

		<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421</p> <p>Email: adj-mundra@gov.in</p>
A	FILE NO./ फ़ाइल संख्या	GEN/ADJ/COMM/454/2023-Adjn-O/o Pr Commr-Cus-Mundra
B	OIO NO./ आदेश संख्या	MUN-CUSTM-000-COM-57-25-26
C	PASSED BY/ जारीकर्ता	Nitin Saini, Commissioner of Customs/आयुक्त सीमा शुल्क, Customs House, AP & SEZ, Mundra//कस्टम हाउस, मुन्द्रा।
D	DATE OF ORDER आदेश की तारीख	27.02.2026
E	DATE OF ISSUE जारी करने की तिथि	27.02.2026
F	SCN No. & Date कारण बताओ नोटिस क्रमांक	GEN/ADJ/COMM/454/2023 dated 24.03.2025
G	NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	M/s. Yara Fertilizers India Pvt. Ltd (IEC 311108398)
H	DIN/ दस्तावेज़ पहचान संख्या	20260271MO0000709677

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 सीए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

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

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

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 बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- 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 ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

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

BRIEF FACTS OF THE CASE:

M/s. Yara Fertilizers India Pvt. Ltd, 402, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra 411001, holding (IEC 311108398) (hereinafter also referred to as “the importer/the Noticee” for the sake of brevity”) presented Bills of Entry, 32 No.’s, through their appointed Customs Broker M/s. Boxco Logistics India Pvt. Ltd at Custom House, Mundra, for clearance of imported goods declared as “Yaraliva Nitrobor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)” And “Yaraliva Tropicote (Double Salt Of Calcium Nitrate) etc. as per the Invoice and Bill of Ladings of the respective Bills of Entry, classifying the same under Tariff item 31026000/31029090 of first schedule of the Customs Tariff Act, 1975.

2. During the course of Audit conducted for the period from April 2020 to September, 2020 and April 2021 to September 2021, it was observed that these Bills of Entry were self-assessed by the importer wherein benefit provided at Sr.No.225 (I) (b) of Notification No.50/2017-Cus dated

30.06.2017 of concessional rate of basic Customs duty @ 5% was availed by them. Further, it is also observed that the said importer has also self-assessed some other BE's from July 2020 to August, 2022 by obtaining benefit of Sr. No. 225(I) (b) of Notification No. 50/2017-Cus dated 30.06.2017. The entry 225(1) (b) of Notification No.50/2017-Cus dated 30.06.2017 is read as under: -

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

THE FERTILISER (CONTROL) ORDER 1985

SCHEDULE I [See Clause 2(h) & (q)] PART-A SPECIFICATIONS OF FERTILISERS

4. Calcium Nitrate

<i>(i) Total Nitrogen, per cent by weight, minimum</i>	15.5
<i>(ii) Ammonical Nitrogen percent by weight, maximum</i>	1.1
<i>(iii) Nitrate Nitrogen as N percent by weight, minimum</i>	14.4.
<i>(iv) Water soluble Calcium as per cent by weight, minimum</i>	18.8.
<i>(v) Water insolubles percent by weight, maximum</i>	1.5
<i>(vi) Permissible limit of Boron</i>	0.3

3. Further, it had been observed that the said importer had imported “Yaraliva Nitrabor-Calcium Nitrate with Boron (Double Salt of Calcium Nitrate with Boron)” And “Yaraliva Tropicote (Double Salt Of Calcium Nitrate) etc.” and availed the benefit of concessional rate of duty under the above said notification which is available only to Calcium Nitrate. The declared description suggests that the impugned imported goods were

different from Calcium Nitrate. Thus, it appeared that in the subject Bills of Entry, 32 No.'s, the importer has wrongly availed the exemption under Sr. No. 225 (1) (b) of Notification No. 50/2017-Cus dated 30.06.2017 for imported goods i.e. "Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)" And "Yaraliva Tropicote (Double Salt Of Calcium Nitrate) etc" which are not Calcium Nitrate and only Calcium Nitrate is covered under the said notification. Therefore, it appeared that in the impugned Bills of Entry Basic Customs duty was liable to be charged at the prevailing tariff rate i.e. 7.5% instead of 5% as claimed.

