mundra Port for the import of goods declared as “Sulphur Bentonite (Granular) Fertilizer for Agricultural Use”. The importer classified the said goods under Customs Tariff Heading 25030010 and availed the benefit of concessional rate of Basic Customs Duty @ 2.5% under Sr. No. 121 of Notification No. 50/2017-Customs dated 30.06.2017, treating the goods as “crude or unrefined sulphur”. On examination of import data for the period 01.12.2020 to 31.10.2023, it was observed that the impugned goods were a mixture consisting of Sulphur and Bentonite clay, imported and marketed as Sulphur Bentonite, and that identical goods had earlier been classified by the importer itself under CTH 25030090 attracting Basic Customs Duty @ 5%. It was further noticed that the importer, w.e.f 01.05.2022, without any change in the composition or nature of the goods, subsequently changed the classification to 25030010 as Sulphur recovered as by-product in refining of crude oil and wrongly availed the benefit of concessional duty, resulting in short levy of customs duty (BCD, SWS and IGST). Accordingly, the Show Cause Notice dated 27.12.2024 was issued to the importer under Section 28(4) of the Customs Act, 1962 proposing rejection of the exemption claimed, re-assessment of the Bills of Entry, recovery of differential duty amounting to Rs. 82,01,264/-, along with interest and imposition of penalties under the relevant provisions of the Customs Act, 1962.

15. In order to determine the correct classification of the impugned goods and the admissibility of the exemption claimed by the importer, it is necessary to examine the relevant entries of the Customs Tariff Act, 1975 and Notification No. 50/2017-Customs dated 30.06.2017, as applicable during the material period.

15.1. The Customs Notification 50/2017 dated 30.06.2017 exempts the goods of the description specified in column (3) of the Table below, as the case may be, and falling within the sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table;

Column-1	Column 2	Column 3	Column 4
Sr. No.	Ch. Heading	Description of Goods	Standard rate of BCD
120	25 (except 2515, 2516,	All Goods	5%

	2523, 2524)		
121	2503 00	<i>Crude or Unrefined Sulphur</i>	2.5%

15.2. The Heading 2503 of Customs Tariff Act, 1975 is reproduced below:-

Prior to 01.05.2022:

2503 SULPHUR OF ALL KIND OTHER THAN SUBLIMED SULPHUR, PRECIPITATED SULPHUR AND COLLODIAL SULPHUR

2503 00 – Sulphur of all kinds, other than sublimed Sulphur, precipitated Sulphur and colloidal sulphur:

2503 00 10 --- Sulphur recovered as by-product in refining of crude oil Kg. 10%

2503 00 90 --- Other Kg 10%

After 01.05.2022:

2503 SULPHUR OF ALL KIND OTHER THAN SUBLIMED SULPHUR, PRECIPITATED SULPHUR AND COLLODIAL SULPHUR

2503 00 – Sulphur of all kinds, other than sublimed Sulphur, precipitated Sulphur and colloidal sulphur:

2503 00 10 --- Sulphur recovered as by-product in refining of crude oil Kg. 2.5%

2503 00 90 ---Other Kg 5%

CLASSIFICATION PATTERN AND AVAILMENT OF EXEMPTION ADOPTED BY IMPORTER UP TO 01.05.2022:

15.3. On perusal of the above change in rate of Basic Customs duty, it is observed that prior to 01.05.2022, Sr.No. 121 of the Notification No. 50/2017-Cus dated 30.06.2017 allowed import of “Crude or Unrefined sulphur” falling under CTH 250300 at 2.5% BCD and Sr.No. 120 of the said notification allowed the import of all other goods falling under Chapter 25 at 5%. During the relevant period up to 01.05.2022, the importer had classified the goods declared as “Sulphur Bentonite for Agricultural Use Only” under CTH 25030090 and accordingly availed the benefit of Sr. No. 120 of Notification No. 50/2017-Cus dated 30.06.2017, attracting Basic Customs Duty at the rate of 5% (Table-3 below). It is further noticed that, in certain instances, the importer also availed the benefit of Sr. No. 121 of the said Notification at 2.5% in respect of identical goods, while continuing to declare the classification under the same residual entry (Table-4 below):-

