सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20250671MN000038783F

क	फ़ाइल संख्या FILE NO.	S/49-64/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-064-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	11.06.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. MCH/ADC/MK/52/2023-24 dated 30.05.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Yara Fertilizers India Pvt. Ltd, 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra 411001

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम **1962** की धारा **129** डी डी **(1)** (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से **3** महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.**-3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- **(क)** रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा **(ख)** अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Appeal has been filed by M/s. Yara Fertilizers India Pvt. Ltd, 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra 411001 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order–in–Original no. MCH/ADC/MK/52/2023-24 dated 30.05.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Custom Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant presented Bills of Entry No.8272102/01.10.2018, 8640194/29.10.2018, 8734227/05.11.2018, 8903374/18.11.2018, 8903407/18.11.2018, 8906547/19.11.2018, and 8995721/26.11.2018 through their appointed Customs Broker M/s. Boxco Logistics India Pvt. Ltd at Custom House, Mundra for clearance of imported goods declared as "YARALIVA *Nitrabor - Calcium Nitrate with Boron (Double Salt of-Calcium Nitrate with Boron)*" classifying the same under Tariff item 31026000 of first schedule of the Customs Tariff Act, 1975.

2.1 During the course of Audit covering the period from October 2018 to December 2018 conducted by the Customs Receipts Auditors of office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad, it was noticed that the Bills of Entry mentioned in Annexure-I to the Show cause Notice were assessed wherein benefit provided at Sr.No.225(I)(b) of Notification No.50/2017-Cus dated 30.06.2017 of concessional rate of basic Customs duty @ 5% was availed by the importer. The entry 225 (1)(b) read as under -

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

2.2 Under the impugned Bills of Entry, the Appellant imported "YARALIVA *Nitrabor - Calcium Nitrate with Boron (Double Salt of-Calcium Nitrate with Boron)*" and availed benefit of concessional rate of duty under the above said notification which is available only to Calcium Nitrate. The declared description suggested that the impugned imported goods were different than

Calcium Nitrate. Thus, it appeared that in the subject Bills of Entry, the appellant has wrongly availed the exemption under Sr.No.225(1)(b) of Notification No.50/2017-Cus dated 30.06.2017 for imported goods i.e. "YARALIVA *Nitrabor - Calcium Nitrate with Boron (Double Salt of-Calcium Nitrate with Boron)*" which is not calcium Nitrate and only Calcium Nitrate is covered under the said notification. Therefore, it appeared that in the impugned Bills of Entry, Basic Customs duty was liable to be charged at the prevailing tariff rate i.e. 7.5%.

2.3 Sr.No.225(1)(b) of Notification No.50/2017-Customs allows clearance at concessional rate of duty @ 5% on Calcium Nitrate. Otherwise Customs Tariff Head 31026000 will attract Duty @ 7.5%. In the instant case the Appellant had imported "YARALIVA *Nitrabor - Calcium Nitrate with Boron (Double Salt of-Calcium Nitrate with Boron)*" and wrongly availed the benefit of Sr. No.225(1)(b) of Notification No.50/2017-Customs which was not allowed for instead of correct rate of BCD @ 7.5%. Therefore, the Appellant appeared liable to pay Differential Customs duty of Rs. 15,45,424/-.

2.4 Relevant Legal provisions, in so far as they relate to the facts of the case are as under :-

A. Customs Notification No. 50/2017-Cus dated 30.06.2017;

B. The Customs Tariff.

C. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-

"(i) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed".

D. Section 28(4) of the Customs Act, 1962 provides that *"Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice".

E. Section 28(AA) of Customs Act, 1962 provides interest on delayed payment of duty-

> *(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent, and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:*

F. Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-

> *114A - Penalty for short-levy or non-levy of duty in certain 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 willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

Provided that where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

2.5 In order to sensitize the People of Trade (read Importer/Exporter) about its benefit and consequences of mis-use; Government of India has also issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self-Assessment 2011' was required as because prior to enactment of the provision of 'Self-Assessment', misclassification or wrong-availment of duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para-1.3 of Chapter-1 of the above manual, Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options:

(a) Seek assistance from Help Desk located in each Custom Houses, or

(b) Refer to information on CBEC/ICEGATE web portal (www.cbic.gov.in), or

(c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or

(d) An importer may seek Advance Ruling from the Authority on Advance Ruling, if qualifying conditions are satisfied.

