प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडीओ के बाजु मे, नवरंगपुरा ,अह्मदाबाद 380009
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OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: VIII/10-09/Pr Commr/O&A/2020-21

DIN- 20240671MN0000999BE0

आदेश की तारीख/Date of Order : 27.06.2024
जारी करने की तारीख/Date of Issue : 27.06.2024

द्वारा पारित/Passed by:- **शिव कुमार शर्मा, प्रधान आयुक्त**
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

1. **Order-In-Original No: AHM-CUSTM-000-PR.COMMR-23-2024-25 dated 27.06.2024** in the case of **M/s Sun Borax Industries,** Plot No. 15, Trimul Ind. Estate, Vadsar-Air Force Road, Khatraj, Tal. Kalol, Gandhinagar-382721.

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 मंज़िल, बहुमाली भवन , गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be

addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004.

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में 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 प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन 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 विना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 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 विरूद्ध 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 बारेमे विवाद है उसका भुकतान 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/10-09/Pr.Commr/O&A/2020-21 dated 08.01.2021 issued by the Principal Commissioner, Customs, Ahmedabad to **M/s. Sun Borax Industries** located at Plot No. 15, Trimul Ind. Estate, Vadsar-Air Force Road, Khatraj, Tal. Kalol, Gandhinagar-382721 and others.

Brief facts of the case:

M/s Sun Borax Industries situated at Plot No. 15, Trimul Ind. Estate, Vadsar-Air Force Road, Khatraj, Tal. Kalol, Gandhinagar-382721, having registered office at 15, Ankur Complex, Nr. Ankur Bus Stand, Naranpura, Ahmedabad-380013 (IEC No.0893010081) [hereinafter referred to as the Noticee] had imported Ground Colemanite B_2O_3 40% Natural Boron Ore. The Noticee had classified the same under CTH 25280090 of Customs Tariff Act, 1975 and availed exemption from payment of Basic Customs duty in terms of Sr. 130 of Notification No. 50/2017-Cus dated 30.06.2017 and Sr. 113 of Notification No. 12/2012-Cus dated 17.03.2012 as applicable for the period from 01.07.2017 to 15.10.2020 and 01.04.2015 to 30.06.2017 respectively.

2. An intelligence gathered indicated that some importers are importing Ground Colemanite 40% B_2O_3 under CTH 25280090 by wrongly claiming exemption as per Sr. No. 130 of Notification No. 50/2017-Cus dated 30.06.2017 by mis-declaring the product as Natural Bore Ore as exemption is available 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, two consignments under Bills of Entry Nos. 6454271 dated 13.01.2020 and No. 6548664 dated 20.01.2020 of **M/s Sun Borax** were under process for clearance from CFS-Seabird, Hazira. Accordingly, the Deputy Commissioner, Adani Hazira Port, Hazira was requested to put the consignment, declared under Bills of Entry Nos. 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020, on hold for drawal of sample and for further investigation.

3. The officers of SIIB, Customs, Surat, visited CFS-Seabird, Seabird Marine Services Pvt Ltd, Hazira, Surat on 22.01.2020 and it was noticed that the CHA, **M/s Steadfast Impex** had filed said Bills of Entry Nos. 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020 on behalf of M/s Sun Borax, for six containers of Ground Colemanite 40% B_2O_3. Therefore, the representative samples were drawn under panchnama dated 22.01.2020 in presence of two independent panchas, **Shri Milind Mukadam**, Dy Manager, CFS-Seabird, Hazira and **Shri Deepankar Mahato**, G-Card Holder of **M/s Steadfast Impex** from one of the containers bearing No. SUDU7920000 of Bill of Entry No. 6454271 dated 13.01.2020 . The sample drawn was sent to CRCL, Vadodara vide Test Memo No. 05/2019-20 dated 24.01.2020 to ascertain the following test/parameter to confirm whether the goods declared is Boron Ore or otherwise:

(i) Whether the sample is of goods which are found naturally on the earth or is processed,

(ii) The nature & composition of the goods and whether the composition is same in which they occur naturally on earth or at the time of extraction from the earth,

(iii) Whether the goods are processed using calcinations or enriched/concentrated by using any other method and

(iv) Whether the goods are in crushed/grinded form i.e. derived from natural form.

4. The Test report dated 07.02.2020 of sample submitted under Test Memo No. 05/2019-20 dated 24.01.2020 in respect of sample drawn under panchnama dated 22.01.2020 was received from CRCL, Vadodara which is reproduced here-under:

The sample is in the form of off-white fine powder. It is mainly composed of oxides of Boron & Calcium alongwith siliceous matter.
B_2O_3 = 40.8% by wt.
Cao = 27.8 % by wt.

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

4.1 The test report dated 21.01.2020 of sample submitted under Test Memo No. 03/2019-20 dated. 16.01.2020 in respect of sample drawn under panchnama dated 14.01.2020 for the consignment imported by **M/s Raj Borax Pvt. Ltd**, C-1-2402/1, GIDC, Sarigam, Tal. Umbergaon, Valsad with identical description and supplied from same producer of Turkey was received from CRCL, Vadodara which is reproduced here-under:

The sample is in the form of grayish powder. It is mainly composed of oxides of Boron & Calcium alongwith siliceous matter.
B_2O_3 = 41.6% by wt.
Cao = 27.3 % by wt.
Loss on ignition at 900 degree C = 28.9% by wt.
Loss on drying at 105 degree C = 0.8% by wt.

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

5. From the above test report, it is noticed that goods imported under the said Bills of Entry is processed Borate Mineral Colemanite and the importer viz. **M/s Sun Borax** had wrongly claimed exemption for the product at Sr. No. 130 of Notification No 50/2017-Cus 30.06.2017, with an intention to evade the Customs duty in respect of the consignment declared under Bills of Entry Nos. 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020. Therefore, the goods imported under above two Bills of Entry, total weighing 144000.000 Kgs V/a Rs. 50,73,264/- [Assessable Value] were seized vide panchnama dtd. 10.02.2020 under Section 110(1) of Customs Act, 1962 in the reasonable belief that they are liable to confiscation under Section 111(m) of Customs Act, 1962. On a request from the importer, the seized goods weighing 144000.000Kgs valued at Rs 50,73,264/- (Approx) were released provisionally on 03.03.2020 on execution of bond for the estimated value of seized goods and on furnishing a bank guarantee or security deposit of Rs 9,10,962/-.

6. The Noticee did not agree with the test report given by CRCL, Vadodara and requested the Joint Commissioner of Customs for re-testing the sample at CRCL, New Delhi. Accordingly, on approval from the Joint Commissioner of Customs, another set sample was sent to Central Revenue Control Laboratory, New Delhi vide Test Memo No 13/2019-20 dated 02.03.2020 with the following test queries:

(i) Whether the sample is of goods which are found naturally on earth i.e. Natural Colemanite,

(ii) What is the nature & composition of the goods and whether their percentage is the same in which they occur naturally on earth or at the time of extraction from earth,

(iii) Whether the goods are in crushed/grinded form, ie derived from natural form,

(iv) Whether the goods are processed using calcination or enriched/concentrated by using any other method,

(v) Whether the goods were processed using any other physical or chemical process and

(vi) Processing if any done, whether the goods can still be defined as 'Ore'.

7. The Joint Director, CRCL, New Delhi vide letter F. No 25-Cus/C-43/2019-20 dated 04.06.2020 submitted Re-Test report in respect of above mentioned Test Memo which is reproduced hereunder:

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

1.	*% Moisture (105 degree C) by TGA*	*=0.78*
2.	*% Loss on ignition at (900 degree C) by TGA*	*= 28.9*
3.	*% B_2O_3 (Dry Basis)*	*= 37.62*
4.	*% Acid insoluble*	*= 6.13*
5.	*XRD Pattern*	*= Concordant with Mineral Colemanite*

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

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

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

9. The Joint Commissioner, SIIB, Customs, Surat, vide letter F. No VIII/14-01/SIIB/Boron Ore/Raj Borax/19-20 dated 01.07.2020 again requested the Head Chemical Examiner, CRCL, New Delhi to clarify whether the sample is 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 Ore/Ore Concentrates, 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 Colemnite 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 to 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	The website of ETIMADEN (supplier of imported goods) mentioned that B_2O_3 contents	The sample under reference are not undergone any process

enriched/concentrated by using any other method	of the Colemnite 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.	of calcination. **Laboratory Cannot comment on the starting material and process undergone.** It can give the final value of % B_2O_3.

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 Ground Colemanite imported by **M/s Raj Borax** confirmed that Ground Colemanite is processed borate mineral colemanite and found in powder form having B_2O_3 content of 41.6% by weight. The re-test report provided by CRCL, Delhi also confirmed the form of sample as powder which was crushed and ground. However, it 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 Ground Colemanite] in respect of Boron Ore, Colemanite, Ground Colemanite, Ore and Ore Concentrates have been analysed and outcome is discussed hereunder:

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

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

Scan Image No:1

ETiMADEN
İŞLETMELERİ GENEL MÜDÜRLÜĞÜ

PRODUCT TECHNICAL DATA SHEET

GROUND COLEMANITE

GROUND COLEMANITE ETİMADEN

Di-Calcium Hexaborate Pentahydrate ($2CaO.3B_2O_3.5H_2O$)

CAS Number: 1318-33-8

Technical Grade: Powder

Packaging: 1000 kg, 2000 kg

(with or without pallet)

General Information:

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

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

Usage and Benefits:

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

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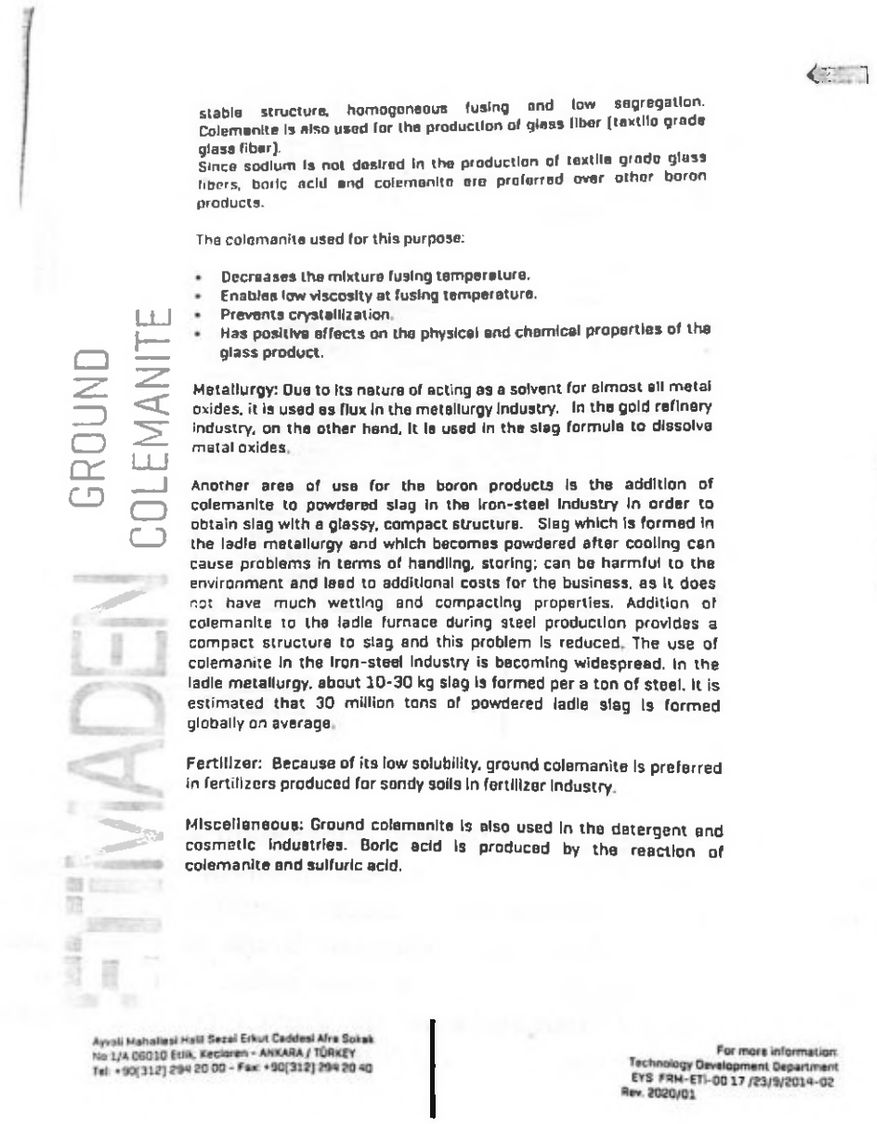
For more information:
Technology Development Department
EYS FRM-ETİ-00 17 /23/9/2014-02
Rev. 2020/01

Image No:2



GROUND COLEMANITE

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

The colemanite used for this purpose:

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

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

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

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

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

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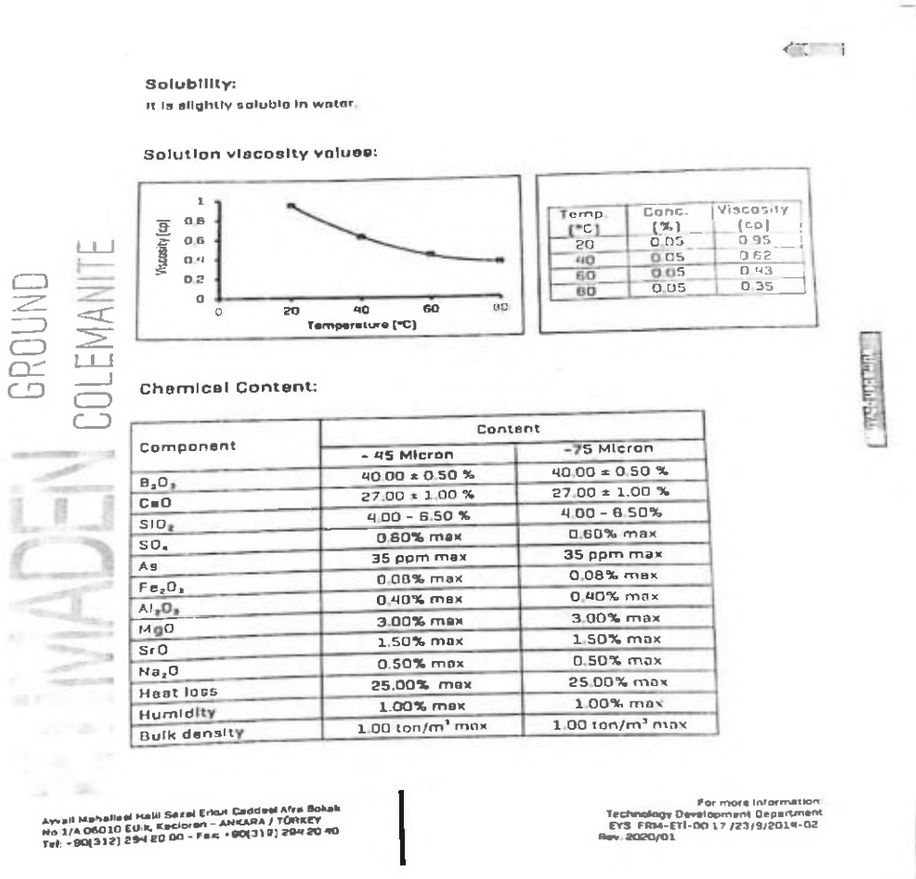
Rev. 2020/01

Image No:3



Solubility:
It is slightly soluble in water.

Solution viscosity values:

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

Chemical Content:

Component	Content	
	- 45 Micron	-75 Micron
B_2O_3	40.00 ± 0.50 %	40.00 ± 0.50 %
CaO	27.00 ± 1.00 %	27.00 ± 1.00 %
SiO_2	4.00 - 6.50 %	4.00 - 6.50%
SO_4	0.60% max	0.60% max
As	35 ppm max	35 ppm max
Fe_2O_3	0.08% max	0.08% max
Al_2O_3	0.40% max	0.40% max
MgO	3.00% max	3.00% max
SrO	1.50% max	1.50% max
Na_2O	0.50% max	0.50% max
Heat loss	25.00% max	25.00% max
Humidity	1.00% max	1.00% max
Bulk density	1.00 ton/m³ max	1.00 ton/m³ max

GROUND COLEMANITE

ETİ MADEN

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For more information
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EYS FR34-ETİ-00 17 /23/9/2014-02
Rev. 2020/01

10.3 On going through the details and General Information available in scan Image No 1, it is noticed that the details are in respect of Ground Colemanite and the Chemical Name of Ground Colemanite is Di-Calcium Hexaborate Pentahydrate and chemical formula is $2CaO.3B_2O_3.5H2O0$. Technical Grade is Powder and sold in packaging of 1000 Kg and 2000 Kg (with or without pallet). The content of B_2O_3 is 40+/_ 0.50%. Further, **M/s ETiMADEN** also discussed regarding concentration of Colemanite Ore under General Information which is reproduced below:

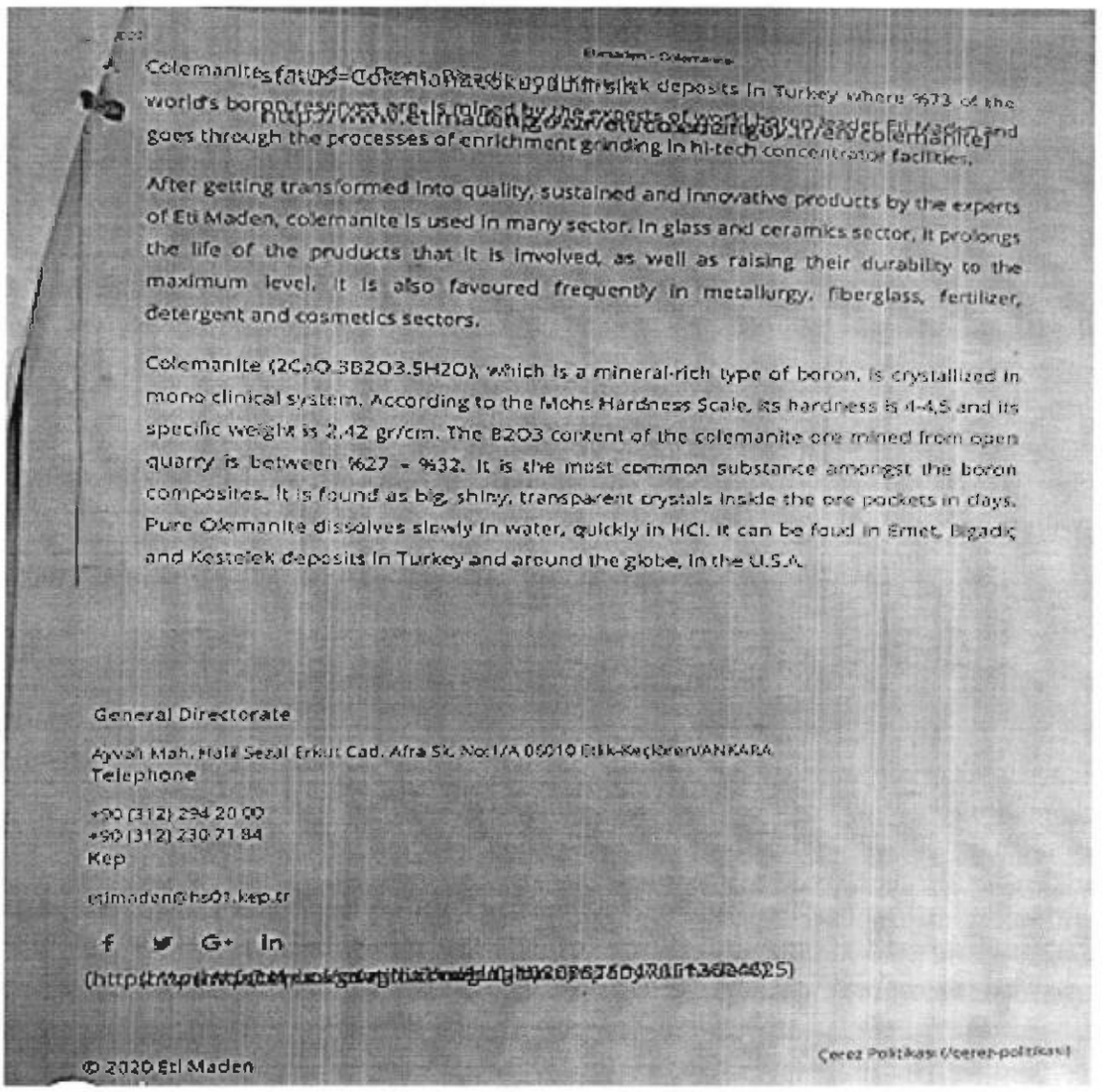
> *"The Ore is enriched in concentrator plant to obtain concentrated product. The Ground Concentrated product is passed through crushing and grinding processes respectively to obtain milled product. It is then packaged in a packaging unit and ready for sale"*

10.4 Thus, from the details available on website of **M/s ETiMADEN**, and discussed above, it is apparent that Ground Colemanite is a concentrated product of Colemanite which contains B_2O_3 40+/- 0.50% and produced by enrichment of Colemanite in concentrator plant. Thereafter, such Ground Concentrated product is passed through crushing and grinding processes respectively to obtain milled product and then it is packaged in a packaging unit, which became ready for sale.

