

	<p>प्रधान सीमा शुल्क आयुक्त का कार्यालय, मुंद्रा आयुक्तालय सीमा शुल्क हाउस, अदानी पोर्ट और एस.ई.जेड., मुंद्रा (कच्छ), <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH</b> <b>MUNDRA PORT &amp; SPL ECONOMIC ZONE,</b> <b>MUNDRA-370421</b> <b>Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62</b></p>	
<b>A. File No.</b>	:	GEN/ADJ/COMM/91/2023-Adjn-O/o Pr. Commr- Cus-Mundra
<b>B. Order-in-Original No.</b>	:	MUN-CUSTM-000-COMM-07-24-25 DATED 02.05.2024
<b>C. Passed by</b>	:	<b>K. Engineer</b> <b>Principal Commissioner of Customs,</b> <b>Customs House, AP &amp; SEZ, Mundra.</b>
<b>D. Date of order and Date of issue of</b>	:	02.05.2024. 02.05.2024.
<b>E. SCN No. &amp; Date</b>	:	SCN F.No. GEN/ADJ/COMM/91/2023-Adjn, dated 08.05.2023.
<b>F. Noticee(s) / Importer / Importer</b>	:	<b>M/s. Yara Fertilisers India Private Limited (IEC-3111008398),</b> 402, Suyog Fusion Dhole Patil Road, Pune, Maharashtra -411001.
<b>G. DIN</b>	:	20240571MO000000EFAC

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

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

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

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ 1000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

6. अपील ज्ञापन के साथ ऊटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

## **1. FACTS OF THE CASE IN BRIEF:**

**1.1.** Whereas, the Intelligence was gathered by the officers of the Directorate of Revenue Intelligence, Zonal Unit, Lucknow (*hereinafter referred to as the "DRI"*) that **M/s Yara Fertilisers India Private Limited**, (IEC-3111008398), (hereinafter referred to as 'the importer' or also as 'M/s.YARA' for the sake of brevity) have imported "YARAVITA ZINTRAC (Zinc Oxide suspension concentrate (39.5%)" classifying the same under CTH 31059090 by declaring "YARAVITA ZINTRAC (Zinc Oxide suspension concentrate (39.5%)-fertilizer" from Mundra Port (INMUN1) and paid Basic Customs Duty at the rate of 5% and IGST at the rate of 5% ad valorem during the F.Y. year 2019.

**1.2.** Whereas, the intelligence further indicated that the chemical composition of "YARAVITA ZINTRAC (Zinc Oxide suspension concentrate (39.5%))" imported by the Importer is as under-

(i) Dense suspension concentrated of liquid Zn	-39.5%w/w/(700g/l)
(ii) Nitrogen (N)	-0.9%w/w / (18g/l)
(iii) PH	-9.0 ±1
(iv) Density	-1.734

**1.3** Whereas 'Zinc Oxide suspension concentrate (39.5% ZN)' as per **Fertiliser (Control) Amendment Order, 2017 dated 06.02.2017**, falls under the category of 'Micronutrient' at Sl. No. 15, Sub-Heading 1(g) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO), in which the chemical composition of the said product is as under,

15. Zinc Oxide Suspension Concentrate (39.5% Zn)		
(i)	Dense suspension concentrate of liquid Zinc	
(ii)	Zinc (as Zn) per cent by weight, minimum	39.5
(iii)	pH (5% solution)	9.0±1
(iv)	Arsenic (as As) per cent by weight, maximum	0.001
(v)	Lead (as Pb) per cent by weight, maximum	0.003
(vi)	Cadmium (as Cd) per cent by weight, maximum	0.0025
(vii)	Specific gravity (at 15° C)	1.71-1.75

**1.4** From the above compositions, it appears that Zinc is main component of the imported product i.e. YaraVita Zintrac "(Zinc Oxide suspension concentrate (39.5%)) and a separate chemically defined component as per FCO, 1985, hence the classification of same under CTH 31059090 which covers "other fertilizers" is not in accordance. As per HSN, the heading 3105 excludes: "Separate chemically defined compound not specified in Notes 2 to 5 to this Chapter but which might be used as fertilizers, e.g., ammonium chloride which falls in heading 28.27. From the above it appears that the imported goods have been misclassified under CTH 31059090 attracting BCD @ 5%, instead of its correct CTH 28170010 which attracts BCD @ 7.5% and thus there is short payment of duty.

## **2. INVESTIGATION OF THE CASE**

**2.1** Whereas, based on the aforesaid intelligence, an investigation was initiated and the Importer was requested vide DRI letter dated 26.05.2020 to submit copies of documents pertaining to all their imports of Zinc Oxide suspension concentrate (39.5%) classifying the same under CTH 31059090. The importer, in reply, vide their letter dated 10.06.2020, submitted the following documents,

- (i)** Copy of Bills of entry, Commercial invoice, purchase order etc. wherein Zintrac was imported and classification indicated is Tariff Item 31059090;
- (ii)** Copy of product literature, brochure of Zintrac;
- (iii)** Copy of proof of remittances and letter of credit effected in relation to procurement of Zintrac;
- (iv)** Copy of agreement between M/s Yara Fertilizers India Private Limited and Supplier(s) of Zintrac with all amendments;
- (v)** Copy of Sales invoices indicating sale of Zintrac.

**2.2 TESTIMONY OF SHRI ANJIVA KUMAR RAI, MANAGER SUPPLY CHAIN OF M/S YARA FERTILISERS INDIA PRIVATE LIMITED:**

Whereas, summons dated 24.11.2020 under Section 108 of the Customs Act, 1962 was issued to M/s. YARA for tendering evidence on 14.12.2020. The Importer, vide their emails dated 30.12.2020 and 01.01.2021, informed that they have paid duty and interest and requested to appear in future once COVID-19 restriction are lifted as they were affected by COVID-19. Subsequently, another Summons dated 04.01.2021 U/s 108 of the Customs Act, 1962 was issued to the Importer for their appearance on 15.01.2021. In compliance of the same, Shri Anjiva Kumar Rai, Manager Supply Chain, M/s Yara Fertilisers India Private Limited appeared and tendered his voluntary statement dated 15.01.2021 under Section 108 of the said Act wherein he *inter alia* stated:

- (i)** That M/s Yara Fertilisers India Private Limited, Mumbai is engaged in production and import of fertilizers and marketing of them in Indian markets: that they are producing neem coated Urea at their Plant at Babrala, district Sambhal, Uttar Pradesh: that they are importing and selling NPK Complex fertilizers, Water soluble fertilizers and micronutrients i.e. Zinc Oxide suspension concentrate (Zintrac), Liquid Calcium 10%, Boron Ethanolamine etc.: that they are importing Zintrac from Yara Asia Pte Ltd Singapore;
- (ii)** On being enquired about who looks after the classification of various goods imported by M/S. YARA, they submitted that, they collect details regarding product like Certificate of Analysis, Material Safety Data Sheet, Product Brochures and share the details with consultants for their advice on import and taxation and classification. Once these advises are received, he along with Akhilesh Bhadauria, Manager Taxation decide classification/ CTH for imports of goods;
- (iii)** On being asked to peruse the letters dated 10.06.2020 and 30.12.2020 submitted by them to DRI, LRU, wherein it was mentioned that M/s YARA is engaged in Import of Zinc Oxide suspension concentrate i.e. Yara Vita Zintrac and further asked that what are the uses of the said

product and is the said product separate chemically defined and asked to comment on it, he submitted that he perused the same and as a token he put his dated signature on the above mentioned letters: that the Zintrac is Zinc suspension product; it is used to provide zinc to plant in cell division and new tissue creation: that this is useful in leaf, flowering and seed development: **that in respect of question made on separate chemically defined compound, he would reply in due course .**

- (iv) On being asked to peruse the product details for YaraVita available on [www.yara.in](http://www.yara.in), wherein the uses of products YaraVita are mentioned as "for fertigation and soilless system, for foliar application and for seed treatment" and asked to comment on it, he submitted that he perused the same and as a token he put his dated signature on the above mentioned letters: that he is in agreement with same: that YaraVita product is wide in range: that Zintrac is part of YaraVita range: that it is a formulated product for treatment of Zinc deficiency by foliar application: that Foliar application is basically done by mixing concentrate with water and spraying over leaf and flowers which result in cell division and new tissue creation in Plant. This is useful in leaf, flowering and seed development.
- (v) On being asked to peruse the copies of Bill of Entries number 9469024 dated 13.12.2018 and 4666602 dated 28.08.2019 submitted by his office email dated 15 Jan 2021, wherein they have classified Zintrac under CTH 28170010 while, in Bill of Entries number 3199402 dated 13.05.2019, 3579838 dated 10.06.2019 submitted vide his office letter dated 10.06.2020, they have imported Zintrac under CTH 31059090: that further, again Bill of Entry number 7793282 dated 01.06.2020, they have imported Zintrac under CTH 28170010: that during scrutiny of documents submitted by his office, it has been observed that they have regularly changed the CTH for import of Zintrac: that on being asked to comment on same, **he submitted that he has perused the same and as a token he put his dated signature on the above mentioned letters: that he agreed with same: that they started importing ZINTRAC at Mundra Port under CTH 28170010, after clearing few shipments, they started import of said goods under CTH 31059090 as an appeal filed by M/s YARA against the classification of ZINTRAC was already pending before CESTAT Mumbai and they were expecting early disposal of same appeal in their favour: that he further submitted that when they received next shipments, there was delay in disposal of case, hence, they maintained same stand in import of Zintrac under CTH 28170010: that in case of Zintrac, they are of primary view that it is classifiable under chapter 3105, but at the same time, since matter is pending with CESTAT Mumbai, they have again started importing under chapter 2817 and deposited duty under protest: that they have changed CTH as per their submission above only;**
- (vi) On being asked about their submission that they have changed CTH on the basis of submission made in answer 6 above, but they have not paid the differential custom duty on the Bill of Entries filed under CTH 31059090 before change of CTH: that what do he has to say about that,

he replied that they have not paid differential duty before change of CTH: **that they paid differential duty along with interest when they received a letter regarding enquiry w.r.t. import of Zintrac from DRI, Zonal Unit Lucknow;**

(vii) On being asked about the essential character of Zintrac (Zinc Oxide suspension concentrate), he replied that, it is a formulated product for treatment of Zinc deficiency. Zinc is essential micronutrient for Plant growth, which generates Auxin in plant which helps in improving cell division, plant metabolism and grain filling: that Zintrac with 39.5% Zn meets this requirement;

(viii) On being asked to peruse the Certificate of analysis (COA) dated 14.03.2019 w.r.t. order no. IN9907905 submitted by their office vide letter dated 10.06.2020. In COA % of Zn is 39.5% & in nitrogen is 0.9% w/w. What is the role of nitrogen in the said product? On which he replied that he agreed with same: that Nitrogen is essential part of formulation and makes Zinc oxide suspension stable: that Nitrogen being one of the **primary nutrients** also helps in absorption of Zn during cell division;