Table-3 (BE @ 5 % BCD)

Imports upto 01.05.2022

BE No.	Description of Goods	Sum of Assessable Value
3578626	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (OMASULF-90) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (OMASULF-90)	18277975
3659407	- do--	18633905
3663240	SULPHUR BENTONITE (OMASULF-90)	18770975
3868504	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (NCSP 600 SB90) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (OMASULF-90)	9657819
3963846	-do --	8779836
4148956	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (NCSP 600 SB90)	9138664
4428801	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (NCSP 600 SB90) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (NCSP 600 SB90)	8756344
9030483	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (OMASULF-900) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (OMASULF-90)	9983000
9193857	SULPHUR BENTONITE (OMASULF-90)	12741300
9283474	SULPHUR BENTONITE (OMASULF-90)	10617750
9347246	SULPHUR BENTONITE (OMASULF-90)	10617750
9465039	SULPHUR BENTONITE (OMASULF-90)	8494200
Grand Total		144469519

Table-4 (BE @ 2.5 % BCD)
Imports upto 01.05.2022

BE No.	Description of Goods	Sum of Assessable Value
6313314	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	22438350
6389673	SULPHUR BENTONITE (FOR AGRICULTURE USE ONLY)	11152350
6502670	SULPHUR BENTONITE (FOR AGRICULTURAL USE ONLY) (GRANULES)	11152350
6502754	SULPHUR BENTONITE (FOR AGRICULTURAL USE ONLY) (GRANULES)	11152350
6938485	SULPHUR BENTONITE (GRANULAR FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	12671887
7212883	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	13554000
7214030	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	13554000
7376146	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	14316750
7588235	SULPHUR BENTONITE (GRANULAR FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	14373450
7764480	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	14486850

CLASSIFICATION PATTERN AND AVAILMENT OF EXEMPTION ADOPTED BY IMPORTER AFTER 01.05.2022:

15.4 Thereafter, with effect from 01.05.2022, pursuant to the amendments introduced by the Finance Act, 2022, the Basic Customs Duty on goods “Sulphur recovered as by-product in refining of crude oil” classifiable under CTH 25030010 was reduced to 2.5% ad valorem. During the said period, it is observed that the importer, without any change in the composition, nature or use of the impugned goods, altered the classification from CTH 25030090- Others to CTH 25030010, so as to continue availing the concessional rate of 2.5% meant exclusively for “Sulphur recovered as by-product in refining of crude oil” or “crude or unrefined sulphur”. The details of such BoE are given in Table below:-

Table-5 (BE @ 2.5 % BCD)
Imports after 01.05.2022

BE No.	Description of Goods	Sum of Assessable Value
2863742	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR)	7531807
2882112	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR)	7531807
3050984	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	7664265
3138660	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR)	7664265
3138763	SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR) SULPHUR BENTONITE FOR AGRICULTURAL USE ONLY (GRANULAR)	7664265
3149570	SULPHUR BENTONITE FERTILIZER FOR AGRICULTURE USE	4598559
3266812	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	9050400

8749075	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	19416600
8817487	SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE SULPHUR BENTONITE (GRANULAR) FERTILIZER FOR AGRICULTURE USE	19807200

15.5 Thus, it is evident that prior to 01.05.2022, the importer classified the impugned goods under CTH 25030090 in the residual category as “Others”, whereas with effect from 01.05.2022, the very same goods were classified under CTH 25030010 as “sulphur recovered as a by-product in the refining of crude oil”, while availing the concessional rate of Basic Customs Duty @ 2.5%. I don’t find any justification or supporting evidence, in their submissions, to substantiate such a change in the classification.