10.5. The Boron Element and its major Boron Minerals, availability in Turkey and it's 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 Eti Maden are; Tincal, Colemanite and Ulexite.

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

10.7 **M/s ETiMADEN** also discussed in detail regarding availability, production, quality and uses of Colemanite in their website which shows that Colemanite are 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 by grinding in hi-tech concentrator facilities. After getting transformed into quality, sustained and innovative products by the experts of **M/s ETiMADEN**, Colemanite is used in many sector. Colemanite ($2CaO.3B_2O_3.5H2O$), 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 detail is reproduced as under:



Colemanite is one of the boron deposits in Turkey where %73 of the world's boron reserves are. It is mined by the experts of world boron leader Eti Maden 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 Eti Maden, colemanite is used in many sector. In glass and ceramics sector, it prolongs the life of the pruducts that it is involved, as well as raising their durability to the maximum level. It is also favoured frequently in metallurgy, fiberglass, fertilizer, detergent and cosmetics sectors.

Colemanite ($2CaO.3B2O3.5H2O$) 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 B2O3 content of the colemanite ore mined from open quarry is between %27 - %32. It is the most common substance amongst the boron composites. It is found as big, shiny, transparent crystals inside the ore pockets in clays. Pure Colemanite dissolves slowly in water, quickly in HCl. It can be foud in Emet, Bigadiç and Kestelek deposits in Turkey and around the globe, in the U.S.A.

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

1. Colemanite is one of most important Boron minerals in commercial terms which are found in Emet, Bigadiç and Kestelek deposits of Turkey and mined by **ETiMADEN**,

2. The B_2O_3 content of the Colemanite ore mined from open quarry is between 27%-32%, However, after initiation of inquiry, the line "B_2O_3 content of the Colemanite ore mined from open quarry is between %27-%32" has been deleted while the remaining other 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 concentration ranging between 27%-32% has been enhanced to Colemanite Ore Concentrate which is sold as Ground Colemanite having B_2O_3 40%. Ground Colemanite is a concentrated product of Colemanite produced by enrichment in Concentrator plant.

5. Thereafter, such Ground Concentrated product is passed through crushing and grinding processes respectively, to obtain Ground Colemanite.

6. Ground Colemanite is sold in Powder form in packaging of 1000 Kg and 2000 Kg.

7. Ground Colemanite is used in many fields of industry especially in glass, ceramics, agriculture, detergent and cleaning industries, etc

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

11.1 Definition of Ore as per Petrology of Deposits:

Ore: a metalliferous mineral, or aggregate mixed with gangue (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 Britannica:

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

11.6 Definition of Ore Concentrate as per Wikipedia:

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

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

12.1 The definitions of ore and ore concentrate discussed above shows that the term "Ore" is a naturally occurring raw and native mineral which are produced by mines and contain various foreign material and impurities. Ore is extracted from the earth through mining and treated or refined to extract the valuable metals or minerals. The "Ore Concentrate" is dressed ore obtained by passing through the physical or physic-chemical operation viz cleaning, washing, drying, separation, crushing, grinding, etc. Natural Ore which is extracted from the mines though might have predominance of a particular minerals but do not consist of any particular mineral alone. It is a naturally occurring raw and native mineral which are produced by mines and contain various foreign material, impurities and other substances and not suitable for further operations. Ore is extracted from the earth through mining and treated or refined to extract the valuable metals or minerals. The "Concentrate" is the form of ores from which part or all of the foreign matters have been removed and obtained by passing through the physical or 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 the form, from which a 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 Ground Colemanite, B_2O_3 40%, Natural Boron Ore from United Arab Emirates, supplied by **M/s Asian Agro Chemical Corporation** by classifying under CTH. 25280090 of Customs Tariff Act, 1975 and they have availed exemption from payment of Basic Customs duty for item at Sr. 130 of Customs Notification No. 50/2017 dated 30.06.2017 by declaring Ground Colemanite, B_2O_3 40% as Boron Ore. Prior to inception of Notification No. 50/2017-Cus, the Noticee were availing exemption from payment of Basic Customs duty for Sr. 113 of Customs Notification No. 12/2012-Cus dated 17.03.2012 as amended. The details of Ground Colemanite, B_2O_3 40%, Natural Boron Ore, imported by the Noticee and cleared within the jurisdiction of the Commissioner of Customs, Ahmedabad from April 2015 has been prepared and attached as **Annexure-A/1, A/2, A/3, A/4, A/5 and A/6** to the Show Cause Notice for the Financial years 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 & 2020-21 (Up to 17.05.2020).

14. From the data available in EDI system of Customs, it is noticed that the Noticee classified Ground Colemanite (B_2O_3 40%) Natural Boron Ore as **"Others"** under CTH 25280090 of Customs Tariff Act, 1975. The tariff item 25280090 of Customs Tariff Act, 1975 under which the Noticee declared the goods i.e. "Ground Colemanite (B_2O_3 40%) Natural Boron Ore" is reproduced as under:-

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

	NATURAL BORIC ACID CONTAINING NOT MORE THAN 85% OF 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%**

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

15.1 Statement dated 26.10.2020 of **Shri Ketan Manahar Shah**, Partner of **M/s Sun Borax Industries**, recorded before the Superintendent of Customs (SIIB), Surat, is reproduced as under:-

Question No.1 *:Please explain in detail the business activity of M/s Sun Borax Industries?*

Answer*: M/s Sun Borax Industries is engaged in trading of Borax Penta Hydrate, Ground Colemnite, Hisarcik Colemnite and also engaged in manufacturing Borax Decahydrate. Our registered office in now changed and is 15, Ankur Complex, Nr. Ankur Bus Stand, Naranpura, Ahmedabad-380013 which was previously my residential address. Our manufacturing facility is situated at Plot no. 15, Trimul Ind. Estate, Vadsar-Air Force Road, Khatraj, Tal. Kalol, Gandhinagar-382721. Most of our items of trading is being imported. We used to import goods declared as Ground Colemanite and Hisarcik Colemnite, in pack of 1200 kgs of Eti-Maden, Turkey from M/s Asian Agro Chemicals Corporation 11F-09, Amenity Center Tower-2, Al-Jazzra Al-Hamra, RAS Al Khaimah, United Arab Emirates and Borax Penta Hydrate from Boro Chemie International PTE Ltd, Singapore, which is sometimes also purchased locally for trading or to manufacture Borax Deca Hydrate. We do not manufacture anything except Borax Deca Hydrate and Borax Penta Hydrate is the only raw material for the same.*

Question No. 02 *Please give the details of Ground Colemanite imported since April, 2015 and details of ports of import.*

Answer*:- We have regularly imported Ground Colemanite since 2015 mostly at Adani Port, Hazira. However, details of our import would be supplied to your office in few days. The details of such import are also available in your EDI System. I further state that we imported Ground Colemanite (Calcium Borate) B_2O_3 40% of M/s Etimaden, Turkey, by declaring it as "Ground Colemanite, B_2O_3 40%, Natural Boron Ore" as declared in all import documents of only supplier M/s Asian Agro Chemicals Corporations, U.A.E. since Apr 2015 and I further state that all the consignments of Ground Colemanite imported since 2015 are similar in all respect.*

Question No. 03*:-Please state how Ground Colemanite is used?*

Answer:- Main use of Ground Colemanite is in Ceramic Industry for manufacture of Ceramic Glaze Mixture commonly known as Frit and all of our buyers of Ground

Colemnite are such manufacturers. Ground Colemanite are used as such, without any processing. Our prime customers of Ground Colemanite are M/s Jayson Corporation and M/s Aditya Glass and Ceramics both of Jambusar, Bharuch, M/s Sterling Ceramics, Mehsana, and M/s Growmore Glass and Ceramics are our main customers.

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

Answer : We are declaring Ground Colemanite, B_2O_3 40%, Natural Boron Ore under 25280090 and are availing exemption from payment of Basic Customs duty for item at Sr. 130 of Customs Notification No. 50/2017 dated 30.06.2017 by considering Ground Colemanite, B_2O_3 40% as Boron Ore and before this we were availing exemption from payment of Basic Customs duty for item at Sr. 113 of Customs Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015

***Question No. 05**: Please go through CTH 25280090 of Customs Tariff Act which is reproduced as under:-*

Chapter Head	***Description***	***Unit***	***Rate of duty***
2528	NATURAL BORATES AND CONCENTRATES THEREOF (WHETHER OR NOT CALCINED), BUT NOT INCLUDING BORATES PREPARED FROM NATURAL BRINE; NATURAL BORIC ACID CONTAINING NOT MORE THAN 85% OF 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%**

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

***Answer**:- Sir, I have gone through the CTH 2528 of Customs Tariff Act, reproduced as above. I have no idea why it is being classified under CTH 25280090 instead of under 25280030. As it is being classified under the same heading since long, we are also classifying the item in CTH 252800090.*

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

***Answer**:- We are also importing Hisarcik colemnite of Eti-Maden, Turkey from M/s Asian Agro Chemicals Corporation 11F-09, Amenity Center Tower-2, Al-Jazzra Al-Hamra, RAS*

Al Khaimah, United Arab Emirates which is in lumps form and also used in the manufacture of Ceramic Glaze Mixture commonly known as Frit for which Ground Colemnite is used. I am aware that the Hisarsik colemnite being in lump form, it is being first processed before using for manufacture of Ceraminc Glaze Mixture whereas there is no such need in the case of Ground Colemnite, it being a refined product.