(ix) On being asked to peruse the General Rule for the interpretation of import tariff given in custom tariff whereas at point 3. (a), it is given **“The heading which provides the most specific description shall be preferred to headings providing a more general description”**. Further it is also mentioned in **point 3 (b)**, that “Mixtures, composite goods consisting of different materials, or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable”: that as their company imported the said goods under CTH 31059090 under the heading of “Others” and he has answered in Ans 8 of his statement, that essential character of Zintrac is to decrease deficiency of Zinc: that don't he think that the said item should correctly be imported under CTH 28170010, where it is specifically mentioned as Zinc Oxide; Zinc Peroxide: that what do he has to say about that, **he replied that they are of the view that Zintrac merits classification under CTH 3105** since it is mixture of zinc oxide (which is one of the micronutrients), Nitrogen (in the form of Urea) and Monoethylene Glycol (as suspension): that this product is fertilizer, by name, known as Zinc Oxide suspension concentrate (39.5% Zn) under the category of Micronutrient al Sl. No. 16, subheading 1(f) of Part A of the schedule I of the Fertilizer Control Order 1985(FCO). Further it is traded as micronutrient Fertilizer: that accordingly, Zintrac is correctly classifiable under CTH 31059090 as other Fertilizer: that since the classification matter is pending with CESTAT Mumbai, it is sub-judice and to be decided by CESTAT;

(x) On being asked that in answer no. 10 of his statement, he has submitted that composition of Zintrac i.e. zinc oxide 39.5%, Nitrogen 0.9% and Monoethylene Glycol (as suspension), now according to him what is the main content of the said product and what is the use of the same: Further in the said mixture nitrogen is available as 0.9%: he further asked to define the role of nitrogen for the said mixture, he

replied that the main Content of the Zintrac is Zinc oxide: that it is used to decrease the Zinc deficiency: that Nitrogen is essential part of formulation and makes Zinc oxide suspension stable: that Nitrogen being one of the primary nutrients also helps in absorption of Zn during cell division;

(xi) On being asked to peruse the Bill of entries no. 3045776 dated 30.04.2019, 3045360 dated 30.04.2019, 3199402 dated 13.05.2019, 3579838 dated 10.6.2019, 3415097 dated 28.05.2019, 3580889 dated 10.06.2019 submitted vide their office letter dated 10.06.2020, vide which they have imported Zintrac under CTH 31059090 through Mundra Port, while at the same time, as per sales tax invoices No. IN0720000278 dated 10.04.2019, IN0720000281 dated 10.04.2019, IN0720002053 dated 24.06.2019, IN0720003877 dated 16.08.2019 & IN0720020627 dated 29.10.2019 submitted vide their office letter dated 10.06.2020 to this office: that it has been observed that they have cleared the Zintrac in the domestic market under CTH 28170010 and further asked him that what did he has to say about that, on which he replied that 12, he was not in position to comment on that at present and request to give them two weeks time to study & reply on the same;

(xii) On being asked to submit the month wise opening & closing statement of the stocks with respect to said product i.e. ZINTRAC for the FY 2018-19 to till date along with GST Returns for the said periods. **They were also requested to provide the documents pertain to appeal filed before CESTAT-Mumbai as discussed above and to provide the sample of the product Zintrac, on which he requested two weeks time to collect and submit the documents as asked.**

(xiii) On being asked about his submission made in ans. 11 of his statement that Zinc is main component and as he was already peruse the 3(b) of General Rules of Interpretation of Custom Tariff and the product Zintrac clearly defined as ZINC OXIDE SUSPENSION CONCENTRATE (39.5%Zn), under the category of "micronutrients" at Sl. no 16, sub heading 1(f) of part A of Schedule I of the Fertilizer Control Order, 1985(FCO), didn't he think that the said item is correctly classifiable under CTH 28170010 and asked to comment on that, on which he replied that he would submit the reply and product literature/chemical specification in due course;

(xiv) That he further requested two weeks time for further submission on question made in his statement and documents asked during the statement.

**2.3** Summons dated 23.11.2021 under Section 108 of the Customs Act, 1962 was issued to the Importer for appearance and tendering evidence on 02.12.2021. **In reply they submitted that an Appeal No 85205/2018 (relating to classification of YaraVita ZINTRAC under Customs) is pending with CESTAT Mumbai.** They had filed early hearing application on 09.08.2021; CESTAT had accepted their application. In view of the early outcome of the same, they requested to allow them to present in person after the next hearing: Subsequently, another Summons dated 15.03.2022 under Section 108 of the Customs Act, 1962 was issued to the Importer for their appearance on 15.03.2022. In compliance of the same, Shri Anjiva Kumar Rai, Manager Supply Chain, M/s Yara Fertilisers India Private Limited appeared and tendered his

voluntary statement dated 15.03.2023 under Section 108 of the said Act, wherein he *inter alia* stated:

(i) On perusal of Ans No 4 of his statement dated 15 Jan 2021, vide which he had submitted that he will reply in due course against question "Is the said product separate chemically defined?" on which he replied that product Zintrac is a mixture and is not separate chemically defined product. We have submitted manufacturing process which shows it as mixture.

(ii) On being asked that he has submitted that Zintrac is a mixture, while M/s. Yara Fertiliser India Pvt. Ltd. importing the same under the brand name "YaraVita Zintrac (Zinc Oxide suspension concentrate (39.5%)) and the same thing are also mentioned in Master Sales Terms No. S/003/2019 submitted by his office letter dated 10.06.2020. Further brochure of Yaravita Zintrac defined the product for the treatment of Zinc Deficiency. Further as per point (C) of Chapter heading 31.05 of Explanatory Notes for the chapter 31 is reproduced as under:

"All other fertilisers (other than separate chemically defined compounds),.....Further Explanatory Notes for the chapter 31 also states that the heading excludes: (a) Separate chemically defined compounds not specified in Notes 2 to 5 to this Chapter but which might be used as fertilisers, e.g., ammonium chloride which falls in heading 28.27."

That Ammonium Chloride is a straight nitrogenous fertilizer mentioned at Sr. no. 3 of Sub heading 11 (a) Straight Nitrogenous Fertilisers of Part A of Schedule-I of the Fertiliser (Control) Order, 1985, while the product imported by M/s. Yara Fertilisers i.e. 'Zinc Oxide suspension concentrate (39.5% ZN)' is mentioned under the category of 'Micronutrient' at Sl. No. 16, Sub-Heading 1(f) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO). Do you still submit that Zinc Oxide suspension concentrate (39.5%) is not separate chemically defined product? On which he replied that he humbly submit that YaraVita Zintrac is a mixture of Zinc Oxide, Urea and Monoethylene Glycol. Hence, even though product name is Zinc Oxide due to higher share of Zinc Oxide, product is a mixture. Therefore, they understand that this is not a separate chemically defined product. Nitrogen adds; 1) Uptake aid to improve nutrient (Zn) absorption via the leaf, 2) Anti-freeze agent to protect formulation from frost damage, 3) Nutritional N input, 4) Rheology control to maintain product shelf-life and handling.

(iii) On perusal of Ans No 12 of his statement dated 15 Jan 2021, regarding clearance of Zintrac in domestic market under CTH 28170010, in reply of the same he had requested two weeks time to submit the reply, but reply still awaited. In reply of the same he submitted that they had cleared 6 shipments in chapter 31 on premise that they were expecting early resolution of classification from CESTAT. Meanwhile they supplied old inventory in market. Since operationally it was not feasible to change GST% in invoices and revert back to previous GST%. Also they changed CTH back to 28170010 soon, therefore they could not effect changes in domestic market.

(iv) On being asked about brochure of YaraVita Zintrac and in answer of question no. 5 of his statement dated 15.01.2021, in which Yaravita Zintrac is defined as "a highly concentrated flowable formulation for the treatment of Zinc Deficiency by foliar application". While the category of products covered under Chapter 31 has also been elaborated by the General Chapter Notes to the Chapter 31, which is reproduced as under:

"This chapter also excludes micronutrient preparations which are applied to seeds, to foliage or to soil to assist in seed germination and plant growth. They may contain small amounts of the fertilizing element Nitrogen, Phosphorus, and Potassium, but not as essential constituents." Do he agree with the same? On which he replied that Nitrogen plays an essential role in Zintrac. It adds 1) Uptake aid to improve nutrient (Zn) absorption via the leaf 2) Anti-freeze agent to protect formulation from frost damage 3) Nutritional N input 4) Rheology control to maintain product shelf-life and handling, hence Nitrogen is an essential element of Zintrac and it should not be excluded from Chapter 31.

(v) On being asked that vide their office letter dated 10.06.2020 he had submitted that YaraVita Zintrac is a mixture of Zinc Oxide (which is one of the micronutrients), Nitrogen (in form of urea), and Monoethylene Glycol (as suspension). This product is fertilizer, by name, known as 'Zinc Oxide suspension concentrate (39.5% ZN)' under the category of 'Micronutrient' at Sl. No. 16, Sub-Heading 1(f) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO). Further, it is traded as micronutrient fertilizer. While, as per Fertiliser (Control) Order (FCO), 1985, Order dated 06.02.2017, Zinc Oxide suspension concentrate (39.5% ZN)' comes under the category of 'Micronutrient' at Sl. No. 15, Sub-Heading 1(g) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO) and its contains,

15.	Zinc Oxide suspension concentrate	-(39.5% Zn)
(i)	Dense suspension concentrate of liquid Zinc	
(ii)	Zinc (as Zn) per cent by weight, minimum	-39.5
(iii)	pH (5% solution)	-9.0+1
(iv)	Arsenic (as As) per cent by weight, maximum	-0.001
(v)	Lead (as Pb) per cent by weight, maximum	-0.003
(vi)	Cadmium (as Cd) per cent by weight, maximum	-0.0025
(vii)	Specific gravity (at 150 C)	-1.71-1.75

As per above composition provided by FCO, 1985 & Analysis report of CFQCTI no. Lab No. 633/21/3975 dated 28.12.2021 submitted by you; **nitrogen is not a part of above composition**. In view of the above it appears that they had submitted incorrect information to this office, on which he replied that there is continuous improvement and correction in specifications over past years. For Yara India, specification of Zintrac has remained same and it qualifies for new specification as evident from test reports. Since Nitrogen is part of their product even after change in FCO specification, they have taken reference on bonafide belief of old entry of FCO inadvertently in place of present entry of FCO. They humbly request to ignore this mistake on their part. Further they believe that in

CFQCTI LAB test report only those elements are reported which are given under FCO specification.

**2.4. SCRUTINY OF DOCUMENTS OF THE IMPORTER:** Whereas, scrutiny of the import documents submitted by importer as well as available in this office, revealed that the importer had filed following Bills of Entry in the year 2019 classifying "YARAVITA ZINTRAC (ZINC OXIDE SUSPENSION CONCENTRATE (39.5%) -fertiliser "under CTH 31059090, as detailed below:

**Table -1  
2019**

S.N.	Port	BE No.	BE Date	Item Description	CTH
1	INMUNI	3045360	30.04.19	YARAVITA ZINTRAC ZINC OXIDE SUSPENSION CONCENTRATE (39.5% Zn)	31059090
2		3045776	30.04.19		
3		3199402	13.05.19		
4		3415097	28.05.19		
5		3580889	10.06.19		
6		3579838	10.06.19		

### **3. EXAMINATION OF THE ISSUE**

**3.1.** From the analysis/scrutiny of data for the imports of 'YARAVITA ZINTRAC (ZINC OXIDE SUSPENSION CONCENTRATE (39.5%))' made by the Importer that they have imported the YaraVita Zintrac in 2019 under CTH 31059090. Further, it has also been noticed that during the F.Y. 2016 to 2018 and after June 2019 onwards, the Importer imported above products under the correct CTH 28170010 and paid customs duty as per applicable rates on CTH 28170010. However, in F.Y. 2019 the Importer switched such imports of 'ZINC OXIDE SUSPENSION CONCENTRATE (39.5%)' to CTH 31059090 (BCD @ 5% + IGST @ 5%) without any valid reason.