NATURE OF GOODS-

16. The issue for determination is whether the impugned goods are crude or unrefined sulphur, as claimed by the importer, or whether they constitute a distinct product obtained by deliberate mixing of Sulphur with Bentonite clay, classifiable under the residual entry as proposed in the Show Cause Notice. In this context, it becomes imperative to examine and compare the chemical composition and nature of elemental (crude) sulphur vis-à-vis Sulphur Bentonite in order to arrive at the correct classification of the imported goods.

16.1 Elemental sulphur is a yellow, inert and water-insoluble crystalline solid, representing the purest commercially available form of sulphur, generally containing about 99.5% sulphur. It occurs naturally in volcanic regions and is also recovered as a by-product during the refining of crude oil. Elemental sulphur is typically available in relatively larger particle sizes and exhibits a comparatively slow rate of oxidation. Such particles, generally ranging from 2 to 6 mm in diameter, remain stable under normal storage conditions and are commonly stored in the open, as they are largely unaffected by moisture and temperature variations. When elemental sulphur is ground into finer particles and applied to soil, it is oxidized by soil microorganisms into sulphate, with the rate of oxidation increasing as particle size decreases. Thus, reduction in particle size leads to a larger surface area, resulting in faster sulphate formation and increased availability of sulphur to crops.

16.2 Sulphur Bentonite, on the other hand, is a manufactured fertilizer formulation consisting of elemental sulphur combined with bentonite clay. Bentonite functions as a binding and dispersing agent, enabling the production

of uniform granules or pellets of controlled size. The manufacturing process involves mixing dry bentonite clay with molten sulphur at elevated temperatures to form a sulphur-clay melt, which is subsequently converted into droplets and cooled in a liquid fertilizer coolant to form pellets. This granulation process enhances handling properties, minimizes dust generation and facilitates uniform application in agricultural fields. Upon application to soil, the bentonite component absorbs moisture and swells, causing the granules to disintegrate into finely divided sulphur particles, which are more rapidly oxidized into sulphate. As a result, sulphur bentonite provides a faster and more efficient conversion to plant-available sulphate compared to elemental sulphur in its crude or unrefined form.

Whether the goods are Crude or unrefined sulphur as claimed by the importer-

16.3 The importer has argued that their goods are in an unrefined form which is received as a by-product in the process of refining the crude oil, therefore, they emphasised that the impugned goods are squarely covered by the HSN Explanatory Note 4 to CTH 2503. The relevant extract of the HSN Explanatory Notes is reproduced below:

"25.03 Sulfur of all kinds, other than sublimed Sulfur, precipitated Sulfur and colloidal Sulfur.

The heading includes:-

(1) Crude mineral sulphur occurring in the free state, whether or not concentrated by mechanical processes to remove part of the rocky matter.

(2) Unrefined Sulphur extracted from mineral sulphur by melting. This process may be carried out in sulphur kilns (calcaroni), furnaces (Gill furnaces), etc., or may be effected in the deposit itself by forcing superheated steam through pipes sunk in a bore hole (Frasch process).

(3) Unrefined sulphurs obtained by the roasting of pyrites or by the treatment of other sulphur minerals.

(4) Unrefined sulphurs recovered as by products in the purification of coal gas, by the scrubbing of sulphurous furnace gases, from sour natural gas and from the refining of sour crude mineral oils, etc. These recovered sulphurs, sometimes referred to as "purified sulphur" or "precipitated sulphur", must not be confused with the precipitated sulphur defined in the Explanatory Note to heading 28.02

The unrefined sulphurs in the last three paragraphs are sometimes fairly pure. This is especially true of the sulphur produced by the Frasch process which contains such small proportions of impurities that it is practically never refined; it is usually presented in rough lumps or as dust."