***Question No.07**:- Please go through your answer to Question No. 02 of this statement wherein you have stated that supplier of imported Ground Colemanite [Ground Colemanite (B_2O_3 40%) Natural Boron Ore] is M/s Asian Agro Chemicals Corporation and producer is M/s Etimaden, Turkey. Please also go through the print out taken from website of M/s Etimaden (http://www.etimaden.gov.tr/en) wherein it is mentioned that*

"The B_2O_3 content of the colemanite ore mined from open quarry is between %27-%32".

Please also go through the print out of 'product technical data sheet' of Colemanite (calcium Borate) taken from website of M/s Etimaden and categorized at their website as "Refined Product" wherein it is mentioned that

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

Please offer your comments.

***Answer**:- Sir, We understand from our supplier M/s Asian Agro Chemical Corporation that M/s Etimaden has many mining sites allover Turkey, different grades and types of Boron Minerals with varying percentages of B_2O_3 content are mined. Ground Colemanite (Natural Boron Ore) having 40% B_2O_3 content is imported by us alongwith Hisarsik Colemnite having less %age of B_2O_3. As I have stated earlier, it is true that in comparison of Hisarsik Colemnite, Ground Colemnite is a refined product. Not being a technical person, I cannot comment more than that.*

***Question 08**: Please go through the description of goods under CTH 25280030 of Custom tariff under CTH 25280030, reproduced as under:-*

Chapter Head	Description	Unit	Rate of duty
2528	NATURAL BORATES AND CONCENTRATES THEREOF (WHETHER OR NOT CALCINED), BUT NOT INCLUDING BORATES PREPARED FROM NATURAL BRINE; NATURAL BORIC ACID CONTAINING NOT MORE THAN 85% OF H3 BO3 CALCULATED ON THE DRY WEIGHT		
25280030	Natural calcium borates and concentrates thereof (whether or not calcined)	KG	10%

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

***Answer**:- I have also gone through the description of goods under CTH 25280030 of Custom tariff, reproduced as above. I have also gone through the Sr. No. 130 of Customs Notification No. 50/2017 dated 30.06.2017, granting exemption. I want to reiterate my*

earlier reply that I am not aware why we are classifying Ground Colemnite under CTH 25280090 and we are only following the convention and practice of others.

***Question 12**: Whether the goods imported by you i.e. Ground Colemanite (B_2O_3 40%) Natural Boron Ore is Calcium Borate or Not?*
***Answer**:- I am not aware that goods imported by us i.e. Ground Colemanite (B_2O_3 40%) Natural Boron Ore is Calcium Borate or Not.*

15.2 During investigation of a similar case by D.R.I., Surat, in respect of import of "ULEXITE" described as "ULEXITE BORON ORE" manufactured by same producer **M/s ETiMADEN**, Turkey and supplied through same trader **M/s Asian Agro Chemicals Corporation**, UAE, it has been found that said product i.e., "ULEXITE" is a concentrated product of natural boron ore. The said investigation in respect of import of "ULEXITE" described as "ULEXITE BORON ORE" by **M/s Indo Borax and Chemicals Ltd**, 302, Link Rose Building, Linking Road, Near Kotak Mahindra Bank, Santacruz West, Maharashtra has been completed and as per Testing Report of **M/s ETiMADEN** 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 ETiMADEN**, Turkey showing the description of the goods supplied as:-

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

Further, 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 16/12/2020). It is pertinent to mention here that as per the literature available at site of **M/s ETiMADEN**, ULEXITE Granular is a refined product having lesser concentration of B_2O_3 i.e., 30% in comparison to their product "Ground Colemnite" which is having minimum concentration of B_2O_3 at 40%. Hence, it is clear that "Ground Colemnite" is a more refined and concentrated product and the test report of the producer in the case of "ULEXITE" declare it as concentrated product and the presence of higher %age of B_2O_3 makes it more concentrated. However, no such test report of the producer **M/s ETiMADEN** has been disclosed by the importer viz. **M/s Sun Borax Industries** in the present case also through e-sanchit portal/customs department.

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 and trading of Ground Colemanite, B_2O_3 40% produced by **M/s ETiMADEN**, Turkey. The said product was imported from United Arab Emirates, supplied by **M/s Asian Agro Chemical Corporation**. The Noticee classified the Ground Colemanite, B_2O_3 40% under CTH. 25280090 of Customs Tariff Act, 1975 and by declaring it as Natural Boron Ore and availed exemption from payment of Basic Customs duty as per Sr. 130 of Customs Notification No. 50/2017 dated 30.06.2017 and Sr. 113 of erstwhile Customs Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 during the period from 01.04.2015 to 30.06.2017 and from 01.07.2017 to 17.05.2020 respectively.

16.2 In view of the discussions in aforesaid paras, it also appears that the Noticee imported Ground Colemanite B_2O_3 40% for trading purpose and generally the same has been sold as such without any further processing and it has been revealed by **Shri Ketan Manahar Shah**, Partner of **M/s Sun Borax Industries** in his statement dated

26.10.2020 that the Ground Colemanite sold by them is used as such, without further process in Ceramic Industry for manufacture of Ceramic Glaze Mixture commonly known as Frit and some quantity is used in agriculture as micro-nutrient for plant growth. The inquiry made from manufacturer of Ceramic Glaze mixture also shows that Ground Colemanite having B_2O_3 40% is utilized directly without further process in manufacture of Ceramic Glaze Mixture (frit). It has further been accepted by **Shri Ketan Manahar Shah** in the same statement that they are also importing Hisarsik Colemnite having less %age of B_2O_3 and it is true that in comparison with Hisarsik Colemnite, Ground Colemnite is a refined product.

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

16.4 In view of the discussions in aforesaid paras and details available on the website of **M/s ETiMADEN**, Turkey, it appears that Colemanite is one of most important Boron minerals in commercial terms which are found in Emet, Bigadiç and Kestelek deposits of Turkey and mined by **M/s ETiMADEN**. The B_2O_3 content of the Colemanite ore mined by 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 is 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 B_2O_3 ranging between 27%-32% is converted to produce Colemanite Ore Concentrate which is sold as Ground Colemanite having B_2O_3 40%. The content of B_2O_3 has also been confirmed as 40.8% and 37.62% by CRCL, Vadodara and CRCL, New Delhi respectively. Thus, Ground Colemanite is a concentrated product of Colemanite produced by enrichment in concentrator plant and after passing through crushing and grinding processes packed in bag and sold in Powder form. The CRCL, Vadodara and CRCL, New Delhi also confirmed the form of sample as ground and crushed powder. Further, **M/s ETiMADEN** also categorized Ground Colemanite as refined product at their website. Thus, Ground Colemanite B_2O_3 40% produced by **M/s ETiMADEN** is Ore Concentrate.

16.5 It also appears from the above discussion at para 15.2 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 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).

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

16.7 It also appears that as per Sr No. 130 of Customs Notification No. 50/2017 dated 30.06.2017 and Sr. 113 of erstwhile 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 Basis Customs duty has been prescribed on the goods i.e. Boron Ore falling under chapter heading 2528 of Customs Tariff Act, 1975. From the Chapter Heading 2528 of Customs Tariff Act, 1975 it is noticed that Natural borates and concentrates thereof fall under the said chapter heading. Thus, from a simultaneous reading of 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 and corresponding description of goods, it is noticed that exemption has been given only to Boron Ore and not to concentrate of Boron Ore.

16.8 It further appears that Ground Colemanite imported under Bills of Entry Nos. 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020, totally weighing 144 Mts totally valued at Rs. 50,73,264/- [Assessable Value] has been seized under Section 110(1) of Customs Act, 1962 being liable for confiscation under Section 111(m) of Customs Act, 1962. It was subsequently released provisionally by the competent authority on the request of the Noticee under provisions of Section 110A of the Customs Act, 1962.

16.9 It also appears that the Noticee imported Ground Colemanite, B_2O_3 40% by wrongly declaring it as Natural Boron Ore and cleared under Jurisdiction of the Commissioner of Customs, Ahmedabad from April, 2015. The Bills of Entry filed by the Noticee for the period from 01.04.2015 to 16.12.2019 have been assessed finally. After initiation of inquiry, the Bills of Entry filed by the Noticee have been assessed provisionally and they have 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 "Ground Colemanite (B_2O_3 40%) Natural Boron Ore" by the Noticee is a concentrate of Natural Calcium Borate. However, the Noticee had wilfully mis-declared the description as "Ground Colemanite (B_2O_3 40%) Natural Boron Ore" instead of "*Concentrates of Natural Calcium Borate* " or "*Concentrates of Boron Ore*" and wrongly claimed and availed the benefit of exemption Notification No. 50/2017 dated 30.06.2017 and erstwhile Notification No. 12/2012-Cus dated 17.03.2012 as amended. By way of wrongly declaring Ground Colemanite, B_2O_3 40% as Boron Ore, the importer has wrongly availed the exemption available only to Boron Ore knowingly and deliberately with intention to evade Customs duty amounting to Rs. **56,67,151**/- as detailed in **Annexures A-1, A-2, A-3, A-4, A-5 & A-6** for the period 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 [up to 17.05.2020] respectively. The fact that Ground Colemanite B_2O_3 40% imported by

them are in fact concentrate of Natural Calcium Borate is suppressed which is clearly evident from the process and literature discussed by **M/s ETiMADEN** on their website in respect of Ground Colemanite wherein they have clearly stated that after mining from open quarry, enrichment in concentrator plant has been done and enhanced content of B_2O_3 from 27%-32% to make it 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 whereas the importer appears to have willfully mis-classified the same under tariff item no. 25280090. 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 28250090. This was done by wrongly 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 had described the imported concentrate of Ground Colemanite (B_2O_3 40%) as Natural Boron Ore and classified it under **"Others"** CTH 25280090 of Customs Tariff Act, 1975. Further, it also appears that Ground Colemanite is Natural Calcium Borate and separate entry of item having description of Natural Calcium Borates and concentrates thereof is available at CTH 25280030 of Customs Tariff Act, 1975. Hence, appropriate classification of Ground Colemanite is CTH 25280030 of Customs Tariff Act, 1975. Thus, the Noticee have wrongly described the imported goods as Boron Ore) under CTH 25280090 of Customs Tariff Act, 1975 which is required to be rejected and appropriately classified under CTH 25280030 of Customs Tariff Act, 1975.