**3.2.** Further, it is also observed that against the import made by importer during the F.Y. 2019, importer cleared the same product i.e. 'YARAVITA ZINTRAC (ZINC OXIDE SUSPENSION CONCENTRATE (39.5%))' under CTH 28170010 vide their tax invoice no. IN0720000278 dated 10.04.2019, invoice no. IN0720000281 dated 10.04.2019, invoice no. IN0720002053 dated 24.06.2019, invoice no. IN0720003877 dated 16.08.2019 & invoice no. IN2420020627 dated 29.10.2019, in domestic market under CTH 28170010, while they imported the same product under CTH 31059090. These tax invoices submitted by patty as sample documents in this office. On being asked that why they are clearing the said goods in domestic market under CTH 28170010, importer failed to submit any plausible reply on that.

PAN : AAACY4766C  
GSTIN : 06AAACY4766C1ZD



ORIGINAL For Recipient

Yara Fertilisers India Pvt Ltd.  
(CROP. NUTRITION AGRI BUSINESS)  
PORTA CABIN-12, DELHI INTERNATIONAL CARGO TERMINAL,  
PANCHI - GUJARAN, SONEPAT, HARYANA

SALE POINT:  
Yara Fertilisers India Pvt Ltd,  
Vidya House Novelty Road,  
KARNAL,  
KARNAL-132001, Haryana.

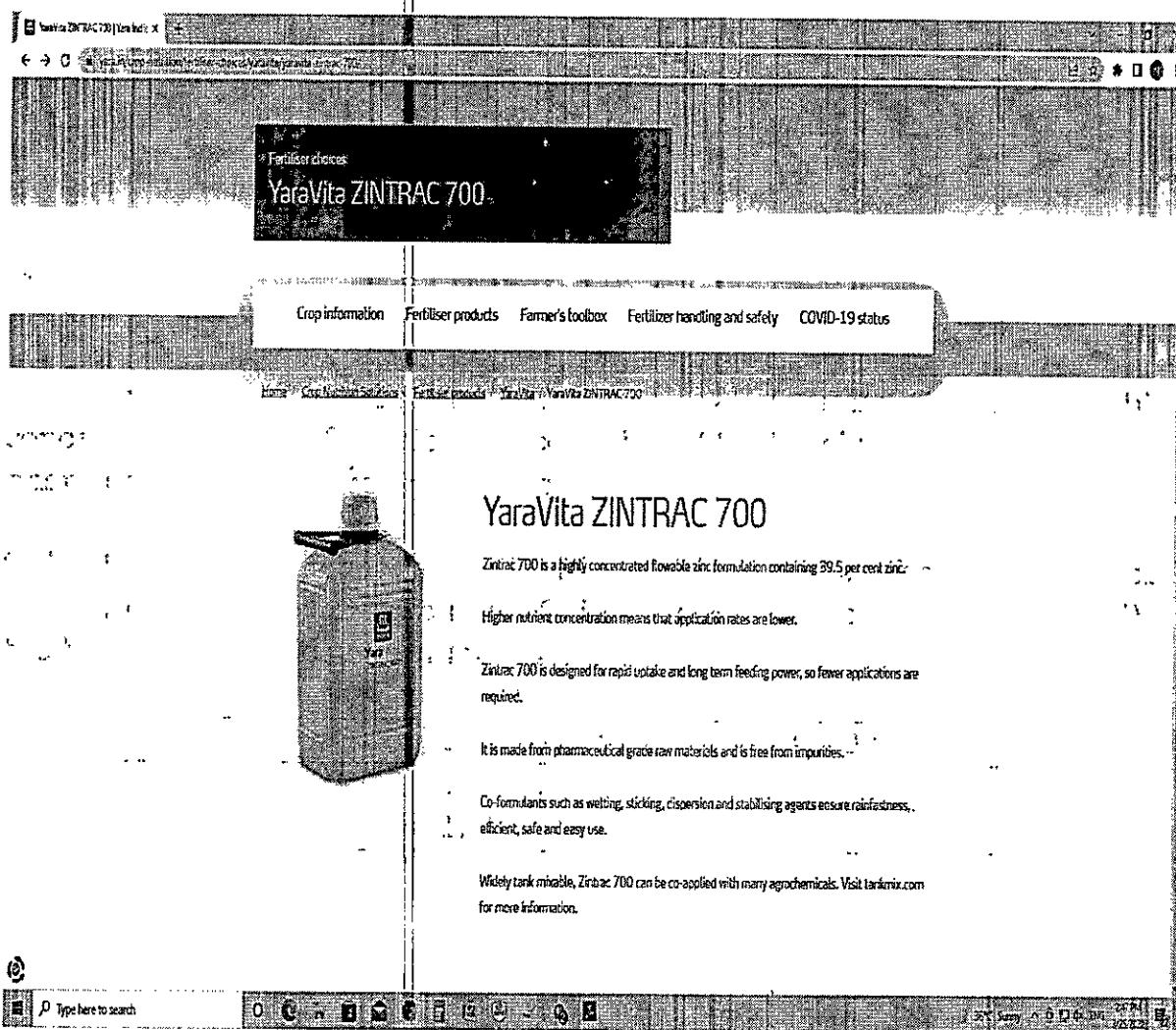
INVOICE NO : IN0720000278  
INVOICE DATE : 10.04.2019  
SAP REF NO. : 9010043309

TAX INVOICE

BILL TO PARTY: AS225S001 SALES GRP: Jind SHIV GANGA TRADERS, SHOP NO. 147 NEW GRAIN MARKET, MELA GROUND, JIND, NARWANA-126116. PAN No: AMDPK4351R GSTIN : 06AMDPK4351R1Z0					SHIP TO: AS225S001 SHIV GANGA TRADERS, SHOP NO. 147 NEW GRAIN MARKET, MELA GROUND, JIND, NARWANA-126116																														
Transporter Name : Truck No : Mode of Delivery : By Road Road Permit No : 371102928656 Driver's Mobile No :					DO No : jind Challan No : 80005955 Challan Date : 09.04.2019 Inco Terms : FOB																														
Sr No	Material Code	Description	HSN Code	Batch No	Bag/ Pack Size	Unit	No of Bag/ Boxes	Qty.	Unit	Rate (Rs.)	Total Amount	Disc.	Taxable Amount(Rs)																						
1	PYP48M1UE	YaraVita Zintrace (Zinc Oxide Sus.) 1 L	28170010	88005	1.000	L	350	350.00	L	1,000.00	350,000.00	2,800.00	347,200.00																						
	CGST									9%			31,248.00																						
	SGST									9%			31,248.00																						
1	PYP48MABD	YaraVita Zintrace (Zinc Oxide Sus.) 250ml	28170010	86129	250.00	ML	120	30.000	L	1,110.00	33,300.00	750.00	32,550.00																						
	CGST									9%			2,929.50																						
	SGST									9%			2,929.50																						
1	PYP48M1ZU	YaraVita Zintrace (Zinc Oxide Sus.) 500ml	28170010	86129	500.00	ML	240	120.00	L	1,050.00	126,000.00	960.00	125,040.00																						
	CGST									9%			11,253.60																						
	SGST									9%			11,253.60																						
	Total Tax Amount												90,862.20																						
Advance Receipt Voucher No.:					Total Invoice Value :																														
Material Dispatched From:					Place of Supply (State name and code) : Haryana, 06																														
IFMS DISPATCH NO.:																																			
Amount in Words: FIVE LAKH NINETY FIVE THOUSAND SIX HUNDRED FIFTY TWO and TWENTY Paise Only																																			
Tax on this invoice is not subject to reverse charge																																			
Signature of Seller					GOODS RECEIVED IN SOUND AND SALABLE CONDITION																														
<i>YaraVita Zintrace</i>					(Signature of the Truck Driver)					(Signature of Purchaser with Stamp)																									
Arrival of Truck No: _____ at _____					CIN No: U51490PN2011PTC139239 Contact No. +91 20 4130 2585 / +91 124 4603187 Fax No. +91 20 4130 2589 E mail Id: india.operations@yara.com Website: www.yara.com																														
Truck unloaded on: _____ at _____					Received Qty:																														
This is a computer generated invoice																																			
CERTIFICATE REGISTRATION NO. : 295																																			
1. Payment Terms: As on order 2. Interest @ 18% per annum shall be levied on payment made after due date 3. Arbitration: - All disputes and differences shall as far as possible to be settled amicably failing with the same shall be referred to arbitration of Sole Arbitrator to be appointed by Yara Fertilisers India Private Limited (#The Company #) and the arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any amendment there to. The venue of the arbitration shall be in Pune and the proceedings shall be conducted in English 4. Where there is an independent written contract between the Company and the buyer, then provisions of such contract will prevail over the foregoing terms and conditions herein. However, the conditions mentioned in this invoice shall over the terms and conditions in buyer's order or confirmation, unless otherwise specifically agreed by the Company in writing 5. Claims for shortage/damages shall not be entertained by the Company unless informed in writing within 07 days from the delivery of the goods																																			
Registered Office: 402, Suyog Fusion, Dhole Patil Road, Pune 411001																																			

**3.3.** The importer in their statement submitted that due to bona fide belief of old entry of FCO inadvertently in place of present entry of FCO, they have cleared the same in domestic market under CTH 28170010. This statement of importer appears just cover-up the issue as they have no proper reply on the same. This act of the Importer shows their willful intention just to evade applicable customs duty by misclassifying the said Zinc Oxide suspension concentrate (39.5%) under CTH 31059090 (other fertilizer).

**3.4.** Further, the details of YaraVita Zintrace has been gathered from the official website of Yara India i.e. yara.in. The screenshot of the said product has been taken from website yara.in and reproduces as under,



From the above details, it is clear that YaraVita Zintrac is a highly concentrated zinc formulation containing 39.5% zinc. It is made from pharmaceutical grade raw materials.