2.6 Para 3 (a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para-2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non-compliant

importers/exporters could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

2.7 It appeared that the appellant had willfully mis-stated the facts & wrongly availed Customs duty exemption benefit of Sr. No. 225(1)(b) of Notification no. 50/2017-Cus dated 30.06.2017 by paying BCD at lower rate i.e. @ 5% instead of correct rate of BCD @ 7.5% as per Customs Tariff. In the light of the documentary evidences, as brought out above and the legal position, it appeared that a well thought out conspiracy was hatched by the appellant to defraud the exchequer by adopting the modus operandi of mis-declaring the description/classification of the goods imported.

2.8 It was apparent that the appellant was in complete knowledge of the correct nature of the goods nevertheless, the appellant claimed undue notification benefit for the said goods in order to clear the goods by wrongly availed Customs duty exemption benefit of Sr. No. 225(1)(b) of Notification no. 50/2017-Cus dated 30.06.2017 by paying BCD at lower i.e. @ 5% instead of correct rate of BCD @ 7.5%. With the introduction of self-assessment under Section 17, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the importer, has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the appellant intentionally abused this faith placed upon it by the law of the land. Therefore, it appeared that the appellant had willfully violated the provisions of Section 17(1) of the Act in as much as appellant had failed to correctly self-assessed the impugned goods and has also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act.

2.9 It appeared that the appellant willfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty. For such act/omissions, the appellant also appeared to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962. Further, it appeared that in respect of the Bills of Entry detailed above, such wrong claim of notifications benefit on the part of the appellant had resulted into short levy of duty of Rs. 15,45,424/- (Rupees Fifteen Lakhs Forty Five Thousand Four Hundred Twenty Four only) for 07 Bills of Entries, which was recoverable from

the appellant under the provisions of Section 28(4) of the Customs Act, 1962 (hereinafter referred to as 'the Act') along with interest as applicable under Section 28AA of the Act. By the said deliberate wrong claim of notification benefit, the appellant also appeared to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

2.10 In view of the above observation, a Show Cause Notice under F.No.CUS/APR/MISC/5524/2022-GR.2 19.12.2022 was issued to the Appellant proposing, as to why:

i. The goods imported vide 07 Bills of Entry should not be re-assessed at correct rate of BCD i.e. @ 7.5% and consequently benefit of Sr. No. 225(1)(b) of Notification no. 50/2017-Cus dated 30.06.2017 should not be denied to the above said goods.

ii. The differential duty worked out as short levy amounting to Rs.1545424/- (Rupees fifteen lakhs forty five thousand four hundred and twenty four only) for 07 Bills of Entries should not be recovered from importer under Section 28(4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

iii. Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

2.11 Consequently, the adjudicating authority passed a impugned order wherein the adjudicating authority ordered as under :-

(1) She rejected the Appellant's claim of exemption under Serial No. 225(1)(b) of Notification No. 50/2017-Cus., dated 30.6,2017, in the Bills of Entry as detailed in the Show Cause Notice mentioned in Para 2 above.

(2) She confirmed and ordered to recover the differential Customs duty of Rs. 15,45,424/- from the Appellant for wrongly availing exemption under Serial No. 225(1)(b) of Notification No. 50/2017-Cus., dated 30.6.2017 under Section 28(4) of the Customs Act, 1962.

(3) She ordered to charge and recover interest from the Appellant on the confirmed duty at Sr. No. (2) above under Section 28AA of the Customs Act, 1962.

(4) She imposed penalty of Rs. 15,45,424/- on the Appellant under Section 114A of the Customs Act, 1962.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The Appellants are, inter alia, engaged in import and distribution of various types of and various grades of fertilizer (including micronutrients fertilizers), in India. They have been in this business since the year 2011. The Appellants are a subsidiary of M/s. Yara International ASA, Norway (hereinafter referred to as 'Yara International') which is a global leader in agricultural products and environment protection agents including nitrates, calcium nitrate, micronutrients, and NPKs. The Appellants have been issued with valid licenses for import and trading of fertilizers imported by them in terms of the Fertilizer (Control) Order, 1985.

3.2 "YaraLiva Nitrabor" is the brand name of the product "Calcium Nitrate with Boron (Double salt of Calcium Nitrate with Boron)". It is a fertilizer. The license issued to the Appellants under Fertilizer (Control) Order 1985 (FCO) includes Yaraliva Nitrabor. 'Calcium Nitrate with Boron (Double salt of Calcium Nitrate with Boron)' is covered under the category of 'Fortified Fertilizers' at Sl. No. 9, Sub-Heading 1(h) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO). The Appellants describe the imported goods as 'Calcium Nitrate with Boron (Double Salt of Calcium Nitrate with Boron)' in the Bills of Entry, whenever they are imported. Along with the description, the Appellants also declare the brand name "YaraLiva Nitrabor".

