



प्रधान आयुक्त का कायलिय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडीओ के बाजु मे, नवरंगपुरा, अहमदाबाद 380009
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फा. सं./ F. No.: VIII/10-31/Pr.Commr/O&A/2020-21

DIN-20240771MN000000CF42

आदेश की तारीख/Date of Order : 11.07.2024
जारी करने की तारीख/Date of Issue : 11.07.2024

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- 32-2024-25
dated 11.07.2024 in the case of M/s Organic Industries Pvt. Ltd.,
Plot No. 163, GIDC, Tal-Vagra, Bharuch.**

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, बहुमाली 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, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.

3. उत्तर अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उत्तर अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित 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 प्रतियाँ 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. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमें विवाद है उसका भुक्तान करके अपील की जा शकती 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/10-31/Pr.Commr/O&A/2020-21 dated 28.3.2021 issued by the Principal Commissioner, Customs, Ahmedabad in the case of M/s Organic Industries Pvt. Ltd. located at Plot No. 163, GIDC, Tal-Vagra, Bharuch.

Brief facts of the case:

M/s Organic Industries Pvt. Ltd. situated at Plot no. 163, G.I.D.C, Tal.-Vagra, Bharuch-392130 and having registered office at Delta 6th Floor, Central Avenue, Hiranandani Gardens, Powai, Mumbai-400076 (IEC No. 0300041501) [hereinafter referred to as the Noticee] had imported goods declared as "Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ Natural Boron Ore", by classifying the same under CTH 25280090 of Customs Tariff Act, 1975 and availing exemption from payment of Basic Customs 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 amended as applicable for period from 01.07.2017 to 23.05.2020 and 06.04.2016 to 30.06.2017 respectively.

2. An intelligence gathered indicated that some importers are importing processed Colemanite B₂O₃ of different description under CTH 25280090 and are wrongly claiming exemption under Sr. No. 130 of Notification No. 50/2017-Cus dated 30.06.2017 by mis-declaring the product as Natural Boron Ore since exemption is available only to Boron Ore under said notification. Acting on the intelligence, necessary details were verified from ICES regarding import of said item and alongwith other consignments, consignment under Bill of Entry No. 6554848 dated 20.01.2020 of the Noticee were under process for clearance. Accordingly, the Deputy Commissioner, Adani Hazira Port, Hazira was requested to put the consignment, declared under Bill of Entry No. 6554848 dated 20.01.2020, on hold for drawal of sample and further investigation.

3. The officers of SIIB, Customs, Surat visited Adani Hazira Port, Hazira, Surat on 24.01.2020 and it was noticed that CHA, namely, **M/s PI Logistics (India) Pvt Ltd** filed said Bill of Entry No. 6554848 dated 20.01.2020 on behalf of the Noticee containing 17 containers of Kestelek Colemanite (-3MM) 36% B₂O₃ Minimum Natural Boron Ore. Therefore, representative samples were drawn under panchnama dated 24.01.2020 in presence of two independent panchas, **Shri Tejas Shah**, Executive Officer, **M/s Adani Hazira Port Pvt Ltd** and **Shri Sandeep Bhatkande**, Assistant Manager (Operation), **M/s PI Logistics (India) Pvt Ltd** [CHA of the Noticee] from one of the containers bearing No. MRKU8006272 of Bill of Entry No. 6554848 dated 20.01.2020. The sample drawn was sent to CRCL, Vadodara vide Test Memo No. 09/2019-20 dtd. 27. 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 dtd. 07.02.2020 of sample submitted under Test Memo No. 09/2019-20 dated 27.01.2020 in respect of sample drawn under panchnama dated 24.01.2020 was received from CRCL, Vadodara which is reproduced here-under:

The sample is in the form of grey colour granular moist powder. It is mainly composed of oxides of Boron & Calcium alongwith siliceous matter.

B₂O₃ content = 36.47

Above analytical findings reveal that it is grounded mineral of Boron (Colemanite) crushed.

5. From above test report, it is noticed that goods imported under the said Bill of Entry is processed Borate Mineral Colemanite and the Noticee 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. 6554848 dated 20.01.2020. Therefore, goods declared under above mentioned Bill of Entry, totally weighing 408000.000 Kgs.,v/a Rs. 1,01,46,960/- [Assessable Value] were seized vide panchnama dtd. 10.02.2020 under Section 110(1) of Customs Act, 1962 under the reasonable belief that the same are liable to confiscation under Section 111(m) of Customs Act, 1962. The same was subsequently provisionally released by the competent authority on request of the Noticee under provisions of Section 110A of the Customs Act, 1962.

6. The Noticee did not agree to the test report given by the CRCL, Vadodara and requested for re-testing of the sample at CRCL, New Delhi. Accordingly, on approval of the Joint Commissioner of Customs, another set sample was sent to Central Revenue Control Laboratory, New Delhi vide Test Memo No 11/2019-20 dated 02.03.2020 with following test queries/parameters:

- (i) Whether the goods are in form in which they 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 processed, whether the goods can still be defined as 'Ore'.

7. The Joint Director, CRCL, New Delhi vide letter F. No 25-Cus/C-41/2019-20 dated 11.06.2020 submitted Re-Test report in respect of above mentioned Test Memo which is reproduced hereunder:

"The sample is in the form of Greyish moist powder with small lumps. 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 = 03.50
2. % Loss on ignition at (900 degree C) by TGA = 36.79
3. % B_2O_3 (Dry Basis) = 36.40
4. % Acid insoluble = 4.25
5. XRD Pattern = Concordant with Mineral Colemanite

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

8. The Joint Commissioner, SIIB, Customs, Surat vide letter F. No VIII/14-01/SIIB/Boron Ore/Raj Borax/19-20 dated 16.06.2020 again requested the Head Chemical Examiner, CRCL, New Delhi to send detailed report covering all

the points of test memo as the re-test report received from CRCL for all similar cases. New Delhi does not cover all queries/questionnaires given in the Test memo. In response of the said letter, the Joint Director, CRCL, New Delhi, videletter 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 what was 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.

9.1 In response of above letter the Joint Director, CRCL, New Delhi vide letter F. No. 25-Cus/C-40-47/2019-20 dated 08.07.2020, has send 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	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 % B_2O_3 .

	of technical data sheet and print out taken from website are enclosed.	
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9.2 From the above and test report received from CRCL, Vadodara and CRCL, New Delhi it is found that the test report provided by CRCL, Vadodara in respect of sample of Kestelek Colemanite imported by the Noticee confirmed that Kestelek Colemanite is processed borate mineral colemanite and found in powder form having B_2O_3 content as 36.40% by wt. The re-test report provided by CRCL, Delhi also confirmed the form of sample as powder which was crushed and grinded, however, failed to comment on details of processes undertaken.

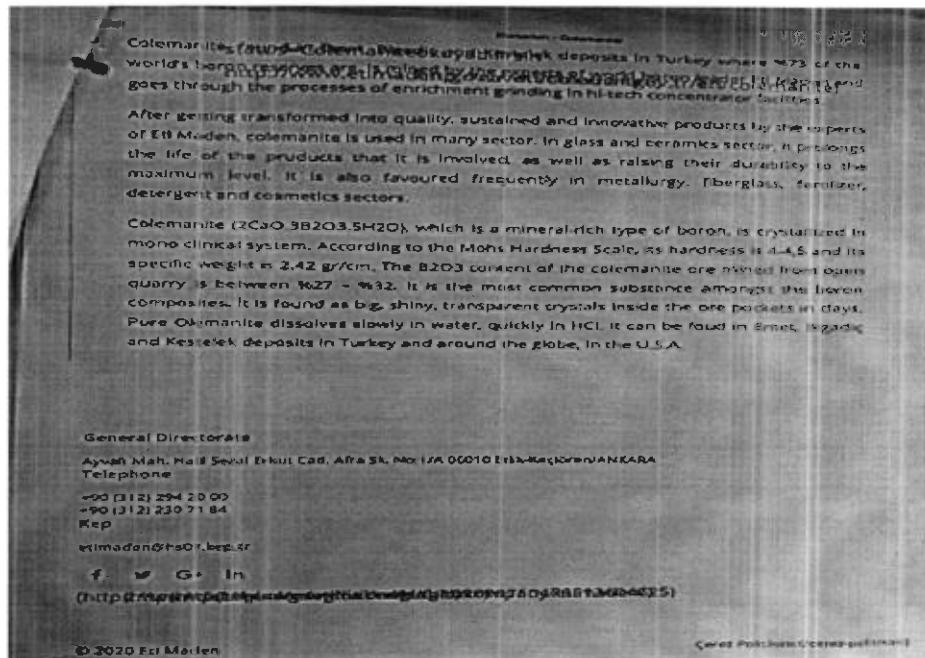
10. The various material and literature available on website especially of **M/s ETiMADEN**, Turkey [producer of Kestelek Colemanite] in respect of Boron Ore, Colemanite, Ore and Ore Concentrates have been analysed and outcome is discussed hereunder:

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

10.1.1 The 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** which described 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.

10.1.2 Boron minerals are made valuable by **M/s ETiMADEN** using various mining methods are 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, Kestelek 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, Kestelek Colemanite and Ground Ulexite are produced and supplied to domestic and Industries markets.

10.1.3 **M/s ETiMADEN** also discussed in detail regarding availability, production, quality and uses of Colemanite in 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 goes through the processes of enrichment 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 the purpose of illustration, the scanned image of page containing such details is reproduced under:



10.2 Thus, from details available on the website of **M/s ETiMADEN** in respect of mining of Colemanite and production of 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 **M/s ETiMADEN**,
2. The B_2O_3 content of the Colemanite ore mined from open quarry is between 27%-32%. However, after initiation of inquiry, the line "*B₂O₃ content of the Colemanite ore mined from open quarry is between %27-%32*" has been deleted while the remaining details are the same in their website.
3. Boron minerals i.e. Colemanite are made usable and valuable by **M/s ETiMADEN** by using various mining methods which enriched by physical processes and converted into concentrated boron products.
4. Mined Colemanite goes through the processes of enrichment grinding in hi-tech concentrator facilities available with **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 Kestelek Colemanite having B_2O_3 36% to 40%. Kestelek Colemanite is a concentrated product of Colemanite produced by enrichment in concentrator plant.
5. Thereafter such concentrated product is passed through crushing and grinding processes respectively to obtain Kestelek Colemanite.

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

11.1 Definition of Ore as per Petrology of Deposits:

Ore: a metalliferous mineral, or aggregate mixed with gangue (impurities present in ore) 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 Britanica:

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

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 defined that the term 'ore' applies to metalliferous minerals associated with the substances in which they occur and with which they are extracted from the mine; it also applies to native metals in their gangue (e.g. metalliferous sands"). The term 'concentrates' applies to ores which has 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 is 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 mineral, but does not consist of any particular mineral alone. It is a naturally occurring raw and native mineral which is produced by mines and contain various foreign material, impurities and other substances and not suitable for further operations. 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 physic-chemical operation viz cleaning, washing, drying, separation, crushing, grinding, etc. Therefore, it appears from the above that Natural Ore consists 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.