**3.5** The analysis report submitted by the importer at the time of import in respect of Yara Vita Zintrac (Zinc Oxide suspension concentrate (39.5%)) had the following specification, Analysis:

Zinc (Zn)	39.5%w/w	(700g/l)
Nitrogen (N)	0.9% w/w	(18g/l)
Density:	1.734	



*Certificate of Analysis*

Date of Issue:	14/03/2019
Production Date:	01/03/2019
Expiry Date:	01/03/2021
Product:	YaraVita Zintrac (Zinc Oxide Suspension Concentrate (39.5% Zn))
Pack:	1000 lt
Order No:	IN 9907904
Batch Code(s):	906001
Physical Form/Appearance:	White Suspension Concentrate
Analysis:	Zinc (Zn) 39.5% w/w (700g/l) Nitrogen (N) 0.9% w/w (18g/l)
Density:	1.734

We hereby certify that the above product has been inspected and analysed, and conforms to the specification within the tolerance limits of the EEC Regulation (EC) No.2003/2003

Quality Control

Yara UK Limited  
Manor Place, Wellington Road  
The Industrial Estate  
Pocklington, York, YO42 1DN.  
01763 302545  
Fax: 01763 303650  
Email: [yu.info@yara.com](mailto:yu.info@yara.com)  
Website: [www.yara.com](http://www.yara.com)  
Registered Office: Harvest House, European, Grimsby, North East Lincolnshire, DN37 8TZ; Registered in England No. 03416170

**From the above analysis, it appears that nitrogen quantity in the said goods is only 0.9%. The main/major component of the said goods is Zinc i.e. 700g/l. YaraVita Zintrac (Zinc Oxide suspension concentrate (39.5% Zn) is a high concentration of zinc having 700 G/L in solution, which source Zinc as a major elements of the said commodity. Hence, the same is rightly classifiable under CTH 28170010, which covers "Zinc Oxide/zinc peroxide".**

**3.6** Importer vide their office letter dated 10.06.2020 submitted that they are in view that Zintrac merits classification under Chapter 31 since it is a mixture of Zinc Oxide (which is one of the micronutrients), Nitrogen (in form of urea), and Monoethylene Glycol (as suspension). This product is fertilizer, by name, known as 'Zinc Oxide suspension concentrate (39.5% ZN)' under the category of 'Micronutrient' at Sl. No. 16, Sub-Heading 1(f) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO). Further, it is traded as micronutrient fertilizer. Accordingly, Zintrac is correctly classifiable under Tariff Item 3105 90 90 as other fertilizer only.

**3.7** In respect of para 3.6 above, it is seen that YaraVita ZinTrac 'Zinc Oxide suspension concentrate (39.5% ZN)' as per Fertiliser (Control) Amendment Order, 2017 dated 06.02.2017, falls under the category of 'Micronutrient' at Sl. No. 15, Sub-Heading 1(g) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO), in which the chemical composition of the said product is as under,

15. Zinc Oxide Suspension Concentrate (39.5% Zn)		
(i)	Dense suspension concentrate of liquid Zinc	
(ii)	Zinc (as Zn) per cent by weight, minimum	39.5
(iii)	pH (5% solution)	9.0+1
(iv)	Arsenic (as As) per cent by weight, maximum	0.001
(v)	Lead (as Pb) per cent by weight, maximum	0.003
(vi)	Cadmium (as Cd) per cent by weight, maximum	0.0025
(vii)	Specific gravity (at 15° C)	1.71-1.75

From the above composition it clearly appears that **nitrogen is not a part of above composition** and importer submission that it is a **mixture of Zinc Oxide** (which is one of the micronutrients), **Nitrogen (in form of urea)**, and **Monoethylene Glycol** (as suspension) and the product known as 'Zinc Oxide suspension concentrate (39.5% ZN)' under the category of 'Micronutrient' at Sl. No. 16, Sub-Heading 1(f) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO), is false. Further, it is traded as micronutrient. Accordingly, Zintrac is not classifiable under Tariff Item 3105 90 90.

**3.8** Importer vide their email dated 30.12.2020, informed that they have deposited the differential Basic Customs Duty & IGST along with interest total amounting of **Rs.2,54,30,640/-** at Customs Mundra, against the 6 Bills of Entries i.e. 3045776 dtd. 30.04.2019, 3045360 dtd. 30.04.2019, 3199402 dtd. 13.05.2019, 3579838 dtd. 10.06.2019, 3415097 dtd. 28.05.2019 & 3580889 dtd. 10.06.2019, vide which they have imported YaraVita Zintrac under CTH 31059090.

**3.9** As per details available on **website yara.in** as well as submitted by importer that YaraVita ZINTRAC is a fully formulated flowable liquid micronutrient fertiliser **containing a high concentration of zinc for foliar application to prevent and treatment of zinc deficiency** on a wide range of crops. From the above details its clearly appears that the said product is mainly use for treatment of zinc deficiency, hence it is rightly classifiable under CTH 27170010 i.e "Zinc oxide; zinc peroxide".

**3.10 Guidelines regarding Classification of Micronutrients, Multi-micronutrients, Plant Growth Regulators and Fertilizers**, has been issued vide **Circular No. :1022/10/2016-CX dated 06.04.2016** issued by Central Board of Excise and Customs, Ministry of Finance, Government of India. The para's of the said Circular are as under:-

- (i)** The issue of classification of micronutrients, multi-micro nutrients, plant growth regulators and fertilizers has remained a disputed area in Central Excise. To bring clarity to the issue of classification thereof, it was decided to take opinion of Indian Agricultural Research Institute (IARI) on various issues relating to micronutrients such as – what constitutes micronutrients, its usage, distinction from plant growth regulator, if any, etc. In light of the opinion received from IARI, Central Excise Tariff and explanatory notes of HSN, nature, usage and classification of micronutrients, multi-micronutrients, plant growth regulators and fertilizers is explained in the following paragraphs.
- (ii)** Micronutrients are essential nutrients that are required in small quantities for the normal growth and development of plants. As on today, iron (Fe), manganese (Mn), zinc (Zn), copper (Cu), boron (B), molybdenum (Mo), nickel (Ni) and chlorine (Cl) are included in this

category. These elements are also called minor or trace elements, but this does not mean that they are less important than macronutrients. Reply received from IARI on the subject, enclosed with the circular, may please be referred for further details. Inputs received from the trade indicates that these micronutrients are sold in the market as 'micronutrient fertilizer' supplying one or more of the eight essential nutrients listed above, namely iron to chlorine. However, in the trade parlance sale of micronutrients as 'micronutrient fertilizers' would not lead to classification thereof under chapter 31 as fertilizers for the purposes of Central Excise Tariff. For classification under chapter 31, at least one of the elements, namely- nitrogen, phosphorus or potassium should be an essential constituent of the fertilizer as per chapter note 6 of chapter 31.

- (iii) There is no specific heading in the tariff for classification of micronutrients. However, where the micronutrient is a separate chemically defined compound, it will be classifiable under the heading for that chemically defined compound under chapter 28 or chapter 29. For example, some of the sulphates of micronutrients are specifically covered under CETH 2833.
- (iv) Vide Notification no. 12/2016 – C.E dated 1.3.2016, Notification no.12/2012 – C.E dated 17.3.2012 has been amended and a new serial no 109A has been inserted to exempt duty of excise in excess of 6%; payable on micronutrients classifiable under chapter 28, 29 or 38 and covered under serial number 1(f) of Schedule 1, Part (A) of the Fertilizer Control Order, 1985 and manufactured by the manufacturers registered under the Fertilizer Control Order, 1985.
- (v) Plant Growth Regulators are defined as organic compounds other than nutrients that affect the physiological processes of growth and development in plants when applied in low concentration. Plant growth regulators are active at low concentrations in promoting, inhibiting or modifying growth and development. They are either natural or synthetic compounds that are applied directly to a target plant to alter its life processes and its structure to improve quality, increase yields, or facilitate harvesting etc. These are in the nature of plant hormones and classical of them are auxins, cytokinins, gibberellins (all three promoters) and abscisic acid, ethylene (both inhibitors). PGRs in the list are not exhaustive and more growth substances are being discovered in this category. PGRs are naturally produced by plants and they act by controlling or modifying, plant growth processes such as formation of leaves and flowers, elongation of stems, development and ripening of fruits etc. Synthetic organic chemicals are also used as PGRs and are industrially produced and marketed. A list of some of the PGRs industrially produced in India is enclosed with the reply of IARI.
- (vi) It would thus be noted that PGRs are different from nutrients, be it macronutrient or micronutrient. The difference between PGR and micronutrient has been clearly brought out in the reply from ICAR. PGR as a substance is specifically covered under CETH 3808. More specifically, Gibberellic acid and Plant Growth regulators are respectively covered under tariff item 3808 9330 and 3808 9340.

(vii) Fertilizers are classified under chapter 31 of the Central Excise Tariff and for this purpose they may interalia be minerals or chemical fertilizers nitrogenous (CETH 3102), phosphatic (CETH 3103), potassic (CETH 3104) or fertilizers consisting of two or three of the fertilizing elements namely nitrogen, phosphorous and potassium; other fertilizers (CETH 3105). For the purpose of classification of any product as "other fertilizers", chapter note 6 of Chapter 31 is relevant which provides that the term "other fertilizers" applies only to products of a kind used as fertilizers and contain, as an essential constituent, at least one of the elements nitrogen, phosphorus or potassium. It is quite clear that for any product to merit classification under CETH 3105 as other fertilizers, the product must have nitrogen or phosphorus or potassium or their combination as an essential constituent providing the essential character to the product. The chemical elements - nitrogen, phosphorus and potassium, are also referred as macronutrients or primary fertilizer elements and are required in higher quantity by the plants.

(viii) Any product where the essential elements are not nitrogen or phosphorus or potassium or their mixture would not merit classification under CETH 3105. Further, the specific exclusion of separate chemically defined compounds as laid down in chapter note 1 (b) and in the HSN Explanatory Notes to the heading 3105.90, reinforce the above conclusion. It may also be noted that notifications issued under Fertilizer Control Order are not relevant for deciding classification under the Central Excise Tariff.

(ix) Mixtures of micronutrients/multi-micronutrients with fertilisers are also manufactured and sold. They shall be classified according to their essential characters and general rules for interpretation of the schedule to the tariff. Where the essential constituent giving character to the mixture is one or more of the three elements namely Nitrogen, Phosphorous or Potassium, the mixture shall be classified under any of the heading of Chapter 31, depending upon its composition. On the other hand, where the essential character of the product is that of mixture of micronutrients/multi-micronutrients having predominately trace elements, it shall be classified under CETH 3824 as chemical products not elsewhere specified or included.

(x) Past circulars of the Board on the subject namely **79/79/94-CX dt 21-11-94** and **392/25/98 - CX dt 19-5-1998** stand rescinded. Classification of Micronutrients, Multi-micronutrients, Plant Growth Regulators and Fertilizers shall be governed by the clarification contained in this circular to the extent the product under consideration is covered by the circular.

**3.11** To bring clarity to the issue of classification of Micronutrients, Multi-micronutrients, Plant Growth Regulators and Fertilizers the CBIC in concentration with (IARI) issued a **circular no. 1022/10/2016-CX dated 06th April, 2016** on various issues relating to micronutrients such as - what constitutes micronutrients, its usage, distinction from plant growth regulator, if any etc. In light of the opinion received from IARI, Central Excise Tariff and explanatory notes of HSN, nature, usage and classification of micronutrients, Multi-micronutrients, Plant Growth Regulators and Fertilizers and accordingly

it has been clarified that Micronutrients are essential nutrients that are required in small quantities for the normal growth and development of plants. As on today, iron (Fe), manganese (Mn), Zinc (Zn), Copper (Cu), Boron (B), Molybdenum (Mo) Nickel (Ni) and Chlorine (Cl) are included in this category. These elements are also called minor or trace elements, but this does not mean that they are less important than macronutrients. These micronutrients are sold in the market as 'micronutrient fertilizer' supplying one or more of the eight essential nutrients listed above, namely iron to chlorine. **However, in the trade parlance sale of micronutrients as 'micronutrient fertilizers' would not lead to classification thereof under chapter 31 as fertilizers.** For classification under Chapter 31, at least one of the elements, namely-nitrogen, phosphorus or potassium should be an essential constituent of the fertilizer as per chapter note 6 of chapter 31. There is no specific heading in the tariff for classification of micronutrients. **However, where the micronutrient is a separate chemically defined compound, it will be classifiable under the heading for that chemically defined compound under chapter 28 or chapter 29.** For example, some of the sulphates of micronutrients are specifically covered under CETH 2833. In the light of circular as issued, YaraVita Zintrac is rightly classifiable under Chapter 28.