19. Section 114A of Customs Act, 1962 provides for penalty for short levy or non-levy of duty in certain cases. In the instant case, the mis-declaration of description is intentional so as to claim an incorrect classification for the purpose of claiming exemption from Customs duty. Therefore, the Noticee also appear to be liable to penalty under Section 114A of the Customs Act as short payment of duty is on account of /due to reason of willful mis-statement or suppression of facts on the part of the Noticee. The Noticee also appears to be 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 them through e-sanchit portal of the department with intent to wrongly avail exemption from payment of Customs Duties.

19.1 The Noticee have imported 3120 MTS of Boron Ore Concentrate totally valued at Rs. 10,87,42,304/- and wrongly claimed and availed the benefit of exemption from payment of Customs Duty for the product at Sr. No. 130 of Customs Notification No. 50/2017 dated 30.06.2017 and Sr. No 113 of erstwhile Customs Notification No. 12/2012-Cus dated 17.03.2012 as amended, for the period from 01.07.2017 to 17.05.2020 and from 01.04.2015 to 30.06.2017 respectively by declaring Ground Colemanite, B_2O_3 40% as Boron Ore as the exemption was available only to Boron Ore.

Out of said goods, a quantity of 144 MTS, totally valued at Rs. 50,73,264/- [Assessable Value] imported under Bills of Entry Nos. 6454271 dated 13.01.2020 and No. 6548664 dated 20.01.2020 have 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 2976 MTS totally valued at Rs. 10,36,69,040/- 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 entire quantity of goods imported as specified in the Annexures to the Show Cause Notice fall under the ambit of smuggled goods within the meaning of 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. By wrongly claiming and availing the benefit of Sr. No. 130 of Customs Notification No. 50/2017 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 the importer have wrongly claimed the goods imported to be ores and therefore, the Noticee is liable for penalty under Section 112(a) & (b) of the said Act for such acts of contravention.

20. Shri Ketan Manahar Shah, Partner of M/s Sun Borax Industries was responsible for import and he has knowingly and with intention to evade Customs Duty wrongly described the product and availed the benefit of exemption from payment of Customs Duty under Customs Notification No. 50/2017 dated 30.06.2017 and under erstwhile Customs Notification No. 12/2012-Cus dated 17.03.2012, as amended. Shri Ketan Manahar Shah, therefore, contravened the provisions of Customs Act and failed to comply with provision of Customs Act and thereby rendered himself liable for penalty under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

21. In view of the above, Show Cause Notice No. VIII/10-09/Pr.Commr/O&A/2020-21 dated 8.1.2021 was issued wherein the Noticee were called upon to show cause as to why:

(i) The classification of goods declared as "Ground Colemanite (B_2O_3 40%) Natural Boron Ore" under tariff item 25280090 given in the Bills of Entries, as mentioned in **Annexures A-1, A-2, A-3, A-4, A-5 & A-6** 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) claimed for the aforesaid goods should not be disallowed;

(iii) Differential Customs duty amounting to **Rs. 56,67,151/- (Rupees Fifty Six Lakhs Sixty Seven Thousand One Hundred Fifty one Only)** as detailed in **Annexures A-1, A-2, A-3, A-4, A-5 & A-6** and consolidated at **Annexure-A7** 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. 10,87,42,304/-** imported by wrongly claiming as Boron Ore as detailed in **A-1, A-2, A-3, A-4, A-5 & A-6** 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 weighing 144000.00 kgs imported under the Bills of Entry bearing Nos. 6454271 dated 13.01.2020 and No. 6548664 dated 20.01.2020 at Customs Hazira Port were placed under seizure and released provisionally, the bond submitted for provisional release should not be enforced and the bank guarantee/security submitted 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. 5,01,496/-** paid under protest towards their differential duty liability in respect of the three Bills of Entry in **Annexure A-6**, should not be adjusted against the clearances made under the three Bills of Entry mentioned in **Annexure A-6** to the Notice.

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 Ketan Manahar Shah, Partner of M/s Sun Borax Industries vide Show Cause Notice No. VIII/10-09/Pr.Commr/O&A/2020-21 dated 8.1.2021.

23. Defence submissions: Advocate of the Noticee and its Partner Shri Ketan Manahar Shah filed written submission date 01.03.2024 wherein they interalia stated as under:

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

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

23.1.2 that the Hon'ble Tribunal has held that the issue whether Ore continues to be Ore after removal of impurities is considered and decided by the various judgments relied upon by the importers; that as per the said judgments, which are referred to herein after, Ore does not cease to be Ore by mere reason of removal of foreign particles and impurities; that as per the directions of the Hon'ble Tribunal, the matter has to be decided in the light of the said judgments, it would follow that the goods do

not cease to be Ore by reason of removal of the foreign particles/ impurities and hence cannot be denied the exemption granted to Boron Ore; that the **Test Report of CRCL, New Delhi, relied upon in the Show Cause Notice itself clearly establishes that the imported goods are "Boron Ore" and therefore covered under Sr. No.113 of Notification No.12/2012-Cus and Sr.No.130 of Notification No. 50/2017-Cus.:**

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

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

23.1.5 That, in response to letters addressed by SIIB, the CRCL, New Delhi had by reiterated that the sample is "**Mineral** Colemanite- a **Natural** Calcium Borate (commonly known as **Boron Ore**)" and that the same is not calcined; that since CRCL, New Delhi, which is an expert body, has reported on the basis of test that the imported goods are "Boron Ore", it is not open to the department to disregard the said Test Report of an expert and to contend to the contrary that the imported goods are not "Boron Ore"; that they placed reliance on following judgments, which hold that Test Report of the CRCL, New Delhi, which is an expert body, cannot be disregarded:

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

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

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

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

23.2.2 That the Show Cause Notices have proceeded on the erroneous premise that the exemption under Sr. No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus is confined and restricted only to "Natural Ore" i.e.

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

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

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

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

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

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

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

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

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

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

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

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

a) **CC v Hindustan Gas & Industries Ltd - 2006 (202) ELT 693:** This decision examined the scope of the term "Ores" appearing in Sr. No.10 of Notification No.5/98-CE dated 2-6-1998 and by following the aforesaid decision of the Hon'ble Supreme Court in the case of MMTC, held that the term "Ores" will cover "Concentrated Ore". It was held that the term "Ore" is the genus and "Concentrated Ore" is a specie of Ore and therefore covered by the term "ore".

b) **CC v Electro Ferro Alloys P. Ltd- 2007 (217) ELT 302:** In this decision it was held that the term "Ores" appearing in Sr. No.21 of Notification no.2/2002-CE dated 1-3-2002, covers "Concentrated Ore" since the "Ore" is the genus and "Concentrated Ore' is a species of Ore. The aforesaid decisions in MMTC and Hindustan Gas & Industries Ltd were followed in this decision.

c) **Shri Bhavani Minerals v CCE-2019 (366) ELT 1041:** In this decision it was held that the term "Ore" appearing in the expression "Iron Ore fines" in exemption Notification no.62/2007-Cus dated 3-5-2007 would cover Concentrated ore. The aforesaid decisions were followed in this decision.

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

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

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

it is contended that by processes of enrichment grinding in hi-tech concentrator facilities the mined Colemanite ore having B2O3 ranging between 27%-32% is enhanced to 40%;

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

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

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

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

Tata Tea Ltd v CCE – 2004 (164) ELT 315
Indian Oil Corporation v CCE – 1991 (53) ELT 347.

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

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

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

23.8 Larger period of Limitation inapplicable in the present case:

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

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

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

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

Northern Plastic Ltd v Collector – 1998 (101) ELT 549 (SC)
CC v Gaurav Enterprises – 2006 (193) ELT 532 (BOM)
C. Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM
S. Rajiv & Co. v CC – 2014 (302) ELT 412.
Lewek Altair Shipping Pvt. Ltd. v CC -2019(366) ELT 318 (Tri- Hyd) upheld in 2019 (367) ELT A328 (SC)

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

23.8.6 That when the goods are declared to be Ground (i.e. Powdered) and also examined and verified by the proper officer of customs, it was known to the assessing officer that the Ore was not imported as mined; that the assessing officer however granted the exemption on the correct understanding that Concentrated ore is also Ore; that merely, because subsequently the department has changed its view that Ore

must mean only Ore as mined, that cannot constitute willful mis-statement or suppression of facts.

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

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

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

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

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

- CC v Finesse Creation Inc- 2009 (248) ELT 122 Bom

- upheld in Commissioner v Finesse Creation Inc-2010 (255) ELT A120 (SC)

- Commissioner v Sudarshan Cargo P. Ltd – 2010 (258) ELT 197 (Bom)

- Chinku Exports v CC – 1999 (112) ELT 400

- upheld in Commissioner v Chinku Exports- 2005 (184) ELT A36 (SC)

- Shiva Kripa Ispat P. Ltd v CC – 2009 (235) ELT 623-Tri-LB

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

23.11 No penalties are imposable:

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

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

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

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

24. Personal Hearing: Personal Hearing was fixed on 01.03.2024 for M/s. Sun Borax Industries and its Partner Shri Ketan Manahar Shah. Shri J. C. Patel, Advocate, on behalf of the Noticee and its Partner attended the Personal Hearing held

on 01.03.2024 wherein he reiterated submission dated 01.03.2024 and also submitted a compilation of the relevant provisions and some case laws.