13. From the data available in EDI system of Customs, it is noticed that the Noticee is importing Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ Natural Boron Ore from United Arab Emirates, supplied by **M/s Asian Agro Chemical Corporation** by classifying the same under CTH. 25280090 of Customs Tariff Act, 1975 and availing exemption from payment of Basic Customs under Sr. 130 of Notification No. 50/2017-Cus dated 30.06.2017 by declaring the said goods as Boron Ore. Prior to inception of Notification No. 50/2017-Cus, the Noticee were availing exemption from payment of Basic Customs under 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 details of Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ Natural Boron Ore imported by the Noticee and cleared under jurisdiction of the Commissioner of Customs, Ahmedabad from April, 2016 has been prepared and attached as **Annexures-A/1, A/2, A/3, A/4, and A/5** to the Show Cause Notice for the Financial years 2016-17, 2017-18, 2018-19, 2019-20 & 2020-21 [Up to 23.05.2020] respectively.

14. From the data available in EDI system of Customs, it is noticed that the Noticee classified Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ Natural Boron Ore as "**Others**" under CTH 25280090 of Customs Tariff Act, 1975 since 25.01.2019 and before that they were classifying the same under CTH 25280030. The CTH 25280090 of Customs Tariff Act, 1975 under which the Noticee declared the goods i.e. "Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ Natural Boron Ore" from 25.01.2019 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%

15.1 Statement dated 03.09.2020 of **Shri Narendra J. Jakkani**, Director (Operations) of the Noticee was recorded and the same is reproduced as under:-

Question No.1: Please explain in details the business activity of M/s Organic Industries Pvt Ltd, Plot No. S/ 163, GIDC, Dahej, Tal. Vagra, Dist-Bharuch.

Ans: Sir, M/s Organic Industries Pvt Ltd, Plot No. S/163, GIDC, Dahej, Tal. Vagra, Dist-Bharuch are engaged in manufacturing of Boric Acid, Potassium Permanganate, Calcium Hypochlorite etc. Our major product is Boric Acid and for

production of which we use Colemanite, Sulphuric Acid and Potassium Permanganate as primary raw material in a definite ratio as per product requirement. Out of the said mentioned raw material, we used to import Colemanite from Etimaden, Turkey.

Question No. 02:- Please go through your answer to Question no. 01 of this statement and state what percentage of Colemanite is used in production of Boric Acid? Please also state the use of Boric Acid manufactured by your company.

Answer:- Sir, I have gone through my answer to Question No. 01 of this statement and I want to submit that Calcium Borate (Colemanite), Sulphuric Acid and Potassium permanganate are being mixed in a ratio of 70:29:01 to produce Boric Acid as primary product and Calcium Sulphate (Gypsum) as by product. I want to state that for manufacturing of 1 kg of Boric Acid 1.8 kgs of Calcium Borate (Colemanite) is required. I further state that our final product Boric Acid is used in furnace in Steel Industry, in production of 'Ceramic Glaze Mixture (Frit), Pharma Industries, Domestic Carrom Powder, Agricultural use etc.

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

Answer:- :- Sir, I have gone through my answer to question no. 02 of this statement and I want to submit that we used to import Colemanite from M/s Etimaden, Turkey. I have visited the plant of M/ Etimaden, Turkey earlier and after satisfying with the quality of Calcium Borate (Colemanite) we have started import of Calcium Borate (Colemanite) of M/s Etimaden, Turkey through M/s Raj Borax Pvt Ltd.

I also want to state that Colemanite(Calcium Borate) contains mainly B_2O_3 , Al_2O_3 , CaO , K_2O and As_2O_3 . The Kestelek Colemanite (Natural Boron Ore) imported by us under BE 6554848 dated 20.01.2020 contains 36% of B_2O_3 [Approx].

Question No.04:- Please state what is definition of 'Ore'. Whether Ore can be used directly without any processing on it.

Answer:- Sir, in my view, a naturally deposited solid material/rock from which a metal or valuable mineral can be extracted profitably is ore. No, it cannot be used directly as such without processing. I am producing process description and flow chart of the process undertaken on Kestelek Colmanite imported by us and used in manufacturing of Boric Acid. The Kestelek Colamanite imported by us is firstly fed in ball mill/crusher for grinding and then transferred to slurry pumping tank for further process.

Question No.05:- It is found that Kestelek Colemanite (-3MM) imported by you is in form of greyish moist powder with small lumps. Please state that any ore can exist in the said form?

Answer:- Kestelek Colemanite imported by us is in form of greyish moist powder/dust with small lumps. I state that Kestelek Colemanite is only water washed and screened for required sizes at plant of Etimaden, Turkey before import and no any other process has been done.

Question No. 06:- What is difference between Ground Colemanite and Kestelek Colamanite produced by Etimaden, Turkey?

Ans: I state that we imported only Kestelek Colamanite. I also state that there are four/five mines owned by Etimaden Turkey and Kestelek is one of them. Kestelek

Colamanite is named as produced in mines named Kestlek. The Kestlek Colamanite which is imported by us is in form of greyish moist small lump which also contain colamanite dust and produced by only washing and screening. As regard Ground Colemanite, I state that Colemanite which is concentrated, grinded and pulverized by Etimaden at their plant is known as Ground Colemanite and it comes in white powder form. This fact can also be verified from the website of Etimaden.

Question No.07:- Please go through your answer to question no. 03 of this statement wherein you have stated that supplier of Kestlek Colemanite 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 offer your comments.

Answer:- Sir, I have gone through my answer to question no. 03 of this statement wherein, I have stated that supplier of Kestlek Colemanite is M/s Etimaden, Turkey. I have also gone through the print out taken from website of M/s Etimaden (<http://www.etimaden.gov.tr/en>) wherein it is mentioned that "The B_2O_3 content of the colemanite ore mined from open quarry is between %27-%32". I cannot comment on the details mentioned on the website of Etimaden however as I known it varies from mines to mines.

Question No. 08: Please peruse the Re-Test Report dated 11.06.2020 of Joint Director, CRCL, New Delhi of samples of Kestlek Colemanite in respect of BE No 6554848 Dt 20.01.2020 imported by you wherein % B_2O_3 is 36.40. Are you agree that Kestlek Colemanite imported by you is enriched to increase the concentration as exist in open query of Etimaden, Turkey [%27-%32]?

Ans: I have gone through the Re-Test Report dated 11.06.2020 of samples of Kestlek Colemanite in respect of BE No 6554848 Dt 20.01.2020 imported by us and put my dated signatory in token of its perusal. On going through the said Test Report, I noticed that % B_2O_3 is 36.40. The Kestlek Colemanite imported by us under said Bill of Entry contains 36% of B_2O_3 [Approx] as I stated above however it exist in raw form which contain huge moisture and various process is required to be done before use.

15.2 Statement dated 12.03.2021 of **Shri Bhagwan B. Shete**, F Card Holder of CHA firm, recorded before the Superintendent of Customs (SIIB), Surat, (RUD-13), is reproduced as under:

"On being asked regarding the import of goods by M/s. Organic Industries Private Limited, I state that my CHA firm is engaged in clearance of various types of mineral products mainly "Kestlek Colemanite" imported by M/s. Organic Industries Private Limited at Adani Hazira Port only during the period 2017-18 and 2019-20.

On being asked I state that our CHA firm received documents from M/s. Organic Industries Pvt Ltd through courier mainly and sometimes through e-mail. On the basis of these documents submitted by M/s. Organic Industries Pvt Ltd, our firm filed Bill of Entry on behalf of M/s. Organic Industries Pvt Ltd. On being asked regarding the approval of checklist, I state that we forwarded the checklist to M/s. Organic Industries Pvt Ltd for the approval before filing of Bills of Entry.

On being specifically asked the test report of load port/shipper for cargo in respect of goods "Kestlek Colemanite", I state that our CHA firm

not received any test report of load port/shipper for cargo from M/s. Organic Industries Pvt Ltd.

I have been asked to peruse the copy of following Bill of Entry and corresponding documents, as detailed in below mentioned Table-A, submitted by my CHA firm vide letter dated 09.03.2021 in respect of import made from M/s. Asian Agro Chemicals Corporation, UAE by M/s. Organic Industries Pvt Ltd and offer my comments.

TABLE-A

Bill of Entry No. & Date	Bill of Lading No. & Date	Invoice No. issued by Seller	Testing Report No. & Date of M/s. ETiMADEN	Description of goods mentioned in Testing Report
3128465 dt 06.05.2019	SAFM 581049261 dt. 11.04.2019	2019/04/182 dt 11.04.2019	890000038967 dt 17.04.2019	Colemanite, Concentrated, Granular, In B - 3 mm
3194634 dt 11.05.2019	SAFM 581375931 dt 12.04.2019	2019/04/184 dt 12.04.2019	890000039399 dt 17.04.2019	Colemanite, Concentrated, Granular, In B - 3 mm
3595539 dt 10.06.2019	SAFM 581675796 dt 21.05.2019	2019/05/2017 dt 17.05.2019	890000040576 dt 27.05.2019	Colemanite, Concentrated, Granular, In B - 3 mm
3693251 dt 17.06.2019	SAFM 582556676 dt 11.06.2019	2019/05/2017 dt 17.05.2019	890000040576 dt 27.05.2019	Colemanite, Concentrated, Granular, In B - 3 mm

I have perused the above Bills of Entry and its corresponding documents viz. Bill of Lading and Testing Report etc. submitted by me vide letter dated 09.03.2021 and appended my dated signature in token of having seen and perused. In this regard, I state that in respect of filing of above Bills of Entry at that time, these import related documents were forwarded by M/s. Organic Industries Pvt Ltd to our firm. I confirm that Test Report shown in above Table-A are related to respective Bills of Entry shown in corresponding column.

On being asked regarding why the description of goods shown in testing report as

“Colemanite, Concentrated, Granular, In B -3 mm”

were not disclosed in Bill of Entry at that time I state that as M/s. Organic Industries Pvt Ltd has supplied these test reports only in respect of above Bills of Entry, therefore, as per prevailing practice in respect of other Bills of Entry we disclosed description of goods as “Kestelek Colemanite (-3 mm) 38% B₂O₃ Minimum Natural Boron Ore” on the basis of Invoice and Packing List issued by the shipper & description shown in Bill of Lading and the Test Report have not been taken into consideration by our CHA firm at the time of filing of Bills of Entry.