3.3 Ever since the commencement of the imports, the imported goods are classified under Tariff Item 31026000 of the First Schedule to the Customs Tariff Act, 1975. Further, the Appellants claim exemption from payment of basic Customs duty under Notification No.12/12Cus., [Sl. No. 202 (I)(b)] and after amendment under Notification No. 50/17-Cus, [Sl. No. 225(I)(b)]. This exemption applies to specified water-soluble fertilizers which are included in Schedule 1, Part A of the Fertilizers Control Order. "Calcium Nitrate" is specified by name in SI. No. 202 (I)(b) of Notification No. 12/12-Cus and now in SI. No. 225(I)(b) of Notification No. 50/17-Cus. Accordingly, effective rate of basic custom duty was 5% by virtue of Notification No. 50/17-Cus., [Sl. No. 225 (I) (b)] for imported goods in question.

3.4 The Appellants filed documents viz., a) bill of landing, b) commercial invoice, c) certificate of weight and analysis, d) certificate of origin, and e) end-use declaration to the effect that these goods are being used as manure and fertilizer and is intended for sale as fertilizer only to duly registered entities under the provisions of the Fertilizer (Control) Order 1985, with the Customs department along with the Bills of Entry, with respect to the imported goods. Certificate of weight and analysis shows percentage of various constituents present in the fertilizers under import.

3.5 The Customs department draws representative samples at discharge port and sends them for testing to ascertain whether it meets the parameters of the fertilizer specified in the FCO. The drawing of samples and testing is done every time any fertilizers is imported into India, including YaraLiva Nitrabor. YaraLiva Nitrabor has been found to be meeting the specification of "Calcium Nitrate" mentioned in 1(g) to Part A of Schedule 1 to the FCO. Accordingly, the customs department has always extended the exemption under Notification No.50/17-Cus., [Sl. No.225(I)(b)] considering YaraLiva Nitrabor as 'water soluble fertilizers' as specified in 1(g) to the Part A of Schedule 1 to the FCO.

3.6 Pursuant to an audit during the period of October 2018- December 2018, the auditors of the Principal Director of Audit (Central), Ahmedabad raised objection with respect to past imports of Yaraliva Nitrabor by the Appellants by availing exemption from payment of Customs duties. As per the department, the exemption benefit under Notification No. 50/2017-Cus., dated 30.06.2017 [Sl. No. 225 (I) (b)] is not available to the imported goods since it failed to meet specifications of Calcium Nitrate specified in FCO, under Item 4 to 1(h) category i.e., 100% water soluble complex fertilizers mentioned at Part A of the Schedule I to the FCO.

3.7 Customs department in the past has issued multiple Show Cause Notices to the Appellants with respect to Yaraliva Nitrabor imported from Mundra as well as other ports. Approximately eight (8) SCNs pertaining to the period from 29.08.2019 to 30.06.2021 have been issued by the Mundra Port itself. The aforesaid investigation culminated in SCN dated 19.12.22. Vide this SCN, the Additional Commissioner proposed to demand differential duty with respect to imports of Yaraliva Nitrabor by denying exemption benefit claimed under Notification No. 50/2017-Cus., dated 30.06.2017 [Sl. No. 225 (I) (b)]. Without considering and appreciating the various submissions made by the Appellants,

the Adjudicating Authority, vide the impugned Order dated 30.05.23 confirmed the duty demand by denying the benefit of exemption Notifications.

3.8 The very issue regarding eligibility of exemption benefit under Sr. No. 225 I(B) of Notification No.50/2017-Cus., on import of Yaraliva Nitrabor is pending with the Hon'ble CESTAT, Bengaluru in Appeal No. C/21092/2017 filed by the Appellants and the matter is sub judice.

3.9 The SCN in the present case had invoked extended period of limitation in terms of Section 28(4) of the Customs Act, 1962 and the impugned Order has confirmed the duty by allowing the same. It is submitted that the Customs department has issued Show Cause Notices in the past for Yaraliva Nitrabor imported from the very same port i.e., Mundra. It is a settled legal position that in case of any delay in the issuance of a show cause notice by the department, after having knowledge about the alleged transactions, extended period of limitation cannot be invoked. In other words, what has been done now could have been done at the time of assessment / or within normal period of limitation. The appellant refers to The Hon'ble Supreme Court in Nizam Sugar Factory Vs. CCE - 2008 (9) STR 314 (SC) in paras 9 & 10, has held that there was no suppression of facts on part of assessee/appellant as all relevant facts were in the knowledge of the authorities when the very first SCN was issued. Therefore, while issuing subsequent show cause notices, suppression of facts on part of assessee cannot be alleged by the department. Similarly, the Hon'ble Supreme Court in ECE Industries Vs. CCE- 2004 (164) ELT 236 (SC) in paras 4-7, has held that when the department has issued show cause notices in the past, then in such circumstances, it could not be said that there was any willful suppression or mis-statement on part of the assessee. Accordingly, extended period of limitation under Section 11A cannot be invoked. Therefore, the impugned Order is liable to be set aside on this ground alone.