**3.12** YaraVita ZinTrac 'Zinc Oxide suspension concentrate (39.5% ZN)' as per Fertiliser (Control) Amendment Order, 2017 dated 06.02.2017, falls under the category of 'Micronutrient' at Sl. No. 15, Sub-Heading 1(g) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 and separate chemically defined product, hence as per para's & subpara's of point 1& 2 of the Circular 1022/10/2016-CX dated 06.04.2016, the said goods is rightly classifiable under Chapter 2817.

**3.13** As per para 4.2 of the Circular 1022/10/2016-CX dated 06.04.2016, it is clearly mentioned that any product where the essential elements are not nitrogen or phosphorus or potassium or their mixture would not merit classification under CETH 3105. Further, the specific exclusion of separate chemically defined compounds as laid down in chapter note 1 (b) and in the HSN Explanatory Notes to the heading 3105.90, reinforce the above conclusion. It may also be noted that notifications issued under Fertilizer Control Order are not relevant for deciding classification under the Central Excise Tariff. As the main Character of dominating elements of the YaraVita Zintrac is Zinc and used for treatment of Zinc deficiency, would not leads to the merit for classifiable under Chapter 3501.

**3.14** Further, the product YARAVITA ZINTRAC (Zinc Oxide suspension concentrate (39.5%)) imported by the importers are defined as 'Micronutrient' at Sl. No. 15, Sub-Heading 1(g) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985. The chemical composition of the said product as per the FCO, 1985, is as under,

15. Zinc Oxide Suspension Concentrate (39.5% Zn)		
(i)	Dense suspension concentrate of liquid Zinc	
(ii)	Zinc (as Zn) per cent by weight, minimum	39.5
(iii)	pH-(5% solution)	9.0±1
(iv)	Arsenic (as As) per cent by weight, maximum	0.001
(v)	Lead (as Pb) per cent by weight, maximum	0.003
(vi)	Cadmium (as Cd) per cent by weight, maximum	0.0025
(vii)	Specific gravity (at 15° C)	1.71-1.75

It is evident from the aforesaid specifications for the products 'Zinc Oxide Suspension Concentrate (39.5% Zn)' given in the Fertilizer Control Order, 1985

that minimum percentage of Zinc is essential in the product 'Zinc Oxide Suspension Concentrate (39.5% Zn)' is 39.5%, **besides some other requirements.** However, in the specifications of this product given in the Fertilizer Control Order, 1985, no requirement of any of the fertilizing elements nitrogen, phosphorus or potassium has been mentioned. Therefore, it cannot be said that the product 'Zinc Oxide Suspension Concentrate (39.5% Zn)' contain at least one of the fertilizing elements nitrogen, phosphorus or potassium as "an essential constituent", which is one of the prime requirements as per Chapter Note 6 of Chapter 31 of the CTA, 1975 to term a product as "other fertilizer" classifiable under heading 3105 of the CTA, 1975. Further, it is traded as micronutrient and a separate chemically defined substance. Accordingly, Zintrac does not appear to be classifiable under Tariff Item 3105 90 90.

#### 4. DISCUSSION ON CUSTOMS TARIFF

4.1. The relevant portion of Tariff heading 3105 is reproduced below,

3105 - MINERAL OR CHEMICAL FERTILISERS CONTAINING TWO OR THREE OF THE FERTILISING ELEMENTS NITROGEN, PHOSPHORUS AND POTASSIUM; OTHER FERTILISERS; GOODS OF THIS CHAPTER IN TABLETS OR SIMILAR FORMS OR IN PACKAGES OF A GROSS WEIGHT NOT EXCEEDING 10 KG

3105 90 90 --- Other

The definition of other fertilizers is given in Note 6 of Chapter 31, i.e. *"For the purposes of heading 31.05, the term "other fertilisers" applies only to products of a kind used as fertilisers and containing, as an essential constituent, at least one of the fertilising elements nitrogen, phosphorus or potassium."*

4.2. The importer's submission that the element Nitrogen (N) is present in subject product "YaraVita Zintrac [Zinc Oxide suspension concentrate (39.5% ZN)] and as the presence of Nitrogen is proved, the product to be classified as 'Other Fertilizer', however, it is observed that the importer's view with regard to classification is not correct as per the guideline of Explanatory Notes. The Note 6 of Explanatory Notes for the chapter 31 is reproduced as under:

*"For the purpose of heading 31. 05, the term "Other fertilizers" applies only to products of a kind used as fertilizers and containing, as an essential constituent, at least one of the fertilizing elements Nitrogen, Phosphorus or Potassium.*

From the above, it clearly appears that the product should contain at least one of the elements Nitrogen, Phosphorus or Potassium as essential element i.e. as one of the main or significant element. To merit the classification under Chapter 31, the fertilizing elements Nitrogen, Phosphorus and Potassium are required to be as "essential elements" but, from the analysis report submitted by the assessee, it is evident that Nitrogen is only 0.9% by weight and zinc is 39.5% by weight, hence Nitrogen could not be an essential constituent in the said goods. This act of the Importer shows their willful intention just to evade applicable customs duty by misclassifying the said Zinc Oxide suspension concentrate (39.5%) under CTH 31059090 (other fertiliser).

**4.3.** Further, the category of products covered under Chapter 31 has also been elaborated by the **General Chapter Notes** to the Chapter 31, which is reproduced as under:

**"This chapter also excludes micronutrient preparations which are applied to seeds, to foliage or to soil to assist in seed germination and plant growth. They may contain small amounts of the fertilizing element Nitrogen, Phosphorus, and Potassium, but not as essential constituents."**

In view of the above, it's clearly appears that in the said product i.e. Yara Vita Zintrac, percentage of Nitrogen is only 0.9%, in a very small amount and not a essential constituents, hence as per general chapter notes to the Chapter 31, the said product is not classifiable under Chapter 31.

**4.4.** General Rules for the Interpretation provides that when by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

**3(a)"The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods".**

**(b)"Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable".**

In YaraVita ZinTrac, Zinc is main components and the product is used for treatment of Zinc deficiency. Hence as per 3(b) of General Rules for the Interpretation Zinc is giving essential character in the said product, therefore the said product is rightly classifiable under CTH 2817.

**4.5.** Since the imported products is Micronutrients and **zinc** is the main elements/components of the said micronutrients and the said product is separately chemically defined product as mentioned under the category of 'Micronutrient' at Sl. No. 15, Sub-Heading 1(g)of Part A of the Schedule I of the Fertilizer (Control) Order, 1985. Hence, the same is rightly classifiable under CTH 28170010, which covers "Zinc Oxide/zinc peroxide". The importer firm appears to have knowingly resorted to mis-classification with the sole purpose of evading Customs duty.

**4.6.** On the basis of submission in para 3 & 4 above, it clearly appears that imported products are separate chemically defined and use for treatment of zinc deficiency and nitrogen is neither a part of the said micronutrients fertiliser as per FCO, 1985 order, nor it is a essential constituents in the said product and are therefore rightly classifiable under CTH 28170010. The importer firm appears to have knowingly and willingly resorted to mis-classification with the sole purpose of evading Customs duty.

## **5. LEGAL PROVISIONS**

### **5.1 WHEREAS,**

(i) As per **Section 28(4)** of the Customs Act, 1962, "where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) Collusion; or
- (b) Any wilful mis-statement; or
- (c) Suppression of facts,

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

(ii) As per **Section 28AA** of the Customs Act, 1962: Interest on delayed payment of duty. "Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section."

(iii) As per **Section 46(4)** of the Customs Act, 1962. - "The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods."

(iv) As per **Section 46(4A)** of the Customs Act, 1962. - "The importer who presents a bill of entry shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force."

(v) As per **Section 111(m)** of the Customs Act, 1962, "the following goods brought from a place outside India shall be liable to confiscation-

any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

(vi) As per **Section 114A** of the Customs Act, 1962, "where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined."

## **5.2 Relevant Provisions of the Customs Tariff Act, 1975:**

- (i) SECTION 2 – Duties specified in the First and Second Schedules to be levied on the goods.
- (ii) As per **Section 3(7)** of the Customs Tariff Act, 1975, “*Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.*”
- (iii) As per **Section 3(8)** of the Customs Tariff Act, 1975, “*For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of- (a) the value of the imported article determined under subsection (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and (b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section.*”

## **6. CONTRAVENTIONS - CHARGES FRAMED**

**6.1.** Considering the facts & investigation done in the case as well as the submissions made by the importer, M/s. Yara Fertilisers India Pvt. Ltd., it appears that the importer has contravened the following provisions and liable to pay the differential Customs duty as under:

- (i) **Demand and recovery of differential Customs duty alongwith interest under Section 28(4) & Section 28AA of the Customs Act, 1962**

From the analysis of imports data of ‘Zinc Oxide Suspension Concentrate (39.5%)’ made by the Importer, it has been noticed that before 2019, the Importer imported above products under the correct CTH 28170010 and paid BCD @7.5%. However, the Importer switched such imports of ‘Zinc Oxide Suspension Concentrate (39.5%)’ to CTH 31059090 (BCD@5%) from 2019 onwards, without any valid reason to just get the undue monetary benefit. Further, imported consignments of YaraVita Zintrac under CTH 31059090, was cleared by them in domestic market under CTH 28170010.

Further, it is also observed that Zinc is main component of the imported product i.e. Yaravita Zintrac “(Zinc Oxide Suspension Concentrate (39.5%))” and a separate chemically defined product as mentioned under the category of ‘Micronutrient’ at Sl. No. 15, Sub-Heading 1(g) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985, while importer vide their office letters submitted to DRI LZU, regularly submitted that the said product i.e. Yaravita Zintrac “(Zinc Oxide Suspension Concentrate (39.5%))” is a micronutrients fertiliser under the category of ‘Micronutrient’ at Sl. No. 16, Sub-Heading 1(f) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985, and

nitrogen is a part of the same while as per amended order of FCO, nitrogen is not a component of the said micronutrients as submitted in para A.2 of this SCN, hence the same is not classifiable under CTH 31059090. This act of the Importer appears to be nothing but their willful intention just to evade applicable customs duty by willfully misclassifying the said Zinc Oxide Suspension Concentrate (39.5%) under CTH 31059090 (other fertilisers).

It therefore appears that the importer had evaded the payment of differential Basic Customs duty & other applicable duties totally amounting to **Rs. 2,15,54,775/-** involved on the said impugned goods. Hence, the element of willful mis-statement and suppression of facts as provided under Section 28(4) of the Customs Act, 1962 is invokable in the instant case and accordingly, the differential Customs duty & other applicable duties totally amounting to **Rs. 2,15,54,775/-** paid by the importer is liable to be appropriated and accordingly interest under Section 28AA of the Customs Act, 1962 is liable to be demanded for the reasons discussed above.