On being specifically asked, I state that I am fully aware that the exemption of Basic Custom Duty (BCD) is available to Boron Ore only and not to Boron Concentrates. I further state that exemption of Basic Customs Duty (BCD) is available to Boron Ore as per (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) (from 01.07.2017). I further state that "Boron Concentrates" attracts Basic Customs Duty (BCD) @ 5% as per (i) Notification No. 12/2012-Cus dated 17.03.2012, as amended (Sr. No. 108) (till 30.06.2017) and (ii) Notification No. 50/2017-Cus dated 30.06.2017, as amended (Sr. No. 120) (from 01.07.2017). I want to further add that vide Notification No. 02/2021-Cus dated 01.02.2021 (Sr. No. 12), now Boron Ore and Concentrate would uniformly attract BCD at a uniform rate of 2.5%.

15.3 The test report (Testing report) issued by the manufacturers' nominated laboratory and produced by CHAM/s **Swami Samarth Clearing Agency** vide their letter dtd. 09.03.2021 shows the description of goods as "Colemanite, Concentrated, Granular in B-3MM". It appears that the testing report itself described that the sample was withdrawn from the cargo which was Colemanite in concentrated form in bulk. In other words, the test report certifies that the product is a concentrated output of the original milled ore. The scanned image of one of the test reports submitted by CHA **M/s Swami Samarth Clearing Agency** i.e., Test Report No. 890000040576 dated 27.05.2019 pertained to order no.101/2019 (Corresponding B/E no. 3595539 dtd. 10.06.2019 and B/E no. 3693251 dtd. 17.06.2019) is reproduced for illustration purpose:

**SCAN IMAGE OF TEST REPORT NO 890000040576 dated
27.05.2019**



TÜRKAK
TÜRK AKREDİTASYON KURUMU
TURKISH ACCREDITATION AGENCY
tarafindan akredite edilmiş
ETİ MADEN İŞLETMELERİ GENEL MÜDÜRLÜĞÜ
KALİTE KONTROL LABORATUVARI
Kestelik - Bigadiç Bor İşletme Müdürlüğü Mustafakemalpaşa



ANALİZ RAPORU
(TESTING REPORT)

Rapor Tarihi (Report Date)	:	27.05.2019
Sayı (Report Number)	:	890000040576
Müşterinin Adı/Adresi Customer Name/Address	:	Pazarlama ve Satış Dairesi Başkanlığı Marketing and Sales Department
Dosya Numarası File Number	:	19-AACC-101 / 70043840
Gözlemci Firma Name of Inspector	:	
Ürünün adı ve tarihi Name of sample	:	COLEMANITE, CONCENTRATED, GRANULAR, IN BULK 3MM
Sevk Edilen Miktarı (MTon) Shipped Quantity	:	408.000 (TON)
Sevk Tarihi Shipment Date	:	17.05.2019
Bağışlama Yeri Port of Discharge	:	HAZIRA/INDIA
Kabul Tarihi ve Analiz Tarihi Receiving date of sample and date of analysis	:	27.05.2019/ANKARA LTD.
Üretilim tarihi/Batch No Production date/Batch No	:	Üretilim Tarihi/palıtlar/lorba Üzerindeki etiketlerde belirtilmiştir. Specified at the labels on the bags / pallets
Son Kullanım Tarihi Expiry Date	:	+5 °C ile +30 °C arasında kuru ve uygun havalandırma depolama koşullarında üretilim tarihinden itibaren 3 yıldır. 3 years after production date, in dry and proper ventilation storage conditions between +5 °C and +30 °C.
Talep Numarası (Order No)	:	101/2019
Raporun Sayfa Sayısı Number of pages of the Report	:	1 / 2
Açıklamalar		
ASIAN AGRO CHEMICALS CORPORATION/AL HAMRA, RAS AL KHAIMAH.		
<small>Türk Akreditasyon Kurumu (TÜRKAK) Deney raporuna teknik bir konuda Avrupa Akreditasyon Birliği (EA) ve Uluslararası Laboratuvar Akreditasyonu (ILAC) ile anlaşmaya imza atılmıştır. The Turkish Accreditation Agency (TÜRKAK) is signatory to the multilateral agreements of the European co-operation for the Accreditation (EA), and of the International Laboratory Accreditation Cooperation (ILAC) for the mutual recognition of test reports. Deney ve təsdiq sənədinin təsdiq etdirilməsi üçün təsdiq (əlçək) və deney təsdiq sənədində təməl olunan əməkdaşlıq sənədləri tətbiq olunmalıdır. The test and reference measurement results (certification) and the test report of the laboratory shall be used, based on the agreements mentioned in the annexes of the respective mutual recognition agreements. The uncertainties of the test results and test methods are given on the following pages which are part of the report.</small>		
Məhür (Seal)	Tarix (Date)	Kontrol Eden (Controlled By)
	27.05.2019	VOLKAN ÖZTÜRK
Tel: Faks:		

Bu rapor laboratuvarının yazılı formda istenilen kriterlere uygun kopyalanıp çoğaltılmaması. İmza ve mühürlü raporlar geçersizdir.
This report shall not be partially copied or reproduced without written consent of the laboratory. Reports without signature and seal are invalid.

FRM GEN 15/29.05.2016-09

15.4 During investigation of a similar enquiry by D.R.I., Surat in respect of import of “ULEXITE” described as “ULEXITE BORON ORE” manufactured by same producer **M/s ETİMADEN**, Turkey and supplied through the same trader i.e. **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 ETİMADEN** 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, submitted the copies of import documents of **M/s Indo Borax** which include the test report of ‘ULEXITE’ supplied by **M/s ETİMADEN**, 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 also obtained and as per Test Report of Chemical Examiner, Grade-I, Central Excise & Customs Laboratory, Vadodara all such imported items were ‘processed mineral Ulexite’ of the Show Cause Notice no. DRI/AZU/SRU-06/2020/Indo-Borax dated

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 "KestelekColemnite" which is having minimum concentration of B_2O_3 at 36% to 40%. Hence, it is clear that "KestelekColemnite" is a more refined and concentrated product and the test report of the producer in case of "ULEXITE" declare it as concentrated product and the presence of higher %age of B_2O_3 makes it more concentrate. However, no such test report of the producer **M/s ETiMADEN** has been disclosed by the Noticee in present case through e-sanchit portal/customs department.

15.5. The Union Government, after assessing the practice of declaring concentrate of Boron ore as 'Boron Ore', has withdrawn the exemption given to 'Boron Ore' and now S. No. 130 of notification No. 50/2017-Customs is amended to prescribe BCD rate of 2.5% on all goods under CTH 2528. As a result, boron ore and concentrate would uniformly attract BCD at a uniform rate of 2.5%. [S. No. 12 of notification No. 02/2021-Customs dated 1st February, 2021]

16. OUT COME OF INVESTIGATION:

16.1. In view of the discussions in the aforesaid paras, it appears that the Noticee are engaged in import of Kestelek Colemanite (-3MM) 40%/38%/36% B_2O_3 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 Kestelek Colemanite (-3MM) 40%/38%/36% B_2O_3 under CTH. 25280090 of Customs Tariff Act, 1975 from 25.01.2019 (prior to 25.01.2019 under CTH 25280030) and availed exemption by declaring as Natural Boron Ore from payment of Basic Customs duty as per Sr. 130 of Customs Notification No. 50/2017 dated 30.06.2017 and 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 for period from 01.07.2017 to 23.05.2020 and 06.04.2016 to 30.06.2017 respectively.

16.2 In view of the discussions in aforesaid paras, 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 physic-chemical operation viz. cleaning, washing, drying, separation, crushing, grinding, etc. Natural Ore which 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. 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 physic-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.

16.3 In view of the discussions in aforesaid paras 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 B₂O₃ 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 enriched by physical processes and converted into concentrated boron products. Mined Colemanite goes through the processes of enrichment grinding in hi-tech concentrator facilities available with **M/s ETiMADEN** and by this process concentrated Colemanite is produced. Further, by this process the mined Colemanite ore having B₂O₃ ranging between 27%-32% has been enhanced to produce Colemanite Ore Concentrate which is sold as Kesletek Colemanite having B₂O₃ 36% to 40%. The content of B₂O₃ has also been confirmed as 36.47% and 36.40 % by CRCL, Vadodara and CRCL, New Delhi respectively. Thus, Kestelek 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. Thus, Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ produced by **M/s ETiMADEN** is Ore Concentrate.

16.4 It also appear from the above discussion at para 15.3 that the test report of the producer itself describe their product as concentrated colemanite which shows that the original milled ore has been worked upon to derive a concentrated output and being marketed as 'KestelekColemnite' by the producer. Further, it also appears from discussion at para 15.4 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 its all 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 dated 17.03.2012 (upto 30.06.2017) and Sr. no. 130 of the Not. No. 50/2017-Cus dtd. 30.06.2017 (from 01.07.2017 onwards).

16.5 It appears that the Noticee classified Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ Natural Boron Ore as "**Others**" under CTH 25280090 of Customs Tariff Act, 1975 from 25.01.2019. Further, it also appears that Kestelek 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 Kestelek Colemanite is CTH 25280030 of Customs Tariff Act, 1975. Thus, the Noticee has wrongly classified Kestelek Colemanite (B₂O₃ 36% to 40%) under CTH 25280090 of Customs Tariff Act, 1975 for their said imports from 25.01.2019 and the same is required to be re-classified under CTH 25280030 of Customs Tariff Act, 1975.

16.6 It also appears that as per Sr No. 130 of Customs Notification No. 50/2017 dated 30.06.2017 and 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 the NIL rate of Basic 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, from simultaneous 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, it is noticed that exemption has been given only to Boron Ore not to concentrate of Boron Ore.

16.7 It further appears that Kestelek Colemanite imported under Bill of Entry No. 6554848 dated 20.01.2020, totally weighing 408000.000 Kgs V/a Rs. 1,01,46,960/- has been seized under Section 110(1) of Customs Act, 1962 being liable for confiscation under Section 111(m) of Customs Act, 1962. The same was subsequently released provisionally by the competent authority on request of M/s Organic under provisions of Section 110A of the Customs Act, 1962.

16.8 It also appears that the Noticee imported Kestelek Colemanite, B₂O₃ 36% to 40% by declaring as Natural Boron Ore and cleared under Jurisdiction of the Commissioner of Customs, Ahmedabad from April, 2016. The Bills of Entry filed by the Noticee for the period from 06.04.2016 to 07.01.2020 have been assessed finally. After initiation of inquiry, the Bills of Entry filed by the Noticee have been assessed provisionally and the Noticee paid Basic Customs duty @ 5% as per Sr. No 120 of Notification No. 50/2017 dated 30.06.2017.