3.10 The goods namely, 'Yaraliva Nitrabor' imported by the Appellants were cleared for home consumption on the strength of duly assessed Bills of Entry and 'Out of Charge' orders issued by the proper officer under the authority of the provisions of Section 17 and Section 47 of the Customs Act. There is no dispute on this factual position. It is submitted that these orders were passed on the satisfaction of the proper officer that the said goods have been properly assessed before clearance for home consumption. It is further submitted that the aforesaid orders (Out of Charge), being quasi-judicial orders, can only be set

aside by an order of the competent appellate authority in appellate proceedings. It is submitted that quasi-judicial orders cannot be sought to be set aside by mere issuance of a show cause notice, which has proposed to declare the goods to be liable for confiscation. This position has been affirmed in the case of CCE Kanpur Vs. Flock (India) - 2000 (120) ELT 285 (SC). The Hon'ble Supreme Court maintained that if an order appealable under the Act is not challenged, then the order is not liable to be questioned and the matter is not to be reopened in a separate proceeding. The Hon'ble Supreme Court has once again affirmed this position in ITC Limited Vs. CCE, Kolkata IV - 2019 (368) ELT 216 (SC), where the court has specifically held that the order of self-assessment is also an assessment order appealable by any person, revenue as well as assessee.

3.11 As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra). The above principle has been applied by the Hon'ble Punjab and Haryana High Court in Jairath International Vs. UOI - 2019 (370) ELT 116 (P & H). Also, in the case of Vittesse Export Import Vs. CC (EP), Mumbai - 2008 (224) ELT 241 (Tri. -Mumbai), it was held that once the shipping bills have been assessed, they attain finality and cannot be re-assessed on the grounds of mis-declaration. Further, the Hon'ble Tribunal held in the case of Ashok Khetrapal Vs. CC, Jamnagar - 2014 (304) ELT 408 (Tri. Ahmd.) that once the Bills of Entry have been assessed, they gain finality and assessment cannot subsequently be reopened by the Revenue by way of demand under Section 28 of the Customs Act by invoking extended period. Similarly, in the case of Neelkanth Polymers Vs. CC, Kandla - 2009 (90) RLT 188 (Tri. -Ahmd.), in the

context of demand under Section 28 of the Customs Act for recovery of additional duty of Customs not levied, Hon'ble Tribunal held that the demand of duty is not sustainable when the Bill of Entry is not challenged.

3.12 It is submitted that ratio of the aforesaid judgments is equally applicable to the case of the Appellants. In the present case also, the Customs Department has sought to propose a demand without challenging the Bill of Entry and the resultant out of charge orders. In absence of any appeal against the said Out of Charge orders/ Bills of Entries which have been assessed by proper officers, it must be understood that the assessment has gained finality, which cannot be challenged or negated by issuance of the SCN. Hence, on this ground alone, the present proceeding is liable to be set aside.

3.13 The appellant has submitted that the aforesaid exemption is available to the water-soluble fertilizers mentioned in the customs notification, which are also included in Schedule 1, part A of the FCO. Calcium Nitrate fertilizer is specified as water soluble fertilizer in Customs Notification and also in FCO. It is submitted that YaraLiva Nitrabor is classified, marked and used as "Calcium Nitrate" fertilizer as the major ingredient is calcium nitrate with 99.5%. Addition of minuscule quantity of boron does not alter either the character of it being a calcium nitrate fertilizer or its water solubility. There is no 100% water solubility mentioned as for as calcium nitrate is concerned, either in the Customs Notification or under the FCO. Whereas, for e.g. monopotassium phosphate (0-52-34), NPK (13-40-13), NPK (18-18-18), NPK (13-5-26), NPK (6-12-36), and NPK (20-20-20), the FCO contemplates 100% water solubility. Further, in terms of Rule 3(a) of Interpretative Rules to Customs Tariff, going by the essential character, the goods in question are to be treated as calcium nitrate, even for the Customs notification. For the purposes of classification under Heading 31.02, the Customs department has treated the goods to be calcium nitrate, a mineral based fertilizer. Hence, the impugned Order-in-Original is incorrect in denying the exemption under SI. No. 225(I)(b) to the goods in question. It is submitted that when the presence of boron in calcium nitrate does not alter the composition of calcium nitrate, the said product remains to be calcium nitrate which is a water-soluble fertilizer and not boron which is a fortified fertilizer.