**(ii) Contravention of Section 46(4A) of the Customs Act, 1962**

Section 46(4) of the Customs Act, 1962, *inasmuch as* the Importer willfully mis-declared and did not file the correct particulars in their declaration before the Customs in respect of impugned goods. They did not classify such goods under correct CTH of 28170010 (attracting BCD@7.5%) but under CTH 31059090 (attracting BCD@ 5%) with the intent to evade applicable customs duty (BCD) on such goods imported from their overseas supplier;

Section 46(4A) of the Customs Act, 1962, *inasmuch as* the Importer failed to ensure the accuracy and completeness of the information given in the Bills of Entry filed before the Customs in respect of impugned goods as required under the provisions of said Section;

**(iii) Confiscation of goods under Section 111 (m) of the Customs Act, 1962**

Section 111 (m) of the Customs Act, 1962 provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act shall be liable for confiscation.

The importer, M/s. YARA had mis-classified the impugned goods, resulting in short payment of differential duty as mentioned above. Thus, the impugned goods as mentioned in the respective Bills of entry are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

**(iv) Contravention of Section 17 of the Customs Act, 1962**

Section 17 of the Customs Act, 1962, *inasmuch as* the Importer failed to file the correct self-assessment of the duty liability on the imported impugned goods before the Customs consequent upon willful mis-declaration by them by way of misclassification of impugned goods as discussed supra;

**(v) Penal provision under Section 114A of the Customs Act, 1962**

Section 114A of the Customs Act, 1962 provides that 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 by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined. In the instant case, the importer, M/s. YARA have wilfully mis-declared the said impugned goods which lead to classification of the said goods under CTH 31059090 and they have suppressed true composition of the said impugned goods as mentioned in FCO, 1985 and willfully submitted old reference of FCO, 1985 & cleared the imported goods in domestic market under CTH 2817 while bills of entry filed under CTH 3105 with an intention to evade the payment of differential duty totally amounting to **Rs. 2,15,54,775/-** (*Rupees two cores fifteen lakhs fifty four thousand Seven hundred and seventy five only*) involved on the said goods. Such an act of omission/commission on the part of the importer, M/s. YARA makes them liable for the penalty under Section 114(A) of the Customs Act, 1962 for the reasons discussed as above.

- (vi) **Section 2** of the Customs Tariff Act, 1975 read with First Schedule to the said Act *inasmuch as* the impugned goods imported by the Importer, during the period from 30.04.2019 to 10.06.2019 having a total assessable value of **Rs. 12,32,75,810/-** (*Rupees twelve cores thirty two lakhs Seventy five thousand Eight hundred and ten only*), have been mis-classified under CTH 31059090 and the same should have been correctly classified under CTH 28170010, as explicated supra. The importer has wrongly availed the exemption Rs. 30,81,895/- on from payment of BCD by way of such willful mis-declaration;
- (vii) **Section 3(7)** read with **Section 3(8)** of the Customs Tariff Act, 1975 *inasmuch as* the impugned goods imported by the Importer, *vide* 22 Bills (Annex A) also attracts Integrated Goods & Services Tax (IGST) U/s 3(7) read with Section 3(8) the Customs Tariff Act, 1975 whereas the importer by way of such willful mis-declaration wrongly availed the exemption from payment of customs duty and thereby reducing assessable value required for calculating such IGST.

## 7. DUTY LIABILITY

7.1 Determination of duty liability Differential Customs Duties - short-paid on the impugned good imported by M/s. YARA FERTILISERS INDIA PRIVATE LIMITED are given in the **Annexure-A**, the gist of the said details are produced as under-

**Table-2**

BE No. & Date	Assessable Value (in Rs.)	Total Duty paid @10.25% (BCD@5%+ IGST@5%) by misclassifying the goods under CTH 31059090 (in Rs.)	Total Duty payable @27.735% (BCD@7.5%+ SWS @10% +IGST@18%) on correct classification of such goods under CTH 28170010 (in Rs.)	Differential duty payable (in Rs.)

A	B	C	D	E
<b>As per Annexure – A</b>	<b>12,32,75,810</b>	<b>1,26,35,771</b>	<b>3,41,90,546</b>	<b>2,15,54,775</b>

**7.2** WHEREAS, it is seen that the Importer have not paid applicable duty on the said goods. Accordingly, from the import details of the Importer for import of Impugned goods their differential duty liability is quantified as detailed in **Table - 2** enclosed to this SCN from the above, it appears that the Importer is liable to pay the total differential Customs duty of **Rs. 2,15,54,775/- (Rupees two cores fifteen lakhs fifty four thousand Seven hundred and seventy five only)** on the impugned goods imported by them during the period April, 2019 to June, 2019. On scrutiny of all the Bills of Entry filed by the Importer during the period from April, 2019 to June, 2019 for determining duty liability, the actual duty liability has been worked out as provided in **Table.2:**

**7.3** Interest amount, at applicable rates, is also leviable on the duty(s) demanded above in terms of provisions of Section 28AA of the said Act, against all the aforesaid Bills of Entry;

**7.4** For their act of willful mis-statement, as discussed supra, penalty is also invokable in terms of Section 114A of the said Act and the impugned goods imported vide all the aforesaid 06 Bills of Entry are also liable for confiscation in terms of Section 111(m) of the Customs Act, 1962.

## 8. SHOW CAUSE

**8.1.** In view of above, a Show Cause Notice No. GEN/ADJ/COMM/91/2023-Adjn dated 08.05.2023 was issued to **M/s. Yara Fertilisers India Private Limited**, (IEC-3111008398), issued by the Principal Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ, Mundra, Kutch, Gujarat-370421 wherein it was proposed to:

- (i) Reject the classification of impugned goods *viz. "YARAVITA ZINTRAC (ZINC OXIDE SUSPENSION CONCENTRATE (39.5%)"* imported vide the above said Bills of entry under chapter 31059090 as in Annexure-A to this Show Cause Notice and re-classify the same under CTH 28170010.
- (ii) Reassess the impugned imported goods declared by them under CTH 31059090, in terms of **Section 17** of the Customs Act, 1962, as discussed supra;
- (iii) Demand the differential customs duty including Cesses and Integrated Goods & Service Tax (IGST) totally amounting to **Rs. 2,15,54,775/- (Rupees two cores fifteen lakhs fifty four thousand Seven hundred and seventy five only)**, as illustrated in **Table.2**, in terms of **Section 28(4)** of the said Act, in respect of all the Bills of Entry filed during the period from April, 2019 to June, 2019 by the Importer; alongwith applicable interest in terms of **Section 28AA** of the said Act, as discussed supra;

- (iv) Confiscate the impugned goods imported by them under wrong CTH of 31059090 during the period from **April, 2019 to June, 2019** under the provisions of **Section 111(m)** of the said Act, as discussed supra;
- (v) Impose the Penalty upon them in terms of **Section 114A and/or Section 112(a)** of the said Act.

**9. DEFENSE SUBMISSION:** Noticee **M/s. Yara Fertilisers India Pvt. Ltd.** (IEC-3111008398) did not make any defence submission in case of impugned SCN.

**10. RECORDS OF PERSONAL HEARING:**

After following principle of natural justice Personal hearing in the matter was granted to all the noticees on 28.03.2024, on 05.04.2024 and 10.04.2024. However, Noticee **M/s. Yara Fertilisers India Pvt. Ltd.** (IEC-3111008398) did not appear for personal hearing neither did they submit any reply thereof.

**11. DISCUSSION AND FINDINGS:**

**11.1.** I have carefully gone through the **Show Cause Notice** No. GEN/ADJ/COMM/91/2023-Adjn dated 08.05.2023 issued by the Commissioner of Customs, Custom House, Mundra, relied upon documents, submissions made by the Noticees, relevant legal provisions and the records available before me. The instant case before me to decide is:

- (i) Whether, the impugned goods *viz. "YARAVITA ZINTRAC (ZINC OXIDE SUSPENSION CONCENTRATE (39.5%)*" imported by the importer are classifiable under CTH 28170010 instead of chapter 31059090.
- (ii) Whether, the impugned imported goods declared by them under CTH 31059090, is to be re-assessed in terms of **Section 17** of the Customs Act, 1962;
- (iii) Whether, the differential customs duty including Cesses and Integrated Goods & Service Tax (IGST) totally amounting to **Rs. 2,15,54,775/- (Rupees two cores fifteen lakhs fifty four thousand Seven hundred and seventy five only)**, in respect of all the Bills of Entry filed during the period from April, 2019 to June, 2019 is to be demanded and recovered from the importer alongwith applicable interest in terms of **Section 28AA** of the said Act;
- (iv) Whether the impugned goods are liable to confiscate under the provisions of **Section 111(m)** of the said Act;
- (v) Whether Penalty in terms of **Section 114A and/or Section 112(a)** of the said Act is imposable upon the importer or otherwise.

**11.2.** I observe that Personal Hearings in case of impugned Show Cause Notice dated **08.05.2023**; were scheduled on three occasions i.e. 26.07.2023, 23.08.2023 and 28.02.2024 in order to provide natural justice to all the noticees; however, the noticee did not appear for personal hearing on aforementioned dates, nor did they submit any reply in the matter. Since the adjudication is a

time bound process it cannot be kept pending for infinite. Hence, I find that principles of natural justice have been duly followed since sufficient opportunities have been granted to the noticee to defend their case. Therefore, the instant case is taken up for adjudication based on material facts, provisions of law and documents available on records.

I observe that the Section 122 A of the Customs Act, 1962 ('the Act' in short) provides that adjudicating authority shall not grant adjournment more than three time, to the noticees during the proceeding. Section 122A of the Act is reproduced hereunder:

*122A. Adjudication procedure.*

*(1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.*

*(2) The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:*

***Provided that no such adjournment shall be granted more than three times to a party during the proceeding.]***

**Emphasis supplied**

**11.3.** I find that in the instant investigation carried out by the DRI, Lucknow against **M/s Yara Fertilisers India Private Limited**, (IEC-3111008398), have imported "YARAVITA ZINTRAC (Zinc Oxide suspension concentrate (39.5%)" classifying the same under CTH 31059090 by declaring "YARAVITA ZINTRAC (Zinc Oxide suspension concentrate (39.5%)-fertilizer" from Mundra Port (INMUN1) and paid Basic Customs Duty at the rate of 5% and IGST at the rate of 5% ad valorem during the F.Y. year 2019.

**11.4.** I find that the chemical composition of "YARAVITA ZINTRAC (Zinc Oxide suspension concentrate (39.5%)" imported by the Importer is as under-

(i)	Dense suspension concentrated of liquid Zn	-39.5%w/w/(700g/l)
(ii)	Nitrogen (N)	-0.9%w/w / (18g/l)
(iii)	PH	-9.0 ±1
(iv)	Density	-1.734

**11.5.** I find that as per **Fertiliser (Control) Amendment Order, 2017 dated 06.02.2017**, 'Zinc Oxide suspension concentrate (39.5% ZN)', falls under the category of 'Micronutrient' at Sl. No. 15, Sub-Heading 1(g) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO), whereby the chemical composition of the said product suggests that Zinc is main component of the imported product i.e. YaraVita Zintrac (Zinc Oxide suspension concentrate (39.5%) which is a separate chemically defined component as per FCO, 1985. However, the importer have classified the same under tariff item 3105 9090 of

the First Schedule of Customs Tariff Act, 1975 which is not in accordance with the said Order dated 06.02.2017, since the said CTH covers "other fertilizers".