17. DEMAND OF DUTY: -

17.1 It appears that imported goods declared as "Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ Natural Boron Ore" by the Noticee is a concentrate of Natural Calcium Borate however the Noticee had mis-declared the description as "Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ 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 intention to evade Customs Duty by wrongly availing the exemption under Sr. No. 130 of Notification No. 50/2017-Cus dated 30.06.2017 and 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 for period from 06.04.2016 to 30.06.2017 and 01.07.2017 to 23.05.2020 respectively by declaring Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ as Boron Ore as the exemption was available only to Boron Ore knowingly and deliberately with intention to evade Customs duty amounting to Rs. **7,01,38,078/-** as detailed in **Annexures A/1, A/2, A/3, A/4, A/5** and consolidated in **Annexure-A/6** for the period 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 [up to 31.05.2020] respectively. The fact that Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ imported by them are concentrates of Natural Calcium Borate is clearly evident from the process and literature discussed by **M/s ETiMADEN** on their website in respect of Colemanite wherein they have clearly stated that after mining from open query, enrichment in concentrator plant has been done and enhanced content of B₂O₃ from 27%-32% to make it usable 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 as was being done by the importer prior to 25.01.2019 but the importer appears to have willfully mis-classified the same under tariff item no. 25280090 from 25.01.2019. It appears that it is not the case where importer was not aware of the nature and appropriate classification of goods. However, the importer has 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 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 to demand the evaded duty 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 Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ as Natural Boron Ore under "**Others**" CTH 25280090 of Customs Tariff Act, 1975 from 25.01.2019 onward whereas, Kestelek Colemanite is Natural Calcium Borate and 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 Kestelek Colemanite is CTH 25280030 of Customs Tariff Act, 1975. Thus, the Noticee have wrongly classified their imports of Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ from 25.01.2019 onward under CTH 25280090 of Customs Tariff Act, 1975 which is required to be rejected and appropriately to be classified under CTH 25280030 of Customs Tariff Act, 1975.

19. Section 114A of Customs Act, 1962 provides for imposition of equivalent penalty for short levy or non-levy of duty in cases where the duty has not been levied or has been short levied by reason of collusion or any willful mis-statement or suppression of facts. In this case, the mis-declaration of description and classification is intentional and the Noticee also appears liable to penalty under Section 114A of the Customs Act as short payment of duty is on account of willful mis-statement or suppression of facts on the part of importer. The Noticee also appears liable for penalty under Section 114AA of the Customs Act, 1962 as test report of the producer **M/s ETiMADEN** has not been disclosed by the Noticee through e-sanchit portal of the department with intent to wrongly avail exemption from payment of Customs Duties.

19.1 The Noticee have imported 51696 MTS of Boron Ore Concentrate, totally v/a Rs. 1,26,14,47,364/-, 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 01.07.2017 to 23.05.2020 and 06.04.2016 to 30.06.2017 respectively by declaring Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ as Boron Ore as the exemption was available only to Boron Ore. Out of said goods, goods totally weighing 408 MTS, totally v/a Rs. 1,01,46,960/- [Assessable Value], imported under Bill of Entry No. 6554848 dated 20.01.2020, had been seized being liable for confiscation under Section 111(m) of Customs Act, 1962 which was subsequently released provisionally by the competent authority. Further, balance goods weighing 51288 MTS, totally v/a Rs. 1,25,13,00,404/-, 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 has wrongly claimed the goods imported to be ores and is liable for penalty under Section 112(a) & (b) of the said Act for such acts of contravention.

20. **Shri Narendra J. Jakkani**, 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 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. Thus, he appears to have contravened the provisions of Customs Act and failed to comply with provision of Customs Act thereby rendered himself liable for penalty under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

21. In view of the above, Show Cause Notice F.No. VIII/10-31/ProComm/O&A/2020-21 dated 28.3.2021 was issued wherein the Noticee was called upon to show cause as to why:-

- (i) The classification of goods declared as "Kestelek Colemanite (-3MM) 40%/38%/36% B₂O₃ Natural Boron Ore" under tariff item 25280090 given in the Bills of Entries, as mentioned in **Annexures A-3, A-4& A-5** to the 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. 7,01,38,078/- (Rupees Seven Crore One Lakh Thirty Eight Thousand Seventy Eight Only)** as detailed in **Annexures A-1, A-2, A-3, A-4 & A-5** and consolidated at **Annexure-A6** 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. 1,26,14,47,364/- (Rupees One Hundred Twenty Six Crore Fourteen Lakh Forty Seven Thousand Three Hundred Sixty Four Only)** imported by wrong claiming as Boron Ore as detailed in **A-1, A-2, A-3, A-4 & A-5** to this Show Cause Notice should not be held as liable to confiscation under Section 111(m) of the Customs Act, 1962;
- (v) As the goods placed under seizure were released provisionally on execution of a Bond for **Rs. 1,01,46,960/-** and a security of **Rs 17,96,974/-**, why the Bond should not be enforced and the security furnished should not be appropriated towards the value of the goods;
- (vi) Interest should not be recovered from them on the differential Customs duty as at (iii) above, under Section 28AA of the Customs Act, 1962;
- (vii) Penalty should not be imposed on them under Section 112(a) & (b) of the Customs Act, 1962;
- (viii) Penalty should not be imposed on them under Section 114A of Customs Act, 1962;
- (ix) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962

- (x) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962
- (xi) Protest lodged by them should not be vacated and customs duty of **Rs. 34,01,163/- (Rs. Thirty Four Lakhs One Thousand One Hundred Sixty Three only)** paid under protest towards their differential duty liability should not be adjusted against their total differential duty liabilities.

22. 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 Narendra J. Jakkani**, Director of the Noticee.

23. Defence submissions: M/s. Organic Industries P. Ltd and its Director Shri Narendra J. Jakkani filed written submission dated 19.02.2024 wherein they interalia stated as under:

23.1 That the show cause notice is *prima facie* a literal formalistic interpretation of the exemption notification which is to be avoided in interpreting the beneficial exemption and cited the decision of Honorable Supreme Court in the judgment in Government of Kerala & Anr. v. Mother Superior Adoration Convent [Civil Appeal No. 202 of 2012 and others, decided on March 1, 2021] and stated that same analogy of the Service Tax matter would apply to the current issue of interpretation; that the notice is trying to travel too much into the literal meaning of Boron Ore just to make out a case by hook or by crook;

23.2 That the CRCL Test Reports relied upon in the Show Cause Notice clearly establish that the imported goods are “Natural Boron Ore” and therefore rightly covered under Sr. No.113 of Notification No.12/2012-Cus and Sr.No.130 of Notification No. 50/2017-Cus.; that Sr.No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus, both grant exemption from basic customs duty to “Boron Ores” falling under Customs Tariff Heading 2528; that the dispute raised in the Show Cause Notice as to the applicable sub-heading of Heading 2528 is irrelevant to the question of exemption under the said Sr. No.113 and the said Sr. No.130 as both the said Sr. Nos. refer only to Heading 2528 and therefore for the purpose of claiming the exemption under the said Sr. Nos. 113 and 130, it is entirely irrelevant whether the goods fall under Sub-Heading 25280090 or Sub-heading 25280030. Since admittedly the goods fall under Heading 2528, the first requirement of the both said Sr. Nos. is satisfied;

23.3 That Report of CRCL, New Delhi, establishes that the imported goods are “Boron Ore”. that the Test report dated 5-6-2020 of CRCL states that on the basis of the test carried out by CRCL and the available technical literature, the sample is **“Mineral Colemanite- a Natural Calcium Borate (commonly known as Boron Ore)**. The CRCL, New Delhi has by letters dated 24-6-2020 and 8-7-2020 addressed to Joint Commissioner, SIIB, in response to the letters of SIIB, reiterated that the sample is **“Mineral Colemanite- a Natural Calcium Borate (commonly known as Boron Ore)”** and that the same is not calcined. Therefore, the very evidence relied upon in the Show Cause Notice in the form of Test Report of CRCL, New Delhi, establishes that the imported goods are **“Boron Ore”** and consequently the second requirement of the said Sr. Nos.113 and 130 that the imported goods must answer the description “Boron Ores” given in the said Sr. Nos. is also satisfied; that the goods imported by noticee company fall under CTH 2528 and since as per the Test Report of the CRCL, New Delhi the imported goods are “Boron Ore”, both the requirements of the said Sr. Nos. 113 and 130 of Notifications Nos. 12/2012-Cus and 50/2017-Cus respectively are

satisfied and therefore the goods are eligible to the duty exemption thereunder; that in **support of the submission that the department cannot contend contrary to the Test Report of the CRCL, New Delhi, which is an expert body, they place reliance on the following judgments:**

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

23.4 That Show Cause Notice proceeds on the erroneous premise that exemption under Sr. No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus is confined and restricted only to the ore in the state/condition in which it is mined i.e. with foreign particles, impurities and other substances; that the extracted boron ore is crushed into small pieces and classified according to the rock sizes. In this process, the ore is screened through screens, where the separation is made according to a standard product specification. The size classification by screening is one of the most important phases of production; that the exemption notification No. 50/2017-Cus dated 30th June 2017 clearly mentions BORON ORES at S.No. 130 of the table annexed to the notification which attracts NIL rate of Customs Duty; that the Chemical re-test report of the CRCL, New Delhi, is also mentioning a mineral which is naturally an ore when there is no objectionable material in the content; that are three types of borates, colemanite ($2\text{CaO}\cdot3\text{B}_2\text{O}_5\cdot5\text{H}_2\text{O}$), ulexite ($\text{CaO}\cdot\text{Na}_2\text{O}\cdot3\text{B}_2\text{O}_5\cdot5\text{H}_2\text{O}$), and tincal ($\text{Na}_2\text{O}\cdot2\text{B}_2\text{O}_5\cdot10\text{H}_2\text{O}$), commercially exploited in Turkey. These hydrated borates are found in the west part of the country and they are usually processed at the mine sites. All borate production is carried out by ETIBANK which is the largest state-owned mining and metallurgy company in Turkey. ETIBANK mines and processes the borates in four main areas, Emet (colemanite), Bigadic (colemanite and ulexite), Kestelek (colemanite and ulexite) and Kirka (tincal); that noticee company had in past made a detail representation for exemption to the imported product, i.e., Kestelek Colemanite(-3MM)Natural Boron Ore which was duly granted by the Government of India vide Notification No. 12/2012-Customs at S.No. 113 as amended by notification No. 28/2015-Customs dated 30-4-2015 refers S.No. 113A has been omitted since ulexite ore, being boron ore, was also exempt from Basic Customs Duty; that the status of exemption has not changed even after the issue of Notification No. 50/2017-Customs dated 30-6-2017 and stated that TRU letter of D.O.F. No. 334/5/2015-TRU dated 30-4-2015 clearly stated under the Customs changes by Finance Bill,2015 that Basic Customs Duty on Colemanite and other Boron Ores has been reduced from 2.5% to NIL vide S.No. 113 of notification Notification No. 12/2012-Customs at S.No. 113 as amended by notification No. 28/2015-Customs dated 30-4-2015 refers S.No. 113A has been omitted since ulexite ore, being boron ore, was also exempt from Basic Customs Duty.