25. Findings: I have carefully gone through the Show Cause Notice dated 08.01.2021 ,written submission dated 01.03.2024, relevant provisions of law and various decisions relied on by the advocate in their submission on behalf of M/s. Sun Borex Industries and its Partner Shri Ketan Manahar Shah 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/10118-10134/2023/2018 dated 25.01.2023 in respect of Appeal No. C/10094/2022 and C/10095/2022 filed by M/s. Sun Borax Industries and its Partner Shri Ketan Manahar Shah 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. Sun Borex Industries vide various Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4, A-5 & A-6 to Show cause Notice, declared by them as "Ground Colemanite (B2O3 40%) Natural Boron Ore" classified under Customs Tariff Item No. 25280090 should be rejected and the goods be classified under tariff item No. 25280030 as "Natural Calcium Borate and concentrates thereof"?

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. Sun Borax Industries vide various Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4, A-5 & A-6 to Show cause Notice are to be confiscated or otherwise? And whether Bond executed for provisional release of seized goods of 144 MTs imported under the Bills of Entry bearing Nos. 6454271 dated 13.01.2020 and No. 6548664 dated 20.01.2020 is required to be enforced and further the bank guarantee/security submitted should be appropriated?

27.4 Whether M/s. Sun Borax Industries are liable to pay the differential amount of Customs Duty, as detailed in Annexure A-1, A-2, A-3, A-4, A-5 & A-6 to the Show Cause Notice under Section 28(4) of the Customs Act, 1962 and whether they are

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 Ketan Manhar Shah, Partner of M/s. Sun Borax Industries 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 Partner 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. Sun Borax Industries vide various Bills of Entry as mentioned in Annexure A-1, A-2, A-3, A-4, A-5 & A-6 to Show cause Notice, declared by them as "Ground Colemanite (B2O3 40%) Natural Boron Ore" classified under Customs Tariff Item No. 25280090 should be rejected and the goods be classified under Customs 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 on the supplier's activities, HSN of Section 2528, and meaning /definition of Ore and Concentrate etc. First of all, it would be worth to discuss the Test Reports.

29.1.2 I find that initially, the sample were drawn from the import of impugned goods imported vide Bill of Entry No.6454271 dated 13.01.2020 by the Noticee. The sample drawn was sent to CRCL, Vadodara vide Test Memo No. 05/2019-20 dated 24.01.2020 which reported Test Report vide letter dated 07.02.2020 as under :

"The sample is in the form of **off-white fine powder. It is** mainly composed of oxides of Boron & Calcium alongwith siliceous matter.**B2O3 = 40.8% by wt.** and CaO = **27.8% by wt.**

29.1.3 Further, the test report dated 21.01.2020 of sample drawn under panchnama dated 14.01.2020 for the consignment imported by M/s. Raj Borax Industries, with identical description and supplied from same producer of Turkey was received from CRCL, Vadodara which was as under:

> *"The sample is in the form of **grayish powder**. It is mainly composed of oxides of Boron & Calcium alongwith siliceous matter.*
> ***B2O3 = 41.6% by wt.***
> *Cao = 27.3 % by wt.*
> *Loss on ignition at 900 degree C = 28.9% by wt.*
> *Loss on drying at 105 degree C = 0.8% by wt."*

29.1.4 M/s Sun Borax Industries 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. 13/2019-20 dated 02.03.2020 . The Joint Director, CRCL, New Delhi vide letter F.No.25-Cus/C-43/2019-20 dated 04.06.2020 submitted Re-Test report in respect of above mentioned Test Memo was as under:

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

1. % Moisture (105 degree C) by TGA =0.78
2. % Loss on ignition at (900 degree C) by TGA = 28.9
3. **% B2O3 (Dry Basis) = 37.62**
4. % Acid insoluble = 6.13
5. XRD Pattern =Concordant with Mineral Colemanite

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

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

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

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

Points raised in the Test Memo	**Details mentioned in Test Reports**	**Remarks**
Point I Whether the samples were in form in which they are found naturally on earth	The sample is commonly known as Boron Ore.	Since, the test report was not clear as to whether the sample was Ore/Ore Concentrates 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.

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

Points raised by you	**Remarks as per your letter**	**Comments**
Whether the samples were in form in which they are found naturally on earth	Since, the test report was not clear as to whether the sample was Ore/Ore Concentrates the classification of the product under Custom Tariff could not be decided.	Natural Borates and Concentrates thereof (whether or not calcined) was mentioned in Custom Tariff. The sample is a natural calcium borate, Mineral Colemanite- a Natural Calcium Borate (Commonly known as Boron Ore) was mentioned in the report.
Whether the goods are processed using calcination or enriched/concentrated by using any other method	The website of Etimaden (supplier of imported goods) mentioned that B2O3 contents of the Colemanite Ore mined are 27% to 32% whereas the technical data sheet of Ground Colemanite shows the B2O3 content as 40%. Thus, there must be any process involved by which the concentration of the product was increased from 27-32% to 40%, i.e. it appears that the product is enriched in concentrator plant to obtain concentrated product. Copy of technical data sheet and print out taken from website are enclosed.	The sample under reference are not undergone any process of calcination. **Laboratory Cannot comment on the starting material and process undergone.** It can give the final value of % B2O3.

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

Thus, I find that there was nothing in Test Report of CRCL, Delhi which indicate methodology adopted for testing and determination of sample as Natural Calcium Borate (Commonly known as Boron Ore)'. The CRCL, Delhi has also admitted

that the sample they tested were *in* ***powder form (Crushed/Grinded) and B2O3 was 38.51%***. Thus, I find that the report of CRCL also does not rule out the fact that some process has been undergone. Thus, I find that CRCL, Vadodara has also said that the sample was off-white fine powder, wherein B2O3 was 40.8% by weight. CRCL, Delhi, also stated that sample was in powder form (crushed/grinded). Further sample of M/s. Raj Borex tested by CRCL Vadodara also stated that sample was in grayish powder mainly wherein B2O3 was 41.6%. Thus, I find that product have undergone some process , possibly concentration in the concentration plant (as indicated in the website of Etimaden) which resulted in the increase of B2O3 content from 27-32% to 41.5%/38.5%.

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. Sun Borax Industries 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 40.5% by weight, CRCL, Delhi interalia stated that "sample is in powder form (Crushed/Grinded) and B2O3 was 38.05% dry basis. Further, CRCL, Delhi, in case of import by M/s. Raj Borex, stated that "sample was of grayish powder and B2O3 was 41.6% . Thus, I find from these Test reports that there is no dispute that process has been done on the 'Natural Boron Ore' and in absence of the definition of " Ore" and "Concentrate' as mentioned in Chapter 2528, it would be appropriate to refer to the definition of " Ore" and "Concentrate" from the dictionary and Wikipedia. To fortify this stand, I rely on the ratio of the decision of Hon'ble Kerala High Court rendered in the case of 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 Ketan Manhar Shah, Partner of M/s. Sun Borax Industries in his statement dated 26.10.2020 has specifically admitted that Main use of Ground Colemanite is in Ceramic Industry for manufacture of Ceramic Glaze Mixture commonly known as Frit and all of their buyers of Ground Colemnite are such manufacturers and Ground Colemanite are used as such, without any processing. I find that although M/s. Etimaden have clarified in their certificate dated 15-2-2021 that the Boron content of each zone varies from 22-44% and that B2O3 contents of their natural borates are not updated frequently in their website; they have mentioned in the said certificate that the unwanted stones, clay and other impurities are physically separated; that thereafter the boron lumps are subjected to pulverization, then powdered wherein the crystallographic structure does not change. As per definition of 'Concentration of Ore' (obtained from askiitians.com), the process of removal of gangue (unwanted impurities such as earth particles, rocky matter, sand limestone etc.) from the Ore itself is technically known as concentration or Ore dressing and the purified Ore is known as 'concentrate'. Thus, irrespective of the content of B2O3 in the Ore, the goods imported by the Noticee are nothing but 'Ore Concentrate' of Natural Calcium Borate OR 'Boron Ore Concentrate' and not 'Boron Ore' as contended by the Noticee.

29.1.13 I find that the Noticee 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 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 that Noticee has produced the Certificate dated 15.02.2021 issued by the overseas supplier M/s Etimaden wherein they have specifically mentioned as under:

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

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

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

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' and the details mentioned in Technical Data of the overseas supplier M/s. EtiMaden, I find that product "Ground Colemanite B2O3 40% Natural Boron Ore" imported by the Noticee 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 "Ground Colemanite B2O3 40% Natural Boron Ore" imported by the Noticee merit classification under Customs Tariff Item No. 25280090 or Customs Tariff Item No. 25280030? Further whether the Noticee is eligible for exemption of Basic Customs Duty under (i) Notification No. 12/2012-Cus dated 17.03.2012, as amended (Sr. No. 113) (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 "Ground Colemanite B2O3 40% Natural Boron Ore" imported by the noticee is actually' Concentrate of Calcium Boron Ore'. The same are covered under Chapter Heading 2528 of the First Schedule to the Customs Tariff Act, 1975 which reads as under:

Chapter Head	***Description***	***Unit***	***Rate of***

			Duty
2528	NATURAL BORATES AND CONCENTRATES THEREOF (WHETHER OR NOT CALCINED), BUT NOT INCLUDING BORATES PREPARED FROM NATURAL BRINE; NATURAL BORIC ACID CONTAINING NOT MORE THAN 85% OF 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. The Noticee has also not raised any dispute so far as the classification of the goods is concerned. Further, CRCL, Vaododara as well CRCL, Delhi have also stated that the sample were of Calcium Borate. Hence, I 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 the Noticee 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 "Ground Colemanite B2O3 40% Natural Boron Ore". I find that there is specific entry for 'Natural Borates and Concentrate'. If the imported goods is 'Natural sodium borates and concentrates thereof (whether or not calcined)' it merits classification under Tariff Item 25280010 and if the imported goods is 'Natural calcium borates and concentrates thereof (whether or not calcined)' it merits classification under Tariff Item 25280030. Whereas, the Noticee 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 the Noticee 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 the Noticee 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 SEPA-RATED FROM NATURAL BRINE; NATURAL BORIC ACID CONTA-INING 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 surplus age, if they can have appropriate application in circumstances conceivably within the contemplation of the statute" [Aswini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369]. In Rao Shiv Bahadur Singh v. State of U.P. [AIR 1953 SC 394] it was held that "it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which render a part of the statute devoid of any meaning or application". Again in the case of J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. [AIR 1961 SC 1170] it was observed that "in the interpretation of statutes, the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute to have effect". The Legislature is deemed not to waste its words or to say anything in vain [AIR 1920 PC 181] and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons [AIR 1964 SC 766].