**11.6.** I find that as per the Customs Tariff 1975, the tariff heading 3105 excludes: "Separate chemically defined compound not specified in Notes 2 to 5 to this Chapter but which might be used as fertilizers, e.g., ammonium chloride which falls in heading 28.27.

**11.7.** I find that the analysis/scrutiny of data for the imports of 'YARAVITA ZINTRAC (ZINC OXIDE SUSPENSION CONCENTRATE (39.5%))' made by the M/s. Yara, reveal that during the F.Y. 2016 to 2018 and after June 2019 onwards, the Importer imported above products under the correct CTH 28170010 and paid customs duty as per applicable rates on CTH 28170010. However, in F.Y. 2019 the Importer switched such imports of 'ZINC OXIDE SUSPENSION CONCENTRATE (39.5%)' to CTH 31059090 (BCD @ 5% + IGST @ 5%) without any valid reason.

**11.8.** I find that though M/s. Yara imported 'YARAVITA ZINTRAC (ZINC OXIDE SUSPENSION CONCENTRATE (39.5%))' under CTH 31059090. However, scrutiny of tax invoices (i.e. tax invoice no. IN0720000278 dated 10.04.2019, invoice no: IN0720000281 dated 10.04.2019, invoice no. IN0720002053 dated 24.06.2019, invoice no. IN0720003877 dated 16.08.2019 & invoice no: IN2420020627 dated 29.10.2019) submitted by importer as sample documents in respect of clearance of imports made by importer during the F.Y. 2019; reveal that M/s. Yara cleared the same product in domestic market under CTH 28170010. On being asked that why they were clearing the said goods in domestic market under tariff item 2817 0010 of the First Schedule of Customs Tariff Act, 1975; importer failed to submit any plausible reply in the matter.

**11.9.** I find that the Importer vide their letter dated 10.06.2020 submitted that Zintrac merits classification under Chapter 31 since it is a mixture of Zinc Oxide (which is one of the micronutrients), Nitrogen (in form of urea), and Monoethylene Glycol (as suspension). This product is fertilizer, by name, known as 'Zinc Oxide suspension concentrate (39.5% ZN)' under the category of 'Micronutrient' at Sl. No. 16, Sub-Heading 1(f) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO). Further, it is traded as micronutrient fertilizer. Accordingly, Zintrac is correctly classifiable under Tariff Item 3105 90 90 as other fertilizer only.

**11.9.1.** In this regard, I find that YaraVita ZinTrac 'Zinc Oxide suspension concentrate (39.5% ZN)' as per Fertiliser (Control) Amendment Order, 2017 dated 06.02.2017, falls under the category of 'Micronutrient' at Sl. No. 15, Sub-Heading 1(g) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO), whereby the chemical composition of the said product suggest that nitrogen is not a part of above composition and importer submission that it is a mixture of Zinc Oxide (which is one of the micronutrients), Nitrogen (in form of urea), and Monoethylene Glycol (as suspension) and the product known as 'Zinc Oxide suspension concentrate (39.5% ZN)' under the category of 'Micronutrient' at Sl. No. 16, Sub-Heading 1(f) of Part A of the Schedule I of the Fertilizer (Control) Order, 1985 (FCO), is false. Further, it is traded as micronutrient. Accordingly, Zintrac is not classifiable under Tariff Item 3105 90 90. Therefore, I find that contention of the

Importer to classify the impugned product under CTH 31059090 is a wilful attempt to mis-classify the same in order to evade duty.

**11.10.** I observe that as per the Guidelines regarding Classification of **Micronutrients, Multi-micronutrients, Plant Growth Regulators and Fertilizers**, issued vide **Circular No. :1022/10/2016-CX dated 06.04.2016** by Central Board of Excise and Customs, Ministry of Finance, Government of India; vide para ix of the said Circular it is stipulated that Mixtures of micronutrients/multi-micronutrients with fertilisers are also manufactured and sold. They shall be classified according to their essential characters and general rules for interpretation of the schedule to the tariff. Where the essential constituent giving character to the mixture is one or more of the three elements namely Nitrogen, Phosphorous or Potassium, the mixture shall be classified under any of the heading of Chapter 31, depending upon its composition. On the other hand, where the essential character of the product is that of mixture of micronutrients/multi-micronutrients having predominantly trace elements, it shall be classified under CETH 3824 as chemical products not elsewhere specified or included.

**11.11.1.** As per para 4.2 of the Circular 1022/10/2016-CX dated 06.04.2016, it is clearly mentioned that any product where the essential elements are not nitrogen or phosphorus or potassium or their mixture would not merit classification under CETH 3105. Further, the specific exclusion of separate chemically defined compounds as laid down in chapter note 1 (b) and in the HSN Explanatory Notes to the heading 3105.90, reinforce the above conclusion. It may also be noted that notifications issued under Fertilizer Control Order are not relevant for deciding classification under the Central Excise Tariff. As the main Character of dominating elements of the YaraVita Zintrac is Zinc and used for treatment of Zinc deficiency, would not leads to the merit for classifiable under Chapter 3501.

**11.12.** I observe that as per details available on **website yara.in** as well as submitted by importer that YaraVita ZINTRAC is a fully formulated flowable liquid micronutrient fertiliser **containing a high concentration of zinc for foliar application to prevent and treatment of zinc deficiency** on a wide range of crops. Further, it comes forth that **nitrogen quantity in the said goods is only 0.9%.** The main/major component of the said goods is Zinc i.e. 700g/l. YaraVita Zintrac (Zinc Oxide suspension concentrate (39.5% Zn), is a high concentration of zinc having 700 G/L in solution. Hence, the same is rightly classifiable under CTH 28170010, which covers "Zinc Oxide/zinc peroxide".

**11.13.** I find that in light of the opinion of IARI, Central Excise Tariff and explanatory notes of HSN, nature, usage and classification of micronutrients, Multi-micronutrients, Plant Growth Regulators and Fertilizers and accordingly it has been clarified that Micronutrients are essential nutrients that are required in small quantities for the normal growth and development of plants. As on today, iron (Fe), manganese (Mn), Zinc (Zn), Copper (Cu), Boron (B), Molybdenum (Mo) Nickel (Ni) and Chlorine (Cl) are included in this category. These elements are also called minor or trace elements, but this does not mean that they are less important than macronutrients. These micronutrients are sold in the market as 'micronutrient fertilizer' supplying one or more of the eight essential nutrients

listed above, namely iron to chlorine. **Whereas, in the trade parlance sale of micronutrients as 'micronutrient fertilizers' would not lead to classification thereof under chapter 31 as fertilizers.** For classification under Chapter 31, at least one of the elements, namely-nitrogen, phosphorus or potassium should be an essential constituent of the fertilizer as per chapter note 6 of chapter 31. There is no specific heading in the tariff for classification of micronutrients. **However, where the micronutrient is a separate chemically defined compound, it will be classifiable under the heading for that chemically defined compound under chapter 28 or chapter 29.** For example, some of the sulphates of micronutrients are specifically covered under CETH 2833. In the light of circular as issued, YaraVita Zintrac is rightly classifiable under Chapter 28.

**11.12. I observe that as per the Fertilizer Control Order, 1985, the** specifications for the products 'Zinc Oxide Suspension Concentrate (39.5% Zn)' lays down that minimum percentage of Zinc is essential in the product 'Zinc Oxide Suspension Concentrate (39.5% Zn)' is 39.5%, **besides some other requirements.** However, in the specifications of this product given in the Fertilizer Control Order, 1985, no requirement of any of the fertilizing elements nitrogen, phosphorus or potassium has been mentioned. Therefore, it cannot be said that the product 'Zinc Oxide Suspension Concentrate (39.5% Zn)' contain at least one of the fertilizing elements nitrogen, phosphorus or potassium as "an essential constituent", which is one of the prime requirements as per Chapter Note 6 of Chapter 31 of the CTA, 1975 to term a product as "other fertilizer" classifiable under heading 3105 of the CTA, 1975. Further, it is traded as micronutrient and a separate chemically defined substance. Accordingly, Zintrac does not qualify to be classified under Tariff Item 3105 9090.

**11.13.** The relevant portion of Tariff heading 3105 is reproduced below,

3105 - MINERAL OR CHEMICAL FERTILISERS CONTAINING TWO OR THREE OF THE FERTILISING ELEMENTS NITROGEN, PHOSPHORUS AND POTASSIUM; OTHER FERTILISERS; GOODS OF THIS CHAPTER IN TABLETS OR SIMILAR FORMS OR IN PACKAGES OF A GROSS WEIGHT NOT EXCEEDING 10 KG

3105 90 90 --- Other

The definition of other fertilizers is given in Note 6 of Chapter 31, i.e. "*For the purposes of heading 31.05, the term "other fertilisers" applies only to products of a kind used as fertilisers and containing, as an essential constituent, at least one of the fertilising elements nitrogen, phosphorus or potassium.*"

**11.14.** Further, the category of products covered under Chapter 31 has also been elaborated by the **General Chapter Notes** to the Chapter 31, which is reproduced as under:

**"This chapter also excludes micronutrient preparations which are applied to seeds, to foliage or to soil to assist in seed germination and plant growth. They may contain small amounts of the fertilizing element Nitrogen, Phosphorus, and Potassium, but not as essential constituents."**

In view of the above, it's clearly appears that in the said product i.e. Yara Vita Zintrac, percentage of Nitrogen is only 0.9%, in a very small amount and not a essential constituents; hence as per general chapter notes to the Chapter 31, the said product is not classifiable under Chapter 31.

**11.15.** I observe that the General Rules for the Interpretation provides that when by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

**3(a)** *"The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods".*

**(b)** *"Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable".*

**11.15.1.** I find that in the instant case, in YaraVita ZinTrac, the Zinc is main components and the product is used for treatment of Zinc deficiency. Hence as per 3(b) of General Rules for the Interpretation Zinc is giving essential character in the said product, therefore the said product is rightly classifiable under CTH 2817.

**11.16.** I find that the importer's submission that the element Nitrogen (N) is present in subject product "YaraVita Zintrac [Zinc Oxide suspension concentrate (39.5% ZN)] and as the presence of Nitrogen is proved, the product to be classified as 'Other Fertilizer', however, it is observed that the importer's view with regard to classification is not correct as per the guideline of Explanatory Notes. The Note 6 of Explanatory Notes for the chapter 31 is reproduced as under:

*"For the purpose of heading 31. 05, the term "Other fertilizers" applies only to products of a kind used as fertilizers and containing, as an essential constituent, at least one of the fertilizing elements Nitrogen, Phosphorus or Potassium.*

**11.17.** From the above, it is evident that the product should contain at least one of the elements Nitrogen, Phosphorus or Potassium as essential element i.e. as one of the main or significant element. To merit the classification under Chapter 31, the fertilizing elements Nitrogen, Phosphorus and Potassium are required to be as "essential elements" but, from the analysis report submitted by the importer, it is evident that Nitrogen is only 0.9% by weight and zinc is 39.5% by weight, hence Nitrogen could not be an essential constituent in the said goods. Whereas, the impugned imported product is Micronutrients and **zinc** is the main elements/components of the said micronutrients and the said product is separately chemically defined product as mentioned under the category of 'Micronutrient' at Sl. No. 15, Sub-Heading 1(g) of Part A of the Schedule I of the

Fertilizer (Control) Order, 1985. Hence, I hold that the impugned product i.e. same is rightly classifiable under CTH 28170010, which covers "Zinc Oxide/zinc peroxide", instead CTH 31059090 (other fertiliser). Therefore, I find that M/s. Yara have misclassified the impugned goods under CTH 31059090 which attracts BCD @ 5%; instead of its correct CTH 28170010 which attracts BCD @ 7.5% and thus there have made short payment of duty.