23.5 That the Noticee Company have never ever suppressed any fact from the department at any stage ever since we are in this business from 2008; that just because there is a separate entry No. 120 referring to all goods falling under Chapter 25(except 2515, 2516, 2523 & 2524) which is attracting customs Duty @ 5%, this futile attempt is being made to show that the imported product is not Boron Ore; that no natural ore can be found which has not been processed or concentrated from a mineral to remove objectionable impurities; that since the Chemical examiner himself is also accepting the fact that it is a processed or crushed mineral so it is beyond doubt that the import consignment is Natural Boron Ore and nothing else; that it is not the case that the imported goods are ORE CONCENTRATES as is being alleged; that Crushing and screening do not amount to concentration as per HSN Explanatory Notes and Technical Literature;

23.6 That there is no definition of "Concentrates" in Central Excise or Customs Tariff. It is a settled law that if the Central Excise or Customs Tariff does not

define any term, importer can resort to H.S.N. Explanatory Notes. Hon'ble Supreme Court in the case cited in 1995 (77) ELT 23 (SC) and 1997 (91) ELT 13 (SC) held that any dispute relating to Tariff classification, must as far as possible, be resolved with reference to the nomenclature indicated by the H.S.N. unless there be an express, different intention indicated by the Central Excise Tariff Act, 1985 or Customs Tariff, 1975. In other words, H.S.N. is to be relied upon for ascertaining the correct meaning of any expression used in the Tariff; that the foreign exporting company of the goods has also certified that Kestelek Colemanite (-3mm) is a Natural Boron Ore and it is only a mined product;

23.7 That the Show Cause Notice proceeds on the totally erroneous premise that the exemption under Sr. No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus is confined and restricted only to "Natural Ore" i.e. naturally occurring raw and native mineral as obtained from the mine and containing various foreign material, impurities and other substances; that a bare perusal of the said Sr. Nos.113 and 130 of Notifications Nos. 12/2012-Cus and No. 50/2017-Cus respectively, would show that they cover "Boron Ores" without any qualification. There is no restriction or condition in the said Notifications that the Boron Ore should be in the state or condition in which it is mined i.e. with foreign particles, impurities and other substances, nor is there any stipulation in the said Notifications that if the Boron ore is imported after removing the foreign particles, impurities and other substances, it would not be entitled to the exemption, therefore, the presumption in the Show Cause Notice that the exemption to "Boron Ores" under Sr. No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus is available only if the Boron Ore is imported with the foreign particles, impurities and other substances contained in it when extracted from the mine and that the exemption is not available if the Boron ore is imported after removing the foreign particles, impurities and other substances by physical processes, is totally baseless and untenable in law; that expression "Boron Ores" appearing in the said Sr. Nos. 113 and 130, must be confined and restricted to Natural Boron Ores i.e. Ore in the state and condition in which it is mined without removing the impurities/ foreign particles, the Show Cause Notice is reading into the Notification additional words and conditions which are absent in the Notification; that it is settled law as laid down in the following judgments that it is not permissible to read into the Notification, any additional words or conditions/ restrictions which are not stipulated in the Notification:

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

23.8 That the contention in the Show Cause Notice that the exemption under the said Sr. Nos.113 and 130 of Notifications Nos. 12/2012-Cus and 50/2017-Cus is confined to Natural Boron Ore i.e. the Ore in the condition in which it is mined, has ignored and disregarded the fact that **with effect from 1st March 2005, the entry "Natural Boron Ore" in the earlier exemption Notifications has been replaced by the entry "Boron Ores"**. The Notifications prior to 1st March 2005, viz. Notification No.23/98-Cus (Sr. No.20), Notification No.20/99-Cus (Sr. No.22), Notification No.16/200-Cus (Sr. No.50), Notification No.17/2001-Cus (Sr. No.54) and Notification No.21/2000-Cus (Sr. No.57), all used the expression "Natural Boron Ore". However, with effect from 1st March 2005, by amending Notification No.11/2005-CUS, the expression "Natural Boron Ore" was replaced by the expression "Boron Ores". Thus, the word Natural which qualified Boron Ore in the notifications in force prior to 1st March 2005 was consciously dropped by the amending Notification 11/2005-Cus and subsequent Notifications Nos. 12/2012-Cus and 50/2017-Cus and the singular Ore was made into plural Ores. It is thus clear that with effect from 1st March 2005, the exemption is available to all types of Boron Ores and is not restricted

or confined to only Natural Boron Ore i.e ore in the condition in which it is mined;

23.9 That the scope of the term "Ore" appearing in the Tariff has been examined by the Hon'ble Supreme Court in the case of **Minerals & Metals Trading Corporation of India v UOI & ors-1983 (13) ELT 1542 (SC)** and the Hon'ble Supreme Court has held that the term "Ore" cannot refer to the Ore as mined; That the said legal position laid down by the Hon'ble Supreme Court has been followed by the Hon'ble Tribunal in the following decisions:

- a) **CC v Hindustan Gas & Industries Ltd - 2006 (202) ELT 693:**
- b) **CC v Electro Ferro Alloys P. Ltd- 2007 (217) ELT 302:**
- c) **Shir Bhavani Minerals v CCE-2019 (366) ELT 1041:**

23.10 That the reliance placed by Notice in Para 15.2 , 15.3 15.4 of the proceeding in case of another importer of completely different goods is irrelevant;

23.11 That confiscation of imported goods also does not hold goods once the classification of imported goods and the avilament of exemption notification is not disputed; that they placed reliance on case of **MD Raju Hussain v. Commissioner of Customs (Preventive), Guwahati - reported in 2016 (331) E.L.T. 595 (Tri. Kolkata)** GMR Energy Ltd. Versus Commissioner of Customs, Bangalore-2015 (0325) ELT 0445 (S.C.)-

23.12 That the larger period of limitation inapplicable in the present case; that the Show Cause Notice is partly barred by time, having been served on us after the expiry of the limitation period of two years specified in Section 28(1) of the Customs Act 1962; that it is settled law that claiming of a particular classification or Notification is a matter of belief on the part of the importer and, the claiming of a particular classification or exemption Notification does not amount to mis-declaration or wilful mis-statement or suppression of facts. Noticee Company have correctly the described the goods in the Bills of Entry as kestlek Colemanite B₂O₃ 40% Natural Boron Ore which they indeed are as evident from the Test Report of the CRCL, Dehli which the Department is relying upon in the said Notice and therefore, as laid down in the following judgments, the claiming of a particular classification or Notification with which the department subsequently disagrees does not amount to mis-declaration or wilful mis-statement or suppression of facts:

- (a) Northern Plastic Ltd v Collector – 1998 (101) ELT 549 (SC)
- (b) CC v Gaurav Enterprises – 2006 (193) ELT 532 (BOM)
- (c) C. Natwarlal& Co v CC-2012-TIOL-2171-CESTAT-MUM
- (d) S. Rajiv & Co. v CC – 2014 (302) ELT 412.

(e) LewekAltairShippingPvt.Ltd.vCC-2019(366)ELT318(Tri-Hyd)=

2019 7) ELT A328 (SC)

23.13 That Section 111(m) of the Customs Act, 1962 has no application; that the goods had been correctly described in the Bills of Entry and there was no mis-declaration as regards the description, value or other particulars of the goods; that mere claiming of an allegedly incorrect classification or notification does not attract the provisions of Section 111(m) of the Customs Act 1962.

23.14 That since as explained above there has been no collusion, wilful mis-statement, suppression of facts or false declaration, no penalty can be imposed under Section 114A and Section 114AAA of the Customs Act 1962. Further, since as explained above, the goods are not liable to confiscation under Section

111(m) of the Customs Act 1962, no penalty can be imposed under Section 112 (a) or Section 117 of the Customs Act 1962; that it is settled law as laid down in the following judgments that claiming of a particular classification or Notification with which the department does not agree does not justify imposition of penalty:

C. Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM

S. Rajiv & Co. v CC – 2014 (302) ELT 412

Kores (India) Ltd. 2019(5)TMI 922.

23.15 With regard to the reply of Shri Narendra Jakani, Director, stated that investigation has wrongly mis-interpreted the answer no. 4 to their question no. 4 as he clearly answered that from where the 'Ore' is derived meaning thereon that normally a solid rock/material from which valuable material can be extracted profitably is ore and he further said that it cannot be used directly without processing and submitted the flow chart of the process undertaken of their product Kestelek Colemanite; that further that doesn't result into any refined product as the demand notice is misconstruing the statement given by the noticee No. 2 as the flow chart is showing the process of water pouring and segregation of minerals in raw form and not in any refined product form; that in the present case CRCL, New Delhi reply dated 08.07.2020 clearly decline to comment about the process of their samples drawn about the process for calcination and enrichment/concentration and only gave assurance about the % value of B2O3 (Boron Ore), even though investigation is treating it as concentrated or refined product which is bad in law and proposal of imposition of penalty upon the noticee No. 2 being director is totally unwarranted and requires to be dropped ab-initio; that they relied on the following judgment in his support.

a. 2020 (372) E.L.T. 878 (Tri. - Mumbai) COMMISSIONER OF CUSTOMS

(IMP.), ACC, MUMBAI Versus BIG VISION PVT. LTD.

b. 2016 (342) E.L.T. 280 (Tri. - Kolkata) D.K. SHIPPING AGENCY Versus COMMISSIONER OF CUSTOMS (PORT), KOLKATA.

c. Commissioner v. Praveen Ahuja - 2008 (226) E.L.T. A103 (Guj.)

23.16 That the noticee No. 2 in his statement clearly stated everything truthfully and acted as per his fiduciary duty with all available records without violating the provisions of the Customs Act and rules there under for the Classification of their product Kestelek Colemanite as 'Boron Ore' and correctly availed exemption notifications 12/2012-Cus Sr. No. 113 and 50/2017-Cus Sr. No. 130 from the payment of basis customs duty and hence this is not the case of any abetting of any offence and such imposition of penalty requires to be set aside forthwith; that once penalty is imposed upon firm subsequently penalty on the director appellant requires to be set aside being settled law as held by number of judgments . The appellant director relies on the following judgments viz., 2019 (370) E.L.T. 973 (Tri. - All.) LOGIX SOFT TEL. PVT. LTD. Versus COMMISSIONER OF CUS. C. EX. & S.T., NOIDA; Amit Rajkumar Singhania v. Commissioner - 2019 (368) E.L.T. A348 (Tri. - Mumbai),, 2018 (359) E.L.T. 713 (Tri. - Kolkata) SANTOSH RADIO PRODUCTS Versus COMMISSIONER OF CUSTOMS (PORT), KOLKATA.

24 Personal Hearing: Personal hearing was fixed on 01.03.2024 for M/s. Organic Industries P. Ltd and its Director Shri Narendra J Jakkani. Shri Ajay Banerjee, Advocate appeared on behalf of Importer M/s. Organic Industries P. Ltd and its Director Shri Narendra J Jakkani wherein he reiterated submission dated 19.02.2024.