3.14 In the impugned Order, the Adjudicating Authority did not even dispute the classification of the goods in question under Heading 31026000, which covers double salts and mixture of calcium nitrate and ammonium nitrate.

It is submitted that the classification of the goods in question has a substantial bearing on the present dispute. The classification of the goods under Tariff Item 3:02 6000 of the Custom Tariff and its acceptance by the Department is a strong indicator of the fact that even the Department is of the view that calcium nitrate is the major constituent of the goods in question. Once the Department accepts that the goods in question are essentially calcium nitrate, there is no fathomable reason as to why it should deny the exemption benefit to the Appellants. It is submitted that calcium nitrate is the main constituent of the impugned goods, and the addition of a minuscule quantity of boron does not alter either the character of it being a calcium nitrate fertilizer or its water solubility.

3.15 Calcium Nitrate, as provided in the FCO has almost the same specifications, minus the boron. Merely adding 0.3% of Boron does not change the nature of the product. Since boron itself is a non-soluble element, getting mixed with calcium nitrate, it loses its property of insolubility. This shows that the essential constituent of the impugned goods is only Calcium Nitrate and all different kinds of Calcium Nitrate mentioned in Schedule I, Part A of the FCO should come under the exemption benefit. In view of above, it is submitted that that since the impugned goods fulfill all the conditions, it is imperative that the benefit of exemption should be granted to the appellants. Merely because the fertilizer contains a miniscule amount of boron and put in a different category of FCO does not take the product out of the exemption benefit, moreover when the notification refers to entire Schedule I Part A.

3.16 The appellant has submitted that Sl. No.225(I) of the Notification No.50/17-Cus., grants exemption to other fertilizers which comply to the specific composition e.g., potassium Nitrate (13:0:45), however, no such requirement is mentioned for Calcium Nitrate. This implies that exemption shall be extended to all fertilizers which are water soluble and contain Calcium Nitrate as major constituent, irrespective of other miniscule ingredients. In view of the above, YaraLiva Nitrabor being Calcium Nitrate fertilizer having water solubility of 99.5%, is correctly eligible for exemption benefit Sl. No. 225 (I) (b) of the Notification No. 50/2017-Cus. Accordingly, the impugned Order is incorrect and is liable to be set aside. It is submitted that the Notification grants exemption to water soluble calcium nitrate fertilizer listed in Schedule I Part A of the FCO. There is no 100% water solubility mentioned for calcium nitrate, either in the Customs Notification or under the FCO.

3.17 It is settled law that exemption notification must be read strictly. Therefore, had there been any intention to extend exemption to 100% water soluble complex fertilizer, the legislature would have explicitly mentioned so in the exemption notification itself. In absence of specification, exemption is correctly available to all water-soluble fertilizers which has Calcium Nitrate as a major constituent, subject to same being listed in Schedule I Part A to the FCO. It is submitted that Yaraliva Nitrabor has Calcium Nitrate as a major ingredient and has 99.5% water solubility. It, therefore, satisfies all the conditions required for extending the exemption benefit under SI. No. 225 (I) (b) of the Notification No. 50/2017-Cus. Hence, the impugned Order is incorrect in denying the exemption benefit.

3.18 It is submitted that the impugned Order has incorrectly denied the exemption benefit to the imported goods only on the basis that it is not '100% water soluble complex fertilizers' as mentioned in category 1(h) to Part A of the Schedule I of the FCO. It is submitted that evidently, there is a clear misreading of the notification. Notification grants exemption to water soluble calcium nitrate fertilizer listed in Schedule I Part A of the FCO. There is no 100% water solubility mentioned as far as calcium nitrate is concerned, either in the Customs Notification or under the FCO.