16.4 The contention of the importer that the impugned goods "Sulphur

Bentonite” are covered under HSN Explanatory Note 4 to Heading 2503 is not acceptable. A plain reading of the above HSN Explanatory Notes clearly indicates that crude or unrefined sulphur is confined to sulphur obtained directly from natural sources or recovered through specific extraction or recovery processes, such as melting of mineral sulphur, roasting of sulphur-bearing minerals, or recovery as a by-product during the purification of gases or the refining of crude oil. These Notes contemplate sulphur as such, obtained directly from the source processes, without undergoing any further intentional processing or formulation. In the present case, however, the imported goods are not obtained through any of the processes described above; rather, they are produced by a deliberate industrial process of mixing elemental Sulphur with Bentonite clay, followed by granulation. The presence of bentonite is not incidental; it imparts moisture-absorbing and disintegrating characteristics that fundamentally alter the behaviour of sulphur in soil, enabling faster oxidation and improved sulphate availability. Owing to these differences, Sulphur Bentonite is marketed, traded and used as a specialised fertilizer product, distinct from crude or unrefined sulphur, and is recognised in trade parlance as a separate commodity.

16.5 It is a settled principle of law that, for the purpose of classification, the decisive test is the understanding of the goods in common trade and commercial parlance, as laid down by the Hon’ble Supreme Court in *Novopan India Ltd. v. Collector of Central Excise and Customs, Hyderabad*, 1994 (73) E.L.T. 769 (S.C.). Applying the said test to the facts of the present case, it is evident that the impugned goods are understood, marketed and traded in commercial circles as “*Sulphur Bentonite*”, a fertiliser formulation, and not as crude or unrefined sulphur or elemental sulphur. Accordingly, the classification claimed by the importer does not align with the commercial identity of the goods. In view of the foregoing discussion and findings, I hold that the classification of the imported goods under CTH 25030010 as “crude or unrefined sulphur” is not sustainable and is liable to be rejected. Such a manufactured mixture falls outside the scope of “crude or unrefined sulphur” envisaged in the HSN Notes and therefore cannot be equated with sulphur obtained through the processes specified therein.

16.6 The importer has relied on the decision in *Deepak Agro Solution Ltd.* 2008 (227) E.L.T. 52 (S.C.) [08.05.2008] to argue that their goods are crude or unrefined. It is observed that in the said case, the Hon’ble Supreme Court was dealing with the question of “*Whether “Brimstone 90” which contains about 90% of Sulphur and 10% of Bentonite by way of inert filler would come within the classification under “Heading 25.03” of the Customs Tariff and the Central*

Excise Tariff or “Heading 38.08” is the question involved in this appeal”. However, in the instant case, the moot question is whether the goods fall under tariff entry 2503 00 10 or 2503 00 90. Thus, the Hon’ble Apex Court examined the product Brimstone in the context of a different tariff dispute and factual matrix, and the Court did not lay down a universal rule that any mixture containing sulphur and bentonite would necessarily qualify as crude or unrefined sulphur. In the present case, it is also important to note that the Noticee itself consistently classified identical goods under CTH 25030090, thereby acknowledging that the product is distinct from crude sulphur.

CLASSIFICATION OF THE IMPORTED GOODS-

17. The impugned goods are admittedly a manufactured mixture of Sulphur and Bentonite clay, obtained through a deliberate industrial process and imported in the form of granules/pellets for agricultural use. Such goods are commercially known, traded and used as Sulphur Bentonite fertilizer, and do not retain the character of crude or unrefined sulphur envisaged under Heading 25030010. The Chapter Heading 2503 reads as under:

2503 SULPHUR OF ALL KIND OTHER THAN SUBLIMED SULPHUR, PRECIPITATED SULPHUR AND COLLODIAL SULPHUR

2503 00 – Sulphur of all kinds, other than sublimed Sulphur, precipitated Sulphur and colloidal sulphur:

2503 00 10 --- Sulphur recovered as by-product in refining of crude oil	Kg. 2.5%
2503 00 90 --- Other	Kg 5%