25 Discussion and findings: I have carefully gone through the Show Cause Notice dated 28.03.2021, written submission dated 19.02.2024, relevant

provisions of law and various decisions relied on by the advocate in their submission on behalf of M/s. Organic Industries Pvt. Ltd, and its Director Shri Narendra J Jakkani and records of personal hearing held on 01.03.2024.

26. This denovo proceeding has been initiated consequent to the CESTAT's Final Order No A/10118-10134/2023/2023 dated 25.01.2023 in respect of Appeal No. C/10203/2022 and C/10204/2022 filed by M/s. Organic Industries Pvt. Ltd, and its Director Shri Narendra J Jakkani respectively. Relevant Para of CESTAT's Final Order No A/10118-10134/2023/2018 dated 25.01.2023 is re-produced :-

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

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

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

27.1 Whether the goods imported by M/s. Organic Industries Pvt. Ltd under their Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4 & A-5 to Show cause Notice, declared by them as "Kestelek (-3MM) 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"?

27.2 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?

27.3 Whether the goods imported by M/s. Organic Industries Pvt. Ltd under their Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4 & A-5 of the Show cause Notice are liable to confiscation or otherwise? And whether Bond executed for provisional release of seized goods of 408 MTs imported under the Bills of Entry No. 6554848 dated 20.01.2020 is required to be enforced and further the bank guarantee/security submitted should be appropriated towards the value of the goods?

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

27.5 Whether, Shri Narendra J. Jakkani, Director of M/s. Organic Industries Pvt. Ltd is liable to Penalty Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962?

28. Points at Sr. No. **27.2 to 27.5** 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. 27.1 supra is answered in the affirmative. Thus, the main point is being taken up firstly for examination.

29. Whether the goods imported by M/s. Organic Industries Pvt. Ltd under their Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4 & A-5 of the Show cause Notice, declared by them as "Kestelek Colemanite (-3MM) 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'?

29.1.1 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 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.

29.1.2 I find that initially, the sample were drawn from the import of impugned goods imported vide Bill of Entry No.6554848 dated 20.01.2020 by the Noticee. The sample drawn was sent to CRCL, Vadodara vide Test Memo No. 09/2019-20 dated 27.01.2020 who reported Test Report vide letter dated 07.02.2020 as under :

"The sample is in the form of **grey colour granular moist powder**. It is mainly composed of oxides of Boron & Calcium alongwith siliceous matter. **B₂O₃ content = 36.47** and **CaO = 24.69**.

*Above analytical findings reveal that it is **ground mineral of boron (Colemanite)** crushed.*

29.1.3 M/s. Organic Industries Pvt. Ltd 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. 11/2019-20 dated 02.03.2020 . The Joint Director, CRCL, New Delhi vide letter F.No.25-Cus/C-41/2019-20 dated 11.06.2020 submitted Re-Test report in respect of above mentioned Test Memo which was as under:

"The sample is in the form **Greyish moist powder with small lump**. 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	=03.50
2. % Loss on ignition at (900 degree C) by TGA	= 36.79
3. % B₂O₃ (Dry Basis)	= 36.40
4. % Acid insoluble	= 4.25
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)".

29.1.4 The Joint Commissioner, SIIIB, Customs, Surat vide letter F.No VIII/14-01/SIIIB/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"**

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

Points raised in the Test Memo	Details mentioned in Test Reports	Remarks
Point I Whether the samples were in form in which they are found naturally on earth	The sample is commonly known as Boron Ore.	Since, the test report was not clear as to whether the sample was <u>Ore/Ore Concentrates</u> the classification of the product under Custom Tariff could not be decided.
Point IV Whether the goods are processed using calcination or enriched/concentrated by using any other method	Samples are not calcined	The website of Etimaden(supplier of imported goods) mentioned that 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.

29.1.6 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
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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 36.79%**. 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 in form of grey colour granular moist powder, wherein **B2O3 was 36.47**. CRCL, Delhi, also stated that sample was in powder form (crushed/grinded). 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%.

29.1.7 Further, I find from Para 15.3 of the Show Cause Notice, that Testing Report No.890000040576 dated 27.06.2019 issued by the nominated laboratory of manufacture M/s. Eti Maden, clearly says that goods is "COLEMANITE,CONCENTRATED, GRANULAR, IN B-3MM". Further CHA M/s. Swami Samarth Clearing Agency vide their letter dated 09.03.2021 submitted documents as mentioned in (Para 15.2 of SCN) Table-A to the Show Cause Notice. On perusal of the details submitted and on comparison with the concerned Bills of Entry, it is found that Testing Report says the goods as "COLEMANITE,CONCENTRATED, GRANULAR, IN B-3MM" whereas M/s. Organic Industries Pvt. Ltd., has declared in Bills of Entry as "Kestelek Colemanite (-3MM) 38% B2O3 Minimum Natural Boron Ore". The details of available Testing reports and of description of imported goods mentioned in relevant Bills of Entry is enlisted in the following table.

Bill of Entry No. & Date	Bill of Lading No. & Date	Invoice No. issued by Seller (M/s. Asian Agro chemical Corporation, Al Hamra, Ras Khaimah)	Testing Report No. & Date of M/s. ETiMADEN, Turkey, (Original manufacturer)	Description of goods mentioned in Testing Report	Description of goods mentioned in Bill of Entry
3128465 dt 06.05.2019	SAFM 581049261 dt 11.04.2019	2019/04/182 dt 11.04.2019	890000038967 dt 17.04.2019	Colemanite, Concentrated, Granular, In B -3 mm	Kestelek Colemanite (-3MM) 38% B2O3 Minimum Natural Boron Ore
3194634 dt 11.05.2019	SAFM 581375931 dt 12.04.2019	2019/04/184 dt 12.04.2019	890000039399 dt 17.04.2019	Colemanite, Concentrated, Granular, In B -3 mm	Kestelek Colemanite (-3MM) 38% B2O3 Minimum Natural Boron Ore
3595539 dt 10.06.2019	SAFM 581675796 dt 21.05.2019	2019/05/2017 dt 17.05.2019	890000040576 dt 27.05.2019	Colemanite, Concentrated, Granular, In B -3 mm	Kestelek Colemanite (-3MM) 38% B2O3 Minimum Natural Boron Ore
3693251 dt 17.06.2019	SAFM 582556676 dt 11.06.2019	2019/05/2017 dt 17.05.2019	890000040576 dt 27.05.2019	Colemanite, Concentrated, Granular, In B -3 mm	Kestelek Colemanite (-3MM) 38% B2O3 Minimum Natural Boron Ore

Thus, from the perusal of the Test Reports, it is observed that goods imported by M/s. Organic Industires P. Ltd was "Colemanite, Concentrated" and not "Natural Boron Ore" as claimed by the noticee.

29.1.8 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".

29.1.9 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. Organic Industries Pvt. Ltd., in present case through e-sanchit portal/Customs Department.

29.1.10 I find that Hon'ble CESTAT, Ahmedabad in its Order dated 25.01.2023 has stated that"that *In our considered view, when the test reports are available on record, there is no need to go to the website and Wikipedia*". I find that word 'Ore' and 'Concentrate' as referred in Chapter 2528 has not been defined. Further, CRCL, Vadodara says that it is "off-white fine powder and B2O3 was 41.2% by weight, CRCL, Delhi interalia stated that "sample is in powder form (Crushed/Grinded) and B2O3 was 38.06% 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 Advance Ruling — 2022 (63) G.S.T.L. 445 (Kar.) which has held as under:

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

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

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

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

certainly it can be taken into consideration and even the Apex Court has held that aid of Wikipedia can also be taken into consideration..."

Thus, following the ratio of aforesaid decisions of Hon'ble Supreme Court relied on by the Hon'ble High Court of Kerala and Rajasthan High Court, it would be worth to refer the definition of 'Ore' and 'Concentrate' from Dictionary and Wikipedia. Since the definition of 'Ore' and 'Concentrate' has already been discussed in detail at Para 11 to 11.6 in the Show Cause Notice, it is needless to reproduce the same but from the meaning of 'Ore' and 'Concentrate' as defined in various Dictionaries and Wikipedia, as discussed in Para 11 to 11.6 of the SCN, I find that 'Boron Ore' and 'Concentrate thereof' are two different and distinct product. From the definition of 'Ore' and 'Concentrate', I find that term "Ore" refers to a naturally occurring raw and native mineral which were produced by mines and contain various foreign material and impurities. Ore was extracted from the earth through mining and treated or refined to extract the valuable metals or minerals. The "Concentrate" was dressed Ore obtained by passing through the physical or physic-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.

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

29.1.12 Further, I find that Shri Narendra J Jakkani, Director of M/s. Organic Industries Pvt. Ltd in his statement dated 03.09.2020 has specifically admitted that Calcium Borate (Colemanite) used for manufacture of Boric Acid is purchased from M/s. Eti Meden, Turkey. I find on browsing the website 'www.etimaden.gov.tr/en' of overseas original supplier M/s. EtiMaden, that they declared that " Colemanite, found in Emet, Bigadic and **Kestelek** deposits in Turkey where%73 of the world's boron reserves are, is mined by the experts of world boron leader Eti Maden and goes through the process of enrichment grinding in hi-tech concentrator facilities". Further, in Technical Data Sheet of Product "Ground Colemanite", they mention 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, Colemanite named as **Kestelek** Comemanite is also concentrated Boron Ore'. 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.

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

In this regard, I find that the Department has rightly relied upon the said case as the product imported by M/s. Indo Borax and Chemicals Ltd. namely "ULEXITE BORON ORE" was manufactured by same producer M/s Etimaden, Turkey and supplied through same trader M/s Asian Agro Chemicals Corporation, UAE and it was found that said product i.e., "ULEXITE" was a concentrated product of natural boron Ore despite having much less B2O3 content than that of the product of the Noticee. M/s Pegasus Customs House Agency Pvt. Ltd., CHA of M/s Indo Borax and Chemicals Ltd vide letter dated 03.07.2020 had submitted copies of import documents of M/s Indo Borax which included the test report of 'ULEXITE' supplied by M/s Etimaden, Turkey showing the description of the goods supplied as "*Ulexite, Concentrated, Granular, In Bulk 3-125mm*".

29.1.14 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'.**

29.1.15 Further, I find from the Certificate dated 15.02.2021 issued by the overseas supplier M/s Etimaden wherein they have specifically mentioned as under:

"After subtracting the mineral, as you may know, it is not possible to sell extracted mass together with the stones and other unwanted material since any of the customers do not want to pay for these unwanted stones, clay and other

impurities which are physically separated. Then the lumps are subjected to pulverization to make 75 micron powder and here there is no chemical treatment done. Even calcination is not done. The Boron lumps having B2O3 content ranging from 38-42% are simply powdered wherein crystallographic structure is never changed.”