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

"It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious."

5.7 From the principles of statutory interpretation as explained by the Hon'ble Apex Court and applying these to the facts of the present case, the only reasonable conclusion that can be reached is that the legislature intended to treat 'ores' and 'concentrates' distinctly and differently. Otherwise, there was

no need for the legislature to employ these two terms with a conjunctive 'and' in between. If one treats ores and concentrates synonymously, as argued by the ld. Counsel for the appellant, that would render the term "concentrate" redundant which is not permissible."

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

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 SCC261,368 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. "Ground Colemanite B2O3 40% Natural Boron Ore" imported by the Noticee 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 the Noticee has heavily relied on the decision of Hon'ble Supreme Court rendered in case of Mineral & Metals Trading Corporation of India Vs. Union of India and Others - reported in 1983.(13) E.L.T. 1542 (S.C.).

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

Item No.	Name of Article	Nature of duty	Standard rate
of duty			
(1)	(2)	(3)	(4)
MINERAL PRODUCTS			
26.	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 the Noticee has availed the benefit of Sr. No. 113 of Notification No. 12/2012-Cus dated 17.03.2012 upto 30.06.2017 and thereafter Sr. No. 130 of said Notification No. 12/2012-Cus dated 17.03.2012 amended vide Notification No. No.50/2017-Cus dated 30.06.2017 for the clearance of imported goods viz. "Ground Colemanite B2O3 40% Natural Boron Ore" classified under Customs Tariff Item No. 25280090. On perusal of the said Notification No.12/2012-Cus dated 17.03.2012 and amended Notification No. No.50/2017-Cus dated 30.06.2017, I find that the said Notification No.12/2012-Cus dated 17.03.2012 exempts the goods of the description specified in column (3) of the Table or column (3) of the Table of said NotificationNo.12/2012-Cus dated 17.03.2012and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the Table of the said Notification No.12/2012-Cus dated 17.03.2012. Thus, twin parameters needs to be satisfied to avail the benefit of exemption from Basic Customs Duty. One the description specified in column (3) of the Table to the Notification should be matched with imported goods and other tariff item should also be matched with the tariff item specified in Column (2) of the Notification.

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 legislate 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 The Noticee 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 the Noticee that the Department was reading into the Notification additional words and conditions in the Notification is unjustified and without any basis since the allegation in the SCN is mainly based on the definitions of 'Ore' and 'Ore concentrate' available in various popular dictionaries and on websites, the data available on the Website of M/s. Etimaden as well as the test reports of the samples of the Noticee, of M/s. Raj Borax Pvt.Ltd. and M/s. Indo Borax by CRCL, Vadodara and CRCL, New Delhi as well as the statement of Shri Ketan Manhar Shah, Partner of the Noticee stating that the product which they imported was directly used in the ceramic industry without any further processing. Further, the issues involved in the judgements relied upon by the Noticee pertains to availability of benefit of concessional rate of Customs Duty in respect of a particular entry of a Notification, but circular issued subsequent to the issuance of the said Notification laid down conditions for availment of the said benefit in respect of that particular entry. Also the principles laid down by the Hon'ble Supreme Court, as discussed above, expressly clarify that no addition or deletion is permissible. In the instant case the entry exempts 'Boron Ore' and the same cannot be stretched to include Concentrate of Boron Ore. Thus, I find that the ratio of the case laws cited by the Noticee are not applicable to the facts of the case at 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 the Noticee have not adduced any evidence to consider that the goods viz. "Ground Colemanite B2O3 40% Natural Boron Ore" imported by them were Boron Ore and not 'Concentrate of Boron Ore'. Therefore, I am of the view that Noticee 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. Sun Borax Industries are liable to pay the differential amount of Customs Duty of Rs. 56,67,151/- (Rupees Fifty Six Lakh, Sixty Seven Thousand, One Hundred and Fifty One Only), as detailed in Annexure A-1, A-2,

A-3, A-4, A-5 & A-6 to 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 the Noticee is a 'concentrate of Natural Calcium Borate. However the Noticee had mis-declared the description as "Ground Colemanite (B2O3 40%) Natural Boron Ore" instead of "*Concentrates of Natural Calcium Borate* " or "*Concentrates of Boron Ore*" and wrongly availed the benefit of exemption knowingly and deliberately with intent to evade 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 Ground Colemanite, B2O3 40% as Boron Ore as the exemption was available only to 'Boron Ore' and thereby evaded Customs Duty amounting to **Rs. 56,67,151/-** for the period 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 [up to 17.05.2020] respectively. The fact that 'Ground Colemanite B2O3 40%' imported by them were actually 'concentrate of Natural Calcium Borate' was clearly evident from the discussion held hereinabove. Therefore, the Noticee, 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. Sun Borax Industries had short-paid the applicable Customs Duties by way of deliberate mis-representation, willful mis-statement and suppression of facts in order to evade the differential Duty leading to revenue loss to the government exchequer. Also, the subject imported goods is classifiable under Tariff item No. 25280030 whereas the Noticee have willfully mis-classified the same under Tariff item no. 25280090. Further, I find that Shri Ketan Manhar Shah, Partner in his statement dated 26.10.2020 at reply No. 6 to Question No. 6 regarding whether Ore can be used directly without any process, he has categorically stated that 'Hisarcik colemnite' of Eti-Maden, Turkey from M/s Asian Agro Chemicals Corporation which was in lumps form and also used in the manufacture of Ceramic Glaze Mixture commonly known as Frit for which 'Ground Colemnite' is used and he was aware that the 'Hisarsik colemnite' being in lump form, it is being first processed before using for manufacture of Ceraminc Glaze Mixture whereas there was no such need in the case of 'Ground Colemnite' it being a refined product. Thus, I find that it was not the case where Noticee 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 **Rs. 56,67,151/-** are required to be demanded and recovered from the Noticee invoking the provisions of extended period under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962. I find that the noticee have paid/deposited Rs.5,01,496/- under protest. Since I have found that the Noticee is required to pay differential duty alongwith interest, the protest lodged by M/s. Sun Borax Industries needs to be vacated and Customs Duty of Rs. 5,01,496/- paid under protest towards their differential Duty liability for the Bills of Entry as mentioned in Annexure-A6 to the Show Cause Notice is required to be appropriated and adjusted against the above confirmed Duty liabilities of Rs. 56,67,151/-.

29.3.2 I find that the Noticee 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 the Noticee had suppressed certain material facts from the Department which came to light, only when DRI booked a case against M/s. Indo Borax and Chemicals ltd., Mumbai (in 2020) who also imported 'Ulexite Concentrated Granular' (supplied by M/s. Etimaden, Turkey through same trader M/s Asian Agro Chemicals Corporation, UAE) declaring it as 'Ulexite Boron Ore'. CHA of M/s Indo Borax and Chemicals Ltd vide letter dated 03.07.2020 submitted copies of import documents of M/s Indo Borax which included the test report of 'ULEXITE' supplied by M/s Etimaden, Turkey showing the description of the goods supplied as "Ulexite, Concenrated, Granular, In Bulk 3_125mm". Similar test reports in respect of goods imported by M/s. Sun Borax Industries may also have been supplied by M/s. Etimaden, Turkey. However, no such test report of the producer M/s Etimaden had been disclosed by M/s Sun Borax Industries in present case through e-sanchit portal/Customs Department.

29.4 Whether the goods having assessable value of Rs. 10,87,42,304/- imported by wrongly claiming as "Boron Ore' as detailed in Annexure A-1, A-2, A-3, A-4, A-5 & A-6 and consolidated in Annexure-A7 to Show cause Notice should be held liable for confiscation under Section 111 (m) of the Customs Act, 1962?

29.4.1 I find that 'Ground Colemanite' imported under Bills of Entry Nos. 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020 totally weighing 144000.00 Kgs valued at Rs. 50,73,264/- [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 the Noticee under provisions of Section 110A of the Customs Act, 1962. Further, I find that the Noticee had imported Ground Colemanite, B2O3 40% by declaring as 'Natural Boron Ore' and cleared them under the jurisdiction of the Customs Commissionerate of Ahmedabad from April, 2015 onwards. The Bills of Entry filed by the Noticee for the period from 01.04.2015 to 30.12.2019 were assessed finally. After initiation of inquiry, the bills of entry filed by the Noticee were assessed provisionally and Noticee paid Basic Customs Duty @ 5% as per Sr. No 120 of Notification No. 50/2017 dated 30.06.2017.