3.19 It is settled law that exemption notification should be read strictly. Therefore, had there been any intention to extend exemption to 100% water soluble complex fertilizer, the legislature would have explicitly mentioned in the exemption notification itself. In absence of specification, exemption is correctly available to all water-soluble fertilizers which has Calcium Nitrate as major constituent, subject to same is listed in Schedule I Part A to the FCO. It is submitted that YaraLiva Nitrabor has Calcium Nitrate as major ingredient, and has 99.5% water solubility, therefore, it satisfies all the conditions required for extending the exemption benefit under Sr. No.225(I)(b) of Notification No.50/2017-Cus., dated 30.06.2017. Hence, the denial of the exemption benefit is bad in law and the impugned Order is liable to be set aside.

3.20 It is submitted that in the absence of a statutory definition, trade parlance is to be relied upon to understand the meaning of a product. In the instant case, the impugned products are calcium nitrate with boron. However, the said product is used and understood as calcium nitrate in common trade parlance. Appellant has relied on CCE, New Delhi Vs. Connaught Plaza

Restaurant (P) Ltd. - 2012 (286) ELT 321 (SC) wherein the Apex Court distinguished the case of Akbar Badruddin Jiwani Vs. Collector of Customs - 1990 (47) ELT 161 (SC).

3.21 The appellant has relied on following decisions:

a) Ramavatar Budhaiprasad Vs. Assistant Sales Tax Officer reported (1962) 1 SCR 279: 'Betel leaves' were held to be not falling under the entry of 'Vegetables' by construing the entry in popular sense.

b) Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh reported AIR 1967 SC 1454: 'Charcoal' was held to be included in 'Coal' in commercial sense even though Technically Coal is a Mineral Product while Charcoal is manufactured by Human Agency.

c) South Bihar Sugar Mills Ltd Vs. Union of India reported in 1978 (2) ELT 336: What a Sugar manufacturer produces was held to be known as 'Kiln Gas' and not Carbon Di-Oxide even though one of its constituents was Carbon Di-Oxide.

3.22 The appellant has also submitted that extended period of limitation has been incorrectly invoked since there is no mis-statement or suppression of facts by the appellants in respect of the imports in question. The appellant have also submitted that goods have been correctly described in the Bills of Entry and therefore, allegations of mis-representation or suppression are baseless and that penalty has been incorrectly imposed under section 114A of the Customs Act, 1962. The appellant has also submitted that no interest under Section 28AA of the Customs Act, 1962 when demand itself is not sustainable.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 16.01.2025 in virtual mode. Shri Nayan Singhal, Advocate, appeared for hearing representing the appellant. He had reiterated the submissions made in the appeal memorandum and made in the compilation of case laws mailed on 16.01.25 as under :-

(1) Vikram Pasticizer Vs. CCE -2023-VIL-697-CESTAT-AHM-CU

(2) Deepak Frtilizersd & Petrochemicals Vs. CC-2002(139)ELT328 (Tri-Mum)

(3) Deepak Agro Solutions Vs. CC-2008(227)ELT 52(SC)

(4) DCM Shriram Vs. CC-2024(3) TMI 648

(5) Northern Plastic Vs. CCE 1998 (101) ELT 549 (SC)

(6) Midas Fertchem Impex Vs. Principal CC 2023 (1) TMI 998

(7) Lewek Altair Vs. CC 2019 (366) ELT 318 (Tri.-Hyd.)

(8) Nizam Sugar Factory Vs. CCE 2008 (9) STR 314 (SC)

Due to change of the appellate authority, fresh personal hearing was held on 15.05.2025 in virtual mode. Shri Nayan Singhal Advocate, appeared for hearing representing the appellant. He reiterated the submissions made in the appeal memorandum as well as those submitted during the earlier hearing held on 16.01.2025. He further submitted as under :-

- The presence of miniscule quantity of boron (i.e. 0.3%) will not alter the character of the imported goods. The said goods would remain 'Calcium Nitrate as specified in Schedule-I, Part-A of the FCO and would be eligible for concessional duty benefit in terms of Sr.No. 225(1)(b) of Notification No. 50/2017-Cus dated 30.06.2017

- Reliance was placed on the Hon'ble CESTAT decision in the case of Vikram Plasticizer (Sr. No. 3 of the Compilation) wherein it was held that even though some additives in very miniscule percentage exists in the composition but chemical character of the product i.e.. high density polyethylene does not get altered and the same cannot be classified in any other entry other than high density polyethylene and therefore are clearly exempted in terms of Sl. No. 237 of Notification No. 12/2012-Cus, dated 17.03.2012

- We further relied upon Deepak Fertilisers & Petrochemicals and Deepak Agro Solutions (Sr No. 4 & 5 of the Compilation, respectively) to submit that since the essential constituent of the imported goods is Calcium Nitrate (99.5%), they are correctly eligible for the concessional rate of duty benefit under Sl. No. 225 (1) (b) of Notification No. 50/2017-Cus., dated 30.06.2017