18. Heading 2503 of the Customs Tariff covers “Sulphur of all kinds, other than sublimed sulphur, precipitated sulphur and colloidal sulphur”, thereby making it clear that the scope of the heading is wide enough to include all forms of sulphur not specifically excluded. However, within Heading 2503, CTH 25030010 is a specific sub-heading restricted to sulphur recovered as a by-product in the refining of crude oil in its crude or unrefined form. As discussed hereinabove, the impugned goods do not satisfy this specific description, as they are not sulphur in its primary unrefined form but a manufactured product obtained by deliberate mixing of sulphur with bentonite clay. Consequently, classification under CTH 25030010 stands excluded. In terms of Rule 1 of the General Rules for the Interpretation of the Import Tariff, classification is to be determined strictly in accordance with the description of the tariff entries and the relevant chapter and section notes. Since the impugned goods do not conform to the specific description of CTH 25030010, classification under the said entry is clearly ruled out. Consequently, the goods merit classification under the residual sub-heading CTH 25030090 (“Others”), which covers forms

of sulphur not elsewhere specified under Heading 2503.

19. Further, the reliance placed by the importer on the judgment of the Hon'ble Supreme Court in ITC Limited vs. Commissioner of Central Excise, 2019 (368) ELT 216 (SC) is misplaced and inapplicable to the facts of the present case. The said judgment was rendered in the limited context of refund claims where the assessee sought refund without challenging the self-assessment, and the Hon'ble Court held that such self-assessment must first be appealed. In the present case, the proceedings have been initiated by the Department under Section 28(4) of the Customs Act, 1962 for recovery of short-paid duty arising out of mis-classification and wrong availment of exemption, and not in the context of refund. The Customs Act expressly empowers the proper officer under Sections 17(4) and 28 to verify, re-assess and recover duties short levied due to mis-statement or suppression, even in cases of self-assessment. The ITC Limited judgment itself recognizes that self-assessment is subject to verification and re-assessment and does not confer finality or immunity where short levy is detected. Therefore, the absence of an appeal against self-assessment does not bar initiation of proceedings under Section 28(4), and the reliance on ITC Limited does not come to the aid of the importer in the present case. Further, reliance placed by the Noticee on Ashok Khetrpal vs. C.C., Jamnagar, 2014 (304) ELT 408 (Tri.-Ahmd.) is misplaced, as the said decision was rendered in a case where assessments had attained finality on the basis of full and true disclosure and in absence of any allegation of wilful mis-statement or suppression. In the present case, the Show Cause Notice specifically alleges deliberate mis-classification and wrongful availment of exemption in respect of identical goods, thereby resulting in short payment of duty. It is a settled position of law that the principle of finality of assessment does not apply where duty has been short paid due to mis-declaration or suppression, and in such cases the Department is empowered to invoke the extended period under Section 28(4) of the Customs Act, 1962. Accordingly, the ratio of Ashok Khetrpal is not applicable to the facts of the present case.

20. In view of the above discussion and findings, I hold that the importer is not eligible for exemption provided by Sr. no. 121 of the Notification No. 50/2017-Cus dated 30.06.2017. Thus, the importer is liable to pay duties of customs @5% BCD, on the goods mentioned in Annexure-A to the SCN, alongwith interest. Thus, the total differential duty amounting to Rs. 82,01,264/- (BCD- Rs. 71,00,661/-+ SWS- Rs. 7,10,066/- + IGST- Rs. 3,90,536/-) is recoverable under the provisions of Section 28 of the Customs Act, 1962.