29.4.2 Further, the Noticee had imported 3120 MTS totally valued at Rs. **10,87,42,304/-**of 'Boron Ore Concentrate' and wrongly availed the benefit of exemption from payment of Customs Duty as per Sr.No.113 of Customs Notification No. 12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 for period from 01.04.2015 to 30.06.2017 and 01.07.2017 to 26.11.2020 respectively by declaring 'Ground Colemanite, B2O3 40%' as 'Boron Ore' as the exemption was available only to 'Boron Ore'. Out of said goods, goods totally weighing 144 Mts totally valued at Rs. 50,73,264/- [Assessable Value] imported under Bills of

Entry Nos. 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020 had been seized being liable for confiscation under Section 111(m) of the Customs Act, 1962 which was subsequently released provisionally by the competent authority. Further, balance goods weighing 2976 Mts totally valued at Rs. 10,36,69,040/- which were not available for seizure had been imported in contravention of the provisions of Section 46(4) of the Customs Act, 1962. For these contraventions and violations, the aforementioned goods fall under the ambit of smuggled goods within meaning of Section 2(39) of the Customs Act, 1962 and hence I hold them liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 in as much as by wrongly availing the benefit of Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017, the Noticee 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 144 MTs of goods viz. "Ground Colemanite, B2O3 40%, Natural Boron Ore" appearing in Annexure A-5 imported vide Bill of Entry No. Entry Nos. 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020 totally valued at **Rs. 50,73,264/- (Rupees Fifty Lakh, Seventy Three Lakh, Two Hundred and Sixty Four 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 executed for provisional release of said seized goods is required to be enforced and Bank

Guarantee or security deposit of Rs 9,10,962/-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 fine s 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).*
> ....
> ....
> ...."

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: -

> ".
> .
> .
>
> ***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 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 with clear intent to evade the payment of duty. Therefore, the contention of the Noticee that in absence of availability of goods, cannot be confiscated is not tenable.

In view of the above, I find that 2976 Mts of goods viz. "Ground Colemanite, B2O3 40%, Natural Boron Ore" appearing in Annexure A-1 to A-6 (except goods imported vide Bill of Entry 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020 mentioned in Annexure-A-5) totally valued at **Rs. 10,36,69,040/- (Rupees Ten Crore, Thirty Six Lakh, Sixty Nine Thousand and Forty 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. 10,87,42,304/-, as detailed in Annexure A-1, A-2, A-3, A-4, A-5 & A-6 and consolidated in Annexure-A7 to Show cause Notice as detailed in Annexures attached to the Show Cause Notice.

29.5 Whether M/s. Sun Borax Industries 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. 56,67,151/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Noticee under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of suppression of facts by the Noticee 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. Sun Borax Industries 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 the Noticee 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. Sun Borax Industries 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 Noticee M/s. Sun Borax Industries 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 Noticee was well aware that goods viz. "'Ground Colemanite, B2O3 40%' " imported were actually 'concentrate of Boron Ore', however, they falsely mis classified under Customs Tariff Item No. 25280090 instead of merit classification under Tariff Item No. 25280030 and intentionally declared Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 as amended vide Notification No 28/2015-Cus dated 30.04.2015 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 in Bill of Entry with clear intent to evade the payment of duty and contravened the provision of Section 46 (4) of the Custom Act, 1962 by making *false declarations in the Bill of Entry,*. Hence, I find that the Noticee has knowingly and intentionally mis declared the false/incorrect description of goods and its Tariff Item No. and Notification No. in respect of imported goods. Hence, for the said act of contravention on their part, the Noticee 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. Sun Borax Industries 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, is not warranted and legally not sustainable.

30. Whether, Penalty Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962 should be imposed on Shri Ketan Manhar Shah, Partner of M/s Sun Borax Industries?

30.1 I find that Shri Ketan Manhar Shah , Partner of M/s. Sun Borax Industries was responsible for import and involved in deciding the classification of the imported 'Ground Colemanite B2O3 40%' 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 Ketan Manhar Shah , Partner 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 Ketan Manhar Shah, Partner of M/s. Sun Borax Industries **under Section 114AA of the Customs Act, 1962.**

30.2.1 I find that Shri Ketan Manhar Shah, Partner of M/s. Sun Borx Industries in his statement recorded on 26.10.2020 has specifically stated that 'Ground Colemanite' is used in manufacture of Ceramic Glaze Mixture commonly known as Frit as such without any processing . Further, he stated that they imported 'Ground Colemanite (Calcium Borate) B2O3 40%' of M/s Etimaden, Turkey by declaring it as "Ground Colemanite, B2O3 40%, Natural Boron Ore" as declared in all import documents of their supplier M/s Asian Agro Chemicals Corporations, U.A.E. since April 2015. Further, Shri Ketan Manhar Shah, Partner in his statement dated 26.10.2020 at reply No. 6 to Question No. 6 regarding whether Ore can be used directly without any process, he categorically stated that "*Hisarcik colemnite of Eti-Maden, Turkey from M/s Asian Agro Chemicals Corporation 11F-09, Amenity Center Tower-2, Al-Jazzra Al-Hamra, RAS Al Khaimah, United Arab Emirates which is in lumps form and also used in the manufacture of Ceramic Glaze Mixture commonly known as Frit for which Ground Colemnite is used and he was aware that the Hisarsik colemnite being in lump form, it is being first processed before using for manufacture of Ceraminc Glaze Mixture whereas there was no such need in the case of Ground Colemnite, it being a refined product.*" Further, on being asked, he categorically stated that they classified under CTH 25280090 so because their supplier claimed as per all their documents that Ground Colemanite, B2O3 40%, Natural Boron Ore was to be classified under CTH 25280090 and they were simply classifying under the same

heading since long and claiming the benefit of Notification. I find that from the Product Technical Data Sheet of "Ground Colemanite", no where it has been mentioned as 'Natural Boron Ore', however inspite of having the knowledge that impugned goods was actually 'Concentrate of Boron Ore' they have mentioned/declared the description of the imported goods as "Ground Colemanite, B2O3 40%, Natural Boron Ore" with clear intent to evade the payment of Customs duty by wrong availment of benefit of Sr.No.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 and Sr.No.130 of Customs Notification No.50/2017 dated 30.06.2017 contravened the provision of Section 46 (4) of the Custom Act, 1962 by making false declarations in the Bill of Entry,. Hence, I find that the Shri Ketan Manhar Shah, Partner of M/s. Sun Borx Industries 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 Ketan Manhar Shah, Partner of M/s. Sun Borx Industries 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 Ketan Manhar Shah, Partner of M/s. Sun Borx Industries. 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 Ketan Manhar Shah, Partner of M/s. Sun Borax Industries 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 "Ground Colemanite (B2O3 40%) Natural Boron Ore" imported by M/s. Sun Borax Industries which are given in the Bills of Entries, as mentioned in Annexures A-1, A-2, A-3, A-4, A-5 & A-6 to 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. Sun Borax Industries.;

31.3 I confirm the demand of Differential Customs Duty amounting to Rs. 56,67,151/- (Rupees Fifty Six Lakh, Sixty Seven Thousand, One Hundred and Fifty One Only) as detailed in Annexures A-1, A-2, A-3, A-4, A-5 & A-6 and consolidated in Annexure-A7 to the Show Cause Notice, leviable on Boron Ore Concentrate imported by M/s. Sun Borax Industries 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. Sun Borax Industries, 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. Sun Borax Industries and Customs Duty of Rs.5,01,496/-(Rupees Five Lakh, One Thousand. Four Hundred and Ninety Six 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 144 MTs of goods viz. ""Ground Colemanite, B2O3 40%, Natural Boron Ore" appearing in Annexure A-5 imported vide Bill of Entry No. Entry Nos. 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020 totally valued at **Rs. 50,73,264/- (Rupees Fifty Lakh, Seventy Three Lakh, Two Hundred and Sixty Four only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Sun Borax Industries, 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 and Bank Guarantee or security deposit of Rs 9,10,962/-furnished for provisional release of the seized goods weighing 144MTs imported under Bills of Entry Nos. 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020 and the same should be appropriated towards the above redemption Fine as mentioned in Para 31.6 above.

31.8 I hold the 2976 MTs of goods viz. "Ground Colemanite, B2O3 40%, Natural Boron Ore" appearing in Annexure A-1 to A-65 (except goods imported vide Bills of Entry Nos. 6454271 dated 13.01.2020 and 6548664 dated 20.01.2020 mentioned in Annexure-A-5) totally valued at **Rs. 10,36,69,040/- (Rupees Ten Crore, Thirty Six Lakh, Sixty Nine Thousand and Forty only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Sun Borax Industries, the option to redeem the goods on payment of Fine of **Rs.50,00,000/- (Rupees Fifty Lakh only)** under Section 125 of the Customs Act, 1962.

31.9 I impose penalty of Rs. 56,67,151/- (Rupees Fifty Six Lakh, Sixty Seven Thousand, One Hundred and Fifty One 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. Sun Borax Industries 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. Sun Borax Industries 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. Sun Borax Industries under Section 114AA of the Customs Act,1962.

31.12 I refrain from imposing any penalty on M/s. Sun Borax Industries Bharuch under Section 117 of the Customs Act,1962.

31.13 I impose a penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** on Shri Ketan Manhar Shah, Partner of M/s. Sun Borax Industries under Section 112(a)(ii) of the Customs Act, 1962.

31.14 I impose a penalty of **Rs.5,00,000/- (Rs. Five Lakh only)** on Shri Ketan Manhar Shah, Partner of M/s. Sun Borax Industries under Section 114AA of the Customs Act, 1962.

31.15 I refrain from imposing any penalty on Shri Ketan Manhar Shah, Partner of M/s. Sun Borax Industries 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/10-09/Pr Commr/O&A/2020-21dated 08.01.2021 is disposed off in above terms.

27-06.2024

(Shiv Kumar Sharma)
Principal Commissioner

DIN: 20240671MN0000999BE0

F. No. VIII/10-09/Pr Commr/O&A/2020-21. Date: 27.06.2024

BY Speed Post / Email

To,

1. M/s Sun Borax Industries,
   Plot no. 15, Trimul Ind. Estate, Vadsar-Air Force Road, Khatraj, Tal. Kalol, Gandhinagar-382721 (Registered office at 15, Ankur Complex, Nr. Ankur Bus Stand, Naranpura, Ahmedabad-380013)

2. Shri Ketan Manahar Shah,
   Partner of M/s Sun Borax Industries,
   Plot no. 15, Trimul Ind. Estate, Vadsar-Air Force Road, Khatraj, Tal. Kalol, Gandhinagar-382721

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 Superintendent, System, Customs, HQ (in PDF format) for uploading the order on the website of Ahmedabad Customs Commissionerate.
5. Guard File.