- The impugned Order adjudicated upon the show cause notice issued

invoking extended period of limitation as per section 28(4) of the Customs Act, 1962. The period of imports is between October 2018 to November 2018, and the Show Cause Notice was issued on 19.12.2022. Therefore, the entire demand is barred by limitation. Further the only allegation in the present case is of claim of concessional rate of duty under Notification 50/2017-Cus, dated 30.06.17 It is a settled law that claim to an exemption notification is a matter of bona fide belief and no misdeclaration can be alleged in such cases. Reliance is placed on the decisions cited at Serial No. 7-10 of the Compilation

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that the prime issue to be decided in the present appeal is whether the imported good by the appellant are eligible for exemption under Sl. No. 225(I)(b) of the Notification no. 50/2017-Cus dated 30.06.2017. It is observed that other issues viz. payment of interest, penalty revolve around the decision of the prime issue.

5.2 The core issue is whether "Yaraliva Nitrabor," with 99.5% calcium nitrate and 0.3% boron, qualifies as "Calcium Nitrate" under Sl. No. 225(I)(b). The notification grants a 5% BCD for water-soluble fertilizers listed in Schedule I, Part A of the FCO, including "Calcium Nitrate." The Adjudicating Authority have found that that boron renders the product a "fortified fertilizer," ineligible for the exemption.

5.3 It is observed that the Adjudicating Authority has not disputed the classification of the goods in question under Heading 3102 60 00, which covers double salts and mixture of calcium nitrate and ammonium nitrate. It is observed that the classification of the goods in question has a substantial bearing on the present dispute. It is also observed that calcium nitrate is the main constituent of the impugned goods, and the addition of a minuscule quantity of boron does not alter either the character of it being a calcium nitrate fertilizer or its water solubility.

5.4 It is observed that the Calcium Nitrate, as provided in the FCO has almost the same specifications, minus the boron. Merely adding 0.3% of Boron does not change the nature of the product. Since boron itself is a non-soluble element, getting mixed with calcium nitrate, it loses its property of insolubility. This shows that the essential constituent of the impugned goods is only Calcium Nitrate and all different kinds of Calcium Nitrate mentioned in Schedule I, Part A of the FCO should come under the exemption benefit.

5.5 It is also observed that that Sl. No.225(1) of the Notification No.50/17-Cus., grants exemption to other fertilizers which comply to the specific composition e.g., potassium Nitrate (13:0:45), however, no such requirement is mentioned for Calcium Nitrate. This implies that exemption shall be extended to all fertilizers which are water soluble and contain Calcium Nitrate as major constituent, irrespective of other miniscule ingredients.

5.6 It is observed that Yaraliva Nitrabor has Calcium Nitrate as a major ingredient and has 99.5% water solubility. It is observed that Yaraliva Nitrabor is imported is commercially treated and traded as calcium nitrate, then classification adopted should be as calcium nitrate itself for the purpose of exemption notification. In this regard, I rely upon the following decisions

i. Decision of Hon'ble Supreme Court in case of Commissioner Of Central Excise vs Amrit Food [2015 (324) E.L.T. 418 (S.C.)] wherein at para 10 it is observed as under:

> *" 11. The Commissioner has himself noted that no chemical name of the stabilizer is used and the role played by the aforesaid ingredients of the stabilizer is to maintain a uniform emulsion of oil in water, throughout the shelf life and to improve the body and texture and to impart smoothness to the products. Thus, as far as the basic product is concerned, it demonstrates the same and the purpose is only to impart smoothness to the product and to maintain the product consistency during storage and transportation and throughout its shelf life.*
>
> *12. We find from the aforesaid that the main purpose is to maintain the product consistency during storage and transportation as well as to improve the shelf life. Merely because it improves the body and texture of the product and adds some smoothness thereto, that would not change the basic character of the produce. We also note that the CESTAT has concluded from the Hawley's Condensed Chemical*

Dictionary Eleventh Edition meaning of the substance and the aforesaid dictionary defines stabilizer as : -

"Any substance which tends to keep a compound, mixture, or solution from changing its form or chemical nature. Stabilizers may retard a reaction rate, preserve a chemical equilibrium, act as antioxidants, keep pigments and other compounds in emulsion form, or prevent the particles in a colloidal suspension from precipitating."