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

29.1.16 Further, I find that even today on browsing the website ‘www.etimaden.gov.tr/en’ of overseas original supplier M/s. EtiMaden, declares that “ Colemanite, found in Emet, Bigadic and Kestelek deposits in Turkey where%73 of the world’s boron reserves are, is mined by the experts of world boron leader Eti Maden and goes through the process of enrichment grinding in hi-tech concentrator facilities”. Further, in Technical Data Sheet of Product “Ground Colemanite”, they mention 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, 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 Certificate dated 15.02.2021.

29.1.17 Thus, from the above discussion mentioned in **Para 29.1.1 to 29.1.16**, on harmonious reading of the Test Results of CRCL, Vadodara, Delhi, definition of ‘Ore’ and ‘Concentrate’, Test Reports of nominated testing agency of overseas supplier M/s. Eti Maden and the details mentioned in Technical Data of the overseas supplier M/s. Eti Maden, I find that product “Kestelek Colemanite (-3MM) Natural Boron Ore” imported by M/s. Organic Industries Pvt. Ltd is actually ‘Concentrate of Natural Calcium Borate’ or ‘Concentrate of Boron Ore’ and not ‘Boron Ore’ as contended by the Noticee.

29.2 Whether the goods “Kestelek Colemanite(-3MM) 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) (till 30.06.2017) and (ii) Notification No.50/2017-Cus dated 30.06.2017, as amended (Sr. No. 130) (01.07.2017 onwards).

29.2.1 I find from the discussion made in **Para 29.1.1 to 29.1.16** hereinabove that product “Kestelek Colemanite(-3MM) Natural Boron Ore” imported by Noticee is actually’ Concentrate of Calcium Boron Ore’. The same are covered under Chapter Heading 2528 of the First Schedule to the Customs Tariff Act, 1975 which reads as under:

Chapter Head	Description	Unit	Rate of Duty
2528	NATURAL BORATES AND CONCENTRATES THEREOF (WHETHER OR NOT CALCINED), BUT NOT INCLUDING BORATES PREPARED FROM		

	NATURAL BRINE; NATURAL BORIC ACID CONTAINING NOT MORE THAN 85% OF H3 BO3 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 H3 BO3 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 H3 BO3 (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. Organic Industries Pvt. Ltd 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 the Noticee is 'Concentrates of Natural Calcium Borates' which falls under Tariff Item 25280030 of the Customs Tariff Act, 1975(51 of 1975).

29.2.2 I find that M/s. Organic Industries Pvt. Ltd has declared their impugned goods under Customs Tariff Item No. 25280090. On perusal of the above **Para 29.2.1** it is clear that Customs Tariff Item No. 25280090 is for 'others' and Noticee is declaring their import goods as "Kestelek Colemanite(-3MM) 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. Organic Industries Pvt. Ltd 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. Organic Industries Pvt. Ltd has mis classified under Customs Tariff Item No. 25280090.

29.2.3 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. Organic Industries Pvt. Ltd has mis classified their imported goods under Customs Tariff Item No. 25280090 instead of merit classification under Custom Tariff Item No. 25280030.

29.2.4 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 *Id.* 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**". Further, the Testing Report of nominated agency of oversea supplier M/s. Eti Medan also confirms that goods "Kestelek Colemanite(-3MM) Natural Boron Ore" is 'concentrated Colemanite'. 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.

29.2.5 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. Nandi 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 statue 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"

29.2.6 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. "Kestelek Colemanite (-3MM) Natural Boron Ore" imported by M/s. Organic Industries Pvt. Ltd. is not 'Natural Boron Ore' and it is 'Concentrate of Boron Ore' and it merits classification under Customs Tariff Item No. 25280030 and not under Customs Tariff Item No. 25280090 as declared by the Noticee.

29.2.7 I find that M/s. Organic Industries Pvt. Ltd., has heavily relied on the decision of Hon'ble Supreme Court rendered in case of Mineral & Metals Trading Corporation of India Vs. Union of India and Others - reported in 1983.(13) E.L.T. 1542 (S.C.).

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

Item No. of duty	Name of Article	Nature of duty	Standard rate
(1)	(2)	(3)	(4)
MINERAL PRODUCTS			
26.	Mettalic 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 29.2.1 herein** above. Therefore, in view of the comparison of Tariff entry prevailing in the year 1964 and post 2011, there is vital change. In 1964 there was only mention of 'Mettalic ores of all sorts' and there is no mention of 'concentrate thereof' whereas post 2011 'Natural Borate' as well as 'Concentrate thereof' are in existence. Therefore, the ratio of the decision of Hon'ble Supreme Court rendered in context of 'Ores of all short' cannot be made applicable to the case on hand.

29.2.8 I find that M/s. Organic Industries Pvt. Ltd 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. "Kestelek Colemanite(-3MM) 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 matched with the tariff item specified in Column (2) of the Notification.

29.2.9 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'.

29.2.10 M/s. Organic Industries Pvt. Ltd has contended that that the expression "Boron Ores" appearing in the said Sr. Nos. 113 and 130, must be confined and restricted to Natural Boron Ores i.e. Ore in the state and condition in which it is mined without removing the impurities/ foreign particles; the Show Cause Notice has committed the error of reading into the Notification additional words and conditions which are absent in the Notification. They placed reliance on the following judgments which hold that it is not permissible to read into the Notification, any additional words or conditions/ restrictions which are not stipulated in the Notification:

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

I find that definitions of 'Ore', 'Ore concentrate' and 'Concentration of Ore' as discussed in **Para 29.1 to 29.1.16**, 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 Noticee that the Department was reading into the Notification additional words and conditions in the Notification is unjustified and without any basis since the allegation in the SCN is mainly based on the definitions of 'Ore' and 'Ore concentrate' available in various popular dictionaries and on websites, the data available on the Website of M/s. Etimaden as well as the test reports of the samples of the Noticee, of M/s. Raj Borax Pvt. Ltd. and M/s. Indo Borax by CRCL, Vadodara and CRCL, New Delhi as well as Test Report of nominated laboratory of overseas supplier M/s. Etimaden. Also the principles laid down by the Hon'ble Supreme Court, as discussed above, expressly clarify that no addition or deletion is permissible. In the instant case the entry exempts 'Boron Ore' and the same cannot be stretched to include Concentrate of Boron Ore. Thus, I find that the ratio of the case laws cited by M/s. Organic Industries Pvt. Ltd are not applicable to the facts of the case on hand.

29.2.11 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. Organic Industries Pvt. Ltd. have not adduced any evidence to consider that the goods viz. "Kestelek Colemanite (-3MM) Natural Boron Ore" imported by them were Boron Ore and not 'Concentrate of Boron Ore'. Therefore, I am of the view that M/s. Organic Industries Pvt. Ltd., 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.

29.3 Whether M/s. Organic Industries Pvt. Ltd., are liable to pay the differential amount of Customs Duty of Rs. 7,01,38,078/- (Rupees Seven Crore, One Lakh, Thirty Eight Thousand and Seventy Eight Only), as detailed in Annexure A-1, A-2, A-3, A-4 & A-5 of the Show Cause Notice under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962?

29.3.1 I find that the imported goods declared as "Ground Colemanite (B2O3 40%) Natural Boron Ore" by M/s. Organic Industries Pvt. Ltd., is a 'concentrate of Natural Calcium Borate. However the Noticee had mis-declared the description as "Kestelek Colemanite (-3MM) 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 26.11.2020 respectively by declaring 'Kestelek Colemanite (-3MM) Natural Boron Ore' as Boron Ore as the exemption was available only to 'Boron Ore' and thereby evaded Customs Duty amounting to **Rs. 7,01,38,078/-** for the period 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 [up to 31.05.2020] respectively. The fact that 'Kestelek Colemanite (-3MM) Natural Boron Ore' imported by them were actually 'concentrate of Natural Calcium Borate' was clearly evident from the discussion held hereinabove. Therefore, M/s. Organic Industries Pvt. Ltd , 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. Organic Industries Pvt. Ltd., 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 M/s. Organic Industries Pvt. Ltd have willfully mis-classified the same under Tariff item no. 25280090. Further, I find that noticee had Test Reports of declared 'Kestelek Colemanite (-3MM) Natural Boron Ore" tested by the nominated laboratory of oversea supplier M/s. Eti Medan which has clearly reported the subject goods as " Colemanite, Concentrated, Granular B -3MM". Further, I find from the data available in EDI system of Customs that that before 25.01.2019, M/s. Organic Industries Pvt. Ltd was classifying the "Kestelek Colemanite (-3MM) Natural Boron Ore" under Customs Tariff Item 25280030 and after that they started to classify under Customs Tariff Item No. 25280090 which for 'Others'. Thus, I find that it was not the case where M/s. Organic Industries Pvt. Ltd., was not aware of the nature and appropriate classification of goods. However, the Noticee 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, **7,01,38,078/-** are required to be demanded and recovered from M/s. Organic Industries Pvt. Ltd 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 Noticee have paid/deposited Rs.34,01,163/- under protest. Since I have found that M/s. Organic Industries Pvt. Ltd is required to pay differential duty alongwith interest, the protest lodged by M/s. Organic Industries Pvt. Ltd needs to be vacated and Customs Duty of Rs.34,01,163/- paid under protest is required to be appropriated and adjusted against the above confirmed Duty liabilities of **Rs.7,01,38,078/-**.

29.3.2 I find that M/s. Organic Industries Pvt. Ltd 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 the there is no merit in the Noticee'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 M/s. Organic Industries Pvt. Ltd 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 'Kestelek Colemanite (-3MM) Natural Boron Ore" imported by M/s. Organic Industries Pvt. Ltd and supplied by M/s. Etimaden, Turkey. However, no such test report of the producer M/s Etimaden had been disclosed by M/s. Organic Industries Pvt. Ltd in present case through e-sanchit portal/Customs Department.

29.4 Whether the goods having assessable value of Rs. 126,14,47,364/- imported by wrongly claiming as "Boron Ore" as detailed in Annexure A-1, A-2, A-3, A-4 & A-5 of the Show cause Notice should be held liable for confiscation under Section 111 (m) of the Customs Act, 1962?

29.4.1 I find that 408 Mts of "Kestelek Colemanite (-3MM) Natural Boron Ore" imported under the Bills of Entry No. 6554848 dated 20.01.2020 valued at Rs. 10146960/- [Assessable Value] had 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 M/s. Organic Industries Pvt. Ltd., under provisions of Section 110A of the Customs Act, 1962.

29.4.2 Apart from the above seized goods, M/s. Organic Industries Pvt. Ltd had imported 51288 MTS of 'Kestelek Colemanite (-3MM) Natural Boron Ore' totally valued at Rs. **125,13,00,404/-** which was actually '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 2016-17 to 2020-21 (upto 31.05.2020 except seized goods imported vide B/E No. 6554848/20.01.2020) by declaring 'Kestelek Colemanite (-3MM) Natural Boron Ore' as 'Boron Ore' as the exemption was available only to 'Boron Ore'. Though the said goods 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. Organic Industries Pvt. Ltd had wrongly claimed the goods imported to be Boron Ores.