**11.18.** I find that regarding change of CTH of impugned goods Shri Anjiva Kumar Rai, Manager Supply Chain, M/s Yara Fertilisers India Private Limited appeared and tendered his voluntary statement dated 15.03.2023 has stated that **they started importing ZINTRAC at Mundra Port under CTH 28170010, after clearing few shipments, they started import of said goods under CTH 31059090 as an appeal No. 85205/2018 filed by M/s YARA regarding the classification of ZINTRAC, was pending before CESTAT Mumbai** and they were expecting early disposal of same appeal in their favour. He further submitted that due to delay in disposal of the said case, they maintained same stand in import of Zintrac under CTH 28170010. He further submitted that they were of the view that the said product is classifiable under chapter 3105, however, since the matter was pending with CESTAT Mumbai, they again started importing under chapter 2817 and **deposited duty under protest.**

**11.18.1.** In this connection, I find that **Hon'ble CESTAT MUMBAI, WEST ZONAL BENCH vide it's Final Order No. A/85534/2022 dated 09.06.2022 in CUSTOMS APPEAL NO. 85205 OF 2018** in case of M/s. Yara Fertilisers India Pvt. Ltd. Vs Commissioner of Customs (NS-V), JNCH, Nhava Sheva, has disposed off the case by way of remand. **Therefore, the said case has not attained finality yet.** The Para 11 of the said Order has been reproduced hereunder:

...  
11. We, therefore, set aside the impugned order for having exceeded jurisdiction. The appeal of the importer before the first appellate authority is restored for a fresh decision on the correctness of the order of the original authority in the light of our enunciation supra. Appeal is disposed off by remand.

...  
**11.19.** In view of above, I find that M/s. Yara have evaded the payment of differential Basic Customs duty & other applicable duties totally amounting to **Rs. 2,15,54,775/-** in respect of impugned goods. Hence, the element of willful mis-statement and suppression of facts as provided under Section 28(4) of the Customs Act, 1962 is invokable in the instant case and accordingly, the differential Customs duty & other applicable duties totally amounting to **Rs.2,15,54,775/-** paid by the importer is liable to be appropriated and accordingly interest under Section 28AA of the Customs Act, 1962 is liable to be demanded for the reasons discussed above.

#### **11.20. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962**

The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below:-

*"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded—*

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts.”

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

**11.20.1.** I observe that in terms of Section 28AA (1) of the Customs Act, 1962 the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section. Therefore, I hold that interest at the appropriate rate also recoverable from M/s. Yara.

**11.20.2.** I find that sufficient opportunities were provided by way of granting personal hearing to all the noticees to defend their case and produce evidences in their defense but none of the noticees appeared before me. Therefore, it is reasonable to believe that they did not have substantive evidence to rebut charges levelled against them by the investigating agency. I find it pertinent to mention that the burden of proof with respect of rebuttal of the charges made by the Revenue lies on the person on whom the charges have been leveled. This principle has been aptly explained in the case of **M/s. Satish Mohan Agarwal reported at 2016 (336) ELT 562 (T)** wherein it has been observed as under:

“Enactments like Customs Act, 1962 and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellant, was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained undischarged by appellant.”

**11.20.3.** I find that the statement of **Shri Anjiva Kumar Rai, Manager Supply chain of M/s. Yara**, recorded under Section 108 of the Customs Act, 1962 have merit of substantive evidence in proving the act of contravention. Reliance is placed on the following judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 is emphasized.

- The Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating

him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.

- **Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement- and was not influenced by threat, duress or inducement etc. is a true one.
- In the case of **Govind Lal vs. Commissioner of Customs Jaipur {2000(117) E.L.T. 515(Tri)}**- wherein Hon'ble Tribunal held that— 'Smuggling evidence-statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'.
- In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.** Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is valid evidence under law.

**11.20.4.** In view of above discussion, I find that extended period under proviso to Section 28(4) of the Customs Act, 1962 is rightly invokable in the instant case. Accordingly, the total differential Customs duty of **Rs.2,15,54,775/-** is recoverable from **M/s. Yara** which is short levied/short paid on the goods covered under subject bills of entry filed by them as detailed vide Annexure-A attached to the impugned SCN, in terms of Section 28(4) of the Customs Act, 1962 along with the interest at the appropriate rate thereon under Section 28AA of the Customs Act, 1962 and applicable penalty and benefit of concessional rate of duty is denied based upon the country of origin of imported impugned goods.

#### **11.21. CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962:**

**(i).** I find that it is alleged in the impugned SCN that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

*"(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"*

(ii). On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is clear that any goods, imported by way of misclassification, will be liable to confiscation. As discussed in the foregoing para's, it is evident the Importer has deliberately misclassified the imported goods with a malafide intention to evade duty. Such act of mis-classification of goods resorted by importer, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(m) of Customs Act, 1962. I hold so.

(iii). As the impugned goods are found to be liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125, ibid reads as under:-

*"Section 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."*

(iv). A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

(v). As regards applicability of Section 111(m) of the Customs Act, I find that any goods could be held liable for confiscation only when the goods were physically available for being confiscated. If the imported goods were seized and then released provisionally, then also such goods may be held liable for confiscation because they were released on provisional basis. But in this case, the goods imported by them have never been seized; on the contrary, the goods imported by them have been legally allowed to be cleared for home consumption. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330**, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripa Ispat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not have any ground to hold.

(vi). In this regard, I find that the impugned goods were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A of the Customs Act covering recovery of redemption fine is available. **I, therefore, find that redemption fine cannot be imposed in respect of subject imported goods.**

**12. NOW I PROCEED TO EXAMINE THE ROLES OF M/S. YARA FERTILISERS INDIA PVT. LTD, (IEC-3111008398) IN MISCLASSIFICATION OF IMPUGNED PRODUCT WITH INTENT TO DEFRAUD THE GOVERNMENT EXCHEQUER.**

**12.1.** In light of aforementioned facts and analysis of imports data of made by the Importer, it has been noticed that before 2019, the Importer imported 'Zinc Oxide Suspension Concentrate (39.5%)' under the correct CTH 28170010 and paid BCD @7.5%. However, 2019 onwards M/s. Yara switched such imports of 'Zinc Oxide Suspension Concentrate (39.5%)' to CTH 31059090 (BCD@5%), without any valid reason to just get the undue benefit from illegally saving of duty. Moreover, impugned imported consignments of YaraVita Zintrac were cleared by them in domestic market under CTH 28170010. This act of the Importer clearly shows their willful intention to evade applicable customs duty by intentionally misclassifying the said Zinc Oxide Suspension Concentrate (39.5%) under CTH 31059090 (other fertilisers).

**12.2.** I hold that M/s Yara were aware of the actual classification of the impugned product however, at the time of filing of Bills of Entry the resorted to wilful misclassification of the impugned products in order to get the undue benefit of reduced duty. For such acts of omission and commission on part of M/s. Yara have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

**12.3.** I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable.

**13. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:**

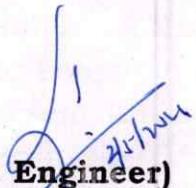
**ORDER**

- (i)** I reject the classification of impugned goods *viz. "YARAVITA ZINTRAC (ZINC OXIDE SUSPENSION CONCENTRATE (39.5%))"* imported by **M/s. Yara Fertilisers India Pvt. Ltd, (IEC-3111008398)** vide the subject Bills of entry under tariff item 31059090 of the First Schedule of Customs Tariff Act, 1975 as detailed vide Annexure- A to impugned Show Cause Notice; and order to re-classify the same under tariff item 28170010 of the First Schedule of Customs Tariff Act, 1975.
- (ii)** I order to reassess the impugned imported goods declared by **M/s. Yara Fertilisers India Pvt. Ltd, (IEC-3111008398)** under tariff item 31059090 of the First Schedule of Customs Tariff Act, 1975, in terms of **Section 17** of the Customs Act, 1962, as discussed supra.
- (iii)** I order to confiscate the impugned goods imported by **M/s. Yara Fertilisers India Pvt. Ltd, (IEC-3111008398)** under wrong tariff item of 31059090 of the First Schedule of Customs Tariff Act, 1975 during the period from April, 2019 to June, 2019, under the provisions of **Section 111(m)** of the said Act; however, the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- (iv)** I confirm the demand of differential customs duty including Cesses and Integrated Goods & Service Tax (IGST) amounting to **Rs.2,15,54,775/-**

(Rupees Two Cores Fifteen Lakhs Fifty Four Thousand Seven Hundred and Seventy Five Only), as illustrated in **Table-2 hereinabove** vide **Para 7.1 hereinabove** in respect of all the Bills of Entry filed during the period from April, 2019 to June, 2019 by **M/s. Yara Fertilisers India Pvt. Ltd**, (IEC-3111008398); and order to recover the same from **the importer** in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, alongwith applicable interest in terms of **Section 28AA** of the Customs Act, 1962.

(v) I impose Penalty of **Rs.2,15,54,775/-** (Rupees Two Cores Fifteen Lakhs Fifty Four Thousand Seven Hundred and Seventy Five Only) upon **M/s. Yara Fertilisers India Pvt. Ltd**, (IEC-3111008398) in terms of **Section 114A** of the Customs Act, 1962; and plus penalty equal to the applicable interest under Section 28AAA of the Customs Act, 1962 payable on the duty demanded and confirmed at (iv) above.

14. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

  
(K. Engineer)

Principal Commissioner of Customs  
Custom House Mundra.

Date: 02.05.2024

**F.No. CUS/ADJ/COMM/91/2023-Adjn**  
**BY SPEED POST/BY EMAIL/BY HAND/ NOTICE BOARD OR BY OTHER LEGALLY PERMISSIBLE MEANS:**

To,  
**M/s. Yara Fertilisers India Private Limited (IEC-3111008398),**  
402, Suyog Fusion Dhole Patil Road,  
Pune, Maharashtra -411001.

**COPY TO:-**

- 1) The Chief Commissioner of Customs, CCO Ahmedabad, Ahmedabad.
- 2) The ADG, DRI, Zonal Unit Lucknow, 2-31, Vishal Khand, Gomtinagar, Lucknow-226010, for information.
- 3) The Additional Director General, Central Economic Intelligence Bureau, 6th Floor, B Wing, Janpath Bhawan, Janpath, New Delhi-110001, for kind information please.
- 4) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 5) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 6) Notice Board
- 7) Guard File.