13. Insofar as Chapter Note 4 on which reliance is placed by the learned counsel for the appellant is concerned, we are of the opinion that even that would not advance the case of the appellant. It has to be noted that the description given there is open ended inasmuch as the Chapter Note itself uses the expression "inter alia". Further, while mentioning the products which would be covered under the said Chapter Heading 04.04, and stating about the additions which could be made, the crucial words are "whether or not". Therefore, the additives which can be added while making the product are illustrative only and merely because stabilizer is not mentioned therein would not mean that after adding the stabilizer the product in question ceases to be dairy produce."

ii. Decision of Hon'ble Tribunal in case of Nestle India Ltd. Vs Commissioner of Central Excise (LTU), Delhi [2018 (8) G.S.T.L. 211 (Tri. - Del.)] wherein at para 10 it is observed as under:

"10.

....

Thus, even when the stabilizers were not specifically mentioned in the Chapter Note 4 of the Central Excise Tariff Act, still the milk shake mixes containing the same were held classifiable under the Tariff Heading 0404 by CESTAT as well as the Hon'ble Supreme Court on the ground that stabilizers do not interfere with basic characteristics of the milk products and are added merely to impart stability to the product. The same analogy can be drawn in the present case where flavouring agent of 0.03% of the total composition is added, which does not change the basic characteristic of the product and the product remains a nutritious milk drink only."

5.7 It is observed that it is a well settled issue that when miniscule quantity of the total composition is added, which does not change the basic

characteristic of the product and the product remains the same, its classification cannot be considered to be changed. The presence of 0.3% boron does not alter the essential character of "Yaraliva Nitrabor" as "Calcium Nitrate."

5.8 It is observed that the appellant's Material Safety Data Sheet (MSDS) and certificates of analysis confirm that "Yaraliva Nitrabor" is 99.5% calcium nitrate, with 0.3% boron as a micronutrient. It is also observed that Calcium nitrate, being the dominant constituent, defines the product's fertilizing properties. Further, the FCO lists "Calcium Nitrate" without specifying purity or excluding minor additives. Unlike other fertilizers (e.g., NPK 13:40:13, requiring 100% water solubility), no such condition applies to calcium nitrate. The notification's reference to Schedule I, Part A, implies inclusivity of products predominantly composed of listed fertilizers.

5.9 It is observed that the presence of 0.3% boron does not alter the essential character of "Yaraliva Nitrabor" as "Calcium Nitrate." The product satisfies the notification's criteria, being a water-soluble fertilizer listed in the FCO, and is eligible for the 5% BCD.

5.10 On the issue of imposition of penalty, it is observed that the issue involved is one of classification or interpretation of terms of an exemption Notification, so penalty cannot be imposed as there was no intention to evade payment of duty. Further, in the above paras, it is already established that the appellant is eligible for exemption notification. Reliance is placed on the decision in the cases of :-

(i) Whiteline Chemicals v. Commissioner of Central Excise, Surat [2008 (229) E.L.T. 95 (Tri. - Ahmd.)] wherein it was held as follows :-

> *"5. However, we find that the issue involved is bona fide interpretation of notification and does not call for imposition of any penalty upon the appellants. The same is accordingly, set aside."*

(ii) Vadilal Industries Ltd. v. Commissioner of Central Excise, Ahmedabad [2007 (213) E.L.T. 157 (Tri. - Ahmd.)] wherein it has been held as :-

> *"10. However, the Learned Advocate submits the following alternative pleas that the price realised by them, should have been*

treated as cum-duty price and no penalty should have been imposed as this is a case of difference in interpretation. There is no issue of limitation involved as the show cause notices were issued within the normal period of limitation."

5.11 Considering the above facts that the appellant is a regular importer of the product and also considering that the supplier is reportedly adopting the above classification globally, I am of the opinion that attributing any mala fide intention or motive for adopting such classification or claiming exemption benefit of the Notification is not justified in the facts of this case. Further, appreciating the ratio decidendi on the issue as discussed above, I hold that the imposition of penalty is not justified and so ordered to be set aside.

6. In view of the above discussions, the appeal filed by M/s Yara Fertilizers India Pvt. Ltd. is allowed. The Order-in-Original No. MCH/ADC/MK/52/2023-24 dated 30.05.2023 is set aside. The differential duty demand of Rs. 15,45,424/-, interest under Section 28AA, and penalty under Section 114A are quashed. The appellant is entitled to the 5% BCD under Sl. No. 225(I)(b) of Notification No. 50/2017-Cus. dated 30.06.2017 as amended, in respect of import under the seven Bills of Entry mentioned above.

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-64/CUS/MUN/2023-24 1386 Date: 11.06.2025

By Registered post A.D/E-Mail

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

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.