29.4.3 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..."

29.4.4 I find that the Noticee 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 408 Mts of 'Kestelek Colemanite (-3MM) Natural Boron Ore' imported under the Bills of Entry No.6554848 dated 20.01.2020 totally valued at 1,01,46,960/- (Rs. One Crore, One Lakh, Forty Six Thousand, Nine Hundred and Sixty only) which was subsequently provisionally released on furnishing Bond and Bank Guarantee are liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, I find that the said Bond for Rs. 1,01,46,960/-executed for provision release of said seized goods is required to be enforced and Bank Guarantee or security deposit of Rs 17,96,974/-furnished thereof is also required to be encashed.

29.4.5 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 fines 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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29.4.6 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:-

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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. Organic Industries Pvt. Ltd 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 M/s. Organic Industries Pvt. Ltd., that in absence of availability of goods, cannot be confiscated is not tenable.

In view of the above, I find that 51288 Mts of goods viz. 'Kestelek Colemanite (-3MM) Natural Boron Ore' appearing in Annexure A-1 to A-5 (except goods imported vide Bills of Entry No 6554848 dated 20.01.2020) totally valued at **Rs. 125,13,00,404/- (Rupees One Hundred Twenty Five Crore, Thirteen Lakh, Four Hundred and Four only)** though not available are liable for confiscation under Section 111(m) of the Customs Act, 1962.

29.4.7 In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods having assessable value of Rs. 126,14,47,364/-, as detailed in Annexure A-1, A-2, A-3, A-4 & A-5 of the Show cause Notice.

29.5 Whether M/s. Organic Industries Pvt.Ltd are liable for penalty under the provisions of Section 114A, of the Customs Act, 1962?

29.5.1 I find that demand of differential Customs Duty amounting to **Rs. 7,01,38,078/-** 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 M/s. Organic Industries Pvt. Ltd., 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.Organic Industries Pvt.Ltd., 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.

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

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

29.7 Whether M/s. Organic Industries Pvt. Ltd., are liable for penalty under the provisions of Section 114AA of the Customs Act, 1962?

29.7.1 I also find that the Show Cause Notice proposes to impose penalty on the M/s. Organic Industries 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."*

29.7.2 I find that M/s. Organic Industries Pvt. Ltd was well aware that goods viz. 'Kestelek Colemanite (-3MM) Natural Boron Ore' 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 M/s. Organic Industries 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. I find that they had test report of nominated laboratory of oversea supplier which had clearly reported that imported goods declared as 'Kestelek Colemanite (-3MM) Natural Boron Ore' was " Clemanite 'Concentrated Granular in B-3MM' and further prior to 25.01.2019 they were classifying the subject goods under Customs Tariff Item No. 25280030, however, they mis classified and mis declared the imported goods in their Bills of Entry. Hence, for the said act of contravention on their part, M/s. Organic Industries Pvt. Ltd is liable for penalty under Section 114AA of the Customs Act, 1962.

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

29.8 Whether M/s. Organic Industries Pvt. Ltd., are liable for penalty under the provisions of Section 117 of the Customs Act, 1962?

29.8.1 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 114 A 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, 1962 is not warranted and legally not sustainable.

30. Whether Shri Narendra J. Jakkani, Director of M/s. Organic Industries Pvt. Ltd is liable for Penalty Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962 ?

30.1 I find that Shri Narendra J Jakkani, Director of M/s. Organic Industries Pvt. Ltd., was responsible for import and involved in deciding the classification of the imported "Kestelek Colemanite (-3MM) Natural Boron Ore" and also in approving mis- classification 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 Narendra J. Jakkani, Director rendered himself liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

30.2 I also find that the Show Cause Notice proposes to impose penalty on Shri Narendra J. Jakkani, Director of M/s. Organic Industries Pvt. Ltd under Section 114AA of the Customs Act, 1962.

30.2.1 I find that Shri Narendra J Jakkani, Director of M/s. Organic Industries Pvt. Ltd was well aware of the nature and appropriate classification of the imported goods. I find that they had test report of nominated laboratory of

overseas supplier M/s. Eti Madean, which had clearly reported that imported goods declared as 'Kestelek Colemanite (-3MM) Natural Boron Ore' was "Colemanite, Concentrated Granular in B-3MM" and further prior to 25.01.2019 they were classifying the subject goods under Customs Tariff Item No. 25280030, however, they mis classified and mis declared the imported goods in their Bills of Entry. I find that from the Product Technical Data Sheet of "Ground Colemanite", nowhere 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 "Kestelek Colemanite (-3MM) 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 Narendra J Jakkani, Director of M/s. Organic Industries 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 Narendra J Jakkani, Director of M/s. Organic Industries Pvt. Ltd is liable for penalty under Section 114AA of the Customs Act, 1962.

30.3 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on Shri Narendra J Jakkani, Director of M/s. Organic Industries Pvt. Ltd. From the findings as discussed in Para 30.1 & 30.2 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 Narendra J Jakkani, Director of M/s. Organic Industries Pvt. Ltd which rendered the goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 and Penalty under Section 114AA found imposable for false declaration in Bills of Entry. Since, specific penalty under Section 112 (a) (ii) of the Customs Act, 1962 & 114AA of the Customs Act, 1962 for contravention of Section 111 (m) and false declaration in Bills of Entry has found imposable, I do not find it worth to impose penalty under Section 117 of the Customs Act, 1962 which is for contravention not expressly mentioned.

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

::ORDER::

31.1 I reject the classification of tariff item 25280090 declared as "Kestelek Colemanite (-3MM) Natural Boron Ore" imported by M/s. Organic Industries Pvt. Ltd, which are given in the Bills of Entries, as mentioned in Annexures A-1, A-2, A-3, A-4 & A-5 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".

31.2 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. Organic Industries Pvt. Ltd.;

31.3 I confirm the demand of Differential Customs Duty amounting to **Rs. 7,01,38,078/- (Rupees Seven Crore, One Lakh, Thirty Eight Thousand and Seventy Eight Only)** as detailed in Annexures A-1, A-2, A-3, A-4 & A-5 of the Show Cause Notice, leviable on Boron Ore Concentrate imported by M/s. Organic Industries 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.

31.4 Interest at the appropriate rate shall be charged and recovered from M/s. Organic Industries Pvt. Ltd, under Section 28AA of the Customs Act, 1962 on the duty confirmed hereinabove at Para 31.3 above.

31.5 I vacate the protest lodged by M/s. Organic Industries Pvt. Ltd and Customs Duty of **Rs.34,01,163/- (Rupees Thirty Four Lakh, One Thousand, One Hundred and Sixty Three only)** paid under protest towards their differential Duty liability stands appropriated and adjusted against the above confirmed Duty liabilities.

31.6 I hold the seized 408 Mts of "Kestelek Colemanite (-3MM) Natural Boron Ore" imported under the Bill of Entry No. 655484 dated 20.01.2020 valued at **Rs. 1,01,46,960/- (One Crore, One Lakh, Forty Six Thousand, Nine Hundred and Sixty only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Organic Industries Pvt. Ltd, the option to redeem the goods on payment of Fine of **Rs.5,00,000/- (Rupees Five Lakh only)** under Section 125 of the Customs Act, 1962.

31.7 I order enforcement of the Bond valued at **Rs. 1,01,46,960/- (One Crore, One Lakh, Forty Six Thousand, Nine Hundred and Sixty only)** and Security deposit of **Rs. 17,96,974/- (Rs. Seventeen Lakh, Ninety Six Thousand, Nine Hundred and Seventy Four only)** furnished for provisional release of the seized goods weighing 408 Mts of "Kestelek Colemanite (-3MM) Natural Boron Ore" imported under the Bills of Entry bearing Nos. 6554848 dated 20.01.2020 valued at Rs. 1,01,46,960/- and the same should be appropriated towards the above confirmed duty and redemption Fine as mentioned in Para 31.3 and Para 31.6 above.

31.8 I hold the 51288 MTs of goods viz. "Kestelek Colemanite (-3MM) Natural Boron Ore" appearing in Annexure A-1 to A-5 (except goods imported vide Bill of Entry No. 6554848 dated 20.01.2020) totally valued at **Rs. 125,13,00,404/- (Rupees One Hundred Twenty Five Crore, Thirteen Lakh, Four Hundred and Four only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Organic Industries Pvt. Ltd, the option to redeem the goods on payment of Fine of **Rs. 6,25,00,000/- (Rupees Six Crore and Twenty Five Lakh only)** under Section 125 of the Customs Act, 1962.

31.9 I impose penalty of **Rs. 7,01,38,078/- (Rupees Seven Crore, One Lakh, Thirty Eight Thousand and Seventy Eight Only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Organic Industries Pvt. Ltd under Section 114A of the Customs Act, 1962 in respect of Bills of Entry detailed in Show Cause Notice. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Noticee, 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.

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

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

31.12 I refrain from imposing any penalty on M/s. Organic Industries Pvt. Ltd under Section 117 of the Customs Act, 1962.

31.13 I impose a penalty of **Rs.4,00,000/- (Rupees Four Crore only)** on Shri Narendra J Jakkani, Director of M/s. Organic Industries Pvt. Ltd under Section 112(a)(ii) of the Customs Act, 1962.

31.14 I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh only)** on Shri Narendra J Jakkani, Director of M/s. Organic Industries Pvt. Ltd under Section 114AA of the Customs Act, 1962.

31.15 I refrain from imposing any penalty on Shri Narendra J Jakkani, Director of M/s. Organic Industries Pvt. Ltd under Section 117 of the Customs Act, 1962.

32. 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.

33. The Show Cause Notice No. VIII/10-31/Pr Commr/O&A/2020-21 dated 23.03.2021 is disposed off in above terms.



11.07.2024

(Shiv Kumar Sharma)
Principal Commissioner

DIN: 20240771MN000000CF42

BY Speed Post /Hand Delivery/E Mail:

F. No. VIII/10-31/Pr.Commr/O&A/2020-21

Date:11.07.2024

To,

1. **M/s Organic Industries Pvt. Ltd.,**
Plot no. 163, G.I.D.C, Tal.-Vagra, Bharuch-392130
(Registered office at Delta 6th Floor,
Central Avenue, Hiranandani Gardens,
Powai, Mumbai-400076)

2. **Shri Narendra J. Jakkani,**
Director of M/s Organic Industries Pvt Ltd,
Plot no. 163, G.I.D.C, Tal.-Vagra, Bharuch-392130
(Registered office at Delta 6th Floor,
Central Avenue, Hiranandani Gardens,
Powai, Mumbai-400076)

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.