21. The invocation of the extended period under Section 28(4) of the Customs

Act, 1962 is fully justified in the present case. It is an undisputed fact that the importer themselves had consistently classified the very same goods under CTH 25030090 up to 01.05.2022, thereby clearly acknowledging the true nature and correct classification of the product. However, immediately after the reduction in the rate of Basic Customs Duty on CTH 25030010 with effect from 01.05.2022, the importer unilaterally and abruptly changed the classification of the identical goods to CTH 25030010, without any change in the composition, manufacturing process, use or commercial identity of the goods, and without disclosing any material facts or justification for such change. This deliberate shift in classification was made solely to avail the lower rate of duty and was accompanied by a wilful mis-statement of facts and suppression of the true nature of the goods from the Department. Such conduct clearly establishes intent to evade payment of customs duty, thereby squarely attracting the proviso to Section 28(4) of the Customs Act, 1962 and warranting invocation of the extended period for recovery of the short-levied duty.

22. Since the differential duty of Rs. 82,01,264/- is liable to be recovered under section 28(4) of the Customs Act, 1962, the importer is liable to penal action under Section 114A of the Customs Act, 1962.

23. Further, I find that the importer has contravened the provisions of Section 17(1) of the Customs Act, 1962, inasmuch as they have wilfully declared an incorrect classification of the impugned goods at the time of self-assessment, resulting in improper assessment of duty. Penal provisions for such act of mis-declaration and non-compliance with the statutory requirements of correct declaration is not specifically provided for elsewhere in the Act and therefore attracts the residuary penal provisions under Section 117 of the Customs Act, 1962.

24. In view of the above discussion and findings, I hereby pass the following order:-

ORDER-

- (i) I reject the benefit availed by the importer on import of Sulphur Bentonite as per Sr. No. 121 of Notification No. 50/2017-Cus dated 30.06.2017.
- (ii) I order to re-assess the Bills of Entry, as detailed in Annexure-A to the SCN, by classifying the imported goods under CTH 2503 00 90- Others.
- (iii) I determine and confirm the amount of differential duty (BCD+SWS+IGST) amounting to Rs. 82,01,264/- (Rupees Eighty Two

lakhs One Thousand Two Hundred & Sixty Four only) short levied on the said imported goods as detailed in Annexure-A to the SCN under Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s. Indian Farmers Fertiliser Cooperative Ltd., under Section 28 (4) of the Customs Act, 1962 read with Section 3 of the Customs Tariff Act, 1975 & Section 5 of the Integrated Goods and Service Tax Act, 2017.

- (iv) I order to recover interest, at the applicable rate on the amount of Rs. 82,01,264/- confirmed above, from M/s. Indian Farmers Fertiliser Cooperative Ltd., under Section 28 AA of the Customs Act, 1962.
- (v) I impose a penalty of Rs. 82,01,264/- (Rupees Eighty Two lakhs One Thousand Two Hundred & Sixty Four only) on M/s. Indian Farmers Fertiliser Cooperative Ltd under Section 114A of the Customs Act, 1962.
- (vi) I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on M/s. Indian Farmers Fertiliser Cooperative Ltd under Section 117 of the Customs Act, 1962.

25. This order is issued without prejudice to any other action that can be taken against the importer under this Act, or any other law for the time being in force.

26. The Show Cause Notice F. No. GEN/ADJ/COMM/771/2023-Adjn-O/o-Pr. Commr.-Cus., Mundra dated 24.12.2024 stands disposed of in the above terms.

(Nitin Saini)
Commissioner of Customs,
Custom House Mundra.

DIN- 20251271MO000000DC16

To,

M/s. Indian Farmers Fertiliser Cooperative Ltd.,

SMO GUJ, NP Patel Bhawan, First Floor,

Shivranjani Cross Road, Satellite,

Ahmedabad – 380015.

Copy to: -

1. The Chief Commissioner, Gujarat Customs Zone, Ahmedabad

2. The Deputy/ Assistant Commissioner (Import Gr-I), Custom House, Mundra
3. The Deputy/ Assistant Commissioner (EDI/TRC/Legal/Prosecution), Custom House, Mundra for necessary action.
4. Guard File.