Computation of Differential duty:

4. Benefit of concessional rate of basic customs duty @5% is allowed to Calcium Nitrate only vide Sr. No. 225[I](b) of Customs Notification No.50/2017-, otherwise Customs Tariff Head 31026000/31029090 attract Basic Customs Duty @ 7.5%. In the instant case, the importer had imported "Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)" And "Yaraliva Tropicote (Double Salt Of Calcium Nitrate) etc." which are not as per prescribed standards as per Fertilizers Control Order, 1985, therefore, it appeared that the importer had wrongly availed the benefit of Sr. No. 225[I](b) of Notification No.50/2017-Customs. Accordingly, the importer is liable to pay differential Customs duty of Rs. 2,17,70,321/- (Rupees Two Crores Seventeen Lakhs Seventy Thousand Three Hundred Twenty One Only).

5. The importer/noticee has willfully mis-stated the facts & wrongly availed Customs duty exemption benefit of Sr. No. 225 (1) (b) of Notification no. 50/2017-Cus dated- 30.06.2017 by paying BCD at lower rate i.e. @ 5% instead of correct rate of BCD @ 7.5% as per Customs Tariff. In the light of the documentary evidences, as brought out above and the legal position, it appears that the importer/notice had deliberately aimed to defraud the exchequer by adopting the above illustrated modus operandi.

5.1. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer/auditee claimed undue notification benefit for the said goods in order to clear the goods by wrongly availed Customs duty exemption benefit of Sr. No. 225 (1) (b) of Notification no. 50/2017-Cus dated 30.06.2017 by paying BCD at lower i.e. @ 5% instead of correct rate of BCD @ 7.5%. With the introduction of self-assessment under Section 17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer seems to have intentionally not paid correctly the customs duties on the imported goods. Therefore, it appears that the importer has willfully violated the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assessed the impugned goods and has also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of **Rs. 27,33,25,929/- (Rupees Twenty Seven Crore Thirty Three Lakh Twenty Five Thousand Nine Hundred Twenty Nine Only)** appeared to be liable for confiscation under Section 111(m) of the Customs Act, 1962. For this act of omission and commission, it also appears that Importer has rendered themselves liable for penalty under Section 112 (a) of the Customs Act, 1962.

6. Therefore, it appeared that the importer wilfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty. Further, it appeared that in the subject Bills of Entry, such wrong claim of notifications benefit on the part of the importer has resulted into short levy of duty of **Rs. 78,92,286/- (Rupees Seventy Eight Lakh Ninety Two Thousand Two Hundred and Eighty Six Only)** for 32 Bills of Entry which appeared to be recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 (hereinafter referred to as 'the Act') along with interest as applicable under Section 28AA of the Act. By the said deliberate wrong claim of notification benefit, the importer also appeared to

have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

7. Accordingly, M/s. Yara Fertilizers India Pvt. Ltd was called upon to show cause as to why: -

- (i) The benefit of Sr No. 225 (1) (b) of Notification No. 50/2017-Cus dated 30.06.2017 should not be denied to the above said goods imported vide 32 Bills of Entry as mentioned in Annexure-A to this Show Cause Notice, and why the said Bills of Entry should not be re-assessed at correct rate of BCD i.e. @ 7.5%.
- (ii) The goods having assessable value of Rs. 27,33,25,929/- (Rupees Twenty Seven Crore Thirty Three Lakh Twenty Five Thousand Nine Hundred Twenty Nine Only) imported vide 32 Bills of Entry as mentioned in Annexure-A to this show cause notice, should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- (iii) The differential duty worked out as Rs. 78,92,286/- (Rupees Seventy Eight Lakh Ninety Two Thousand Two Hundred and Eighty Six Only) for 32 Bills of Entry as detailed in Annexure-A should not be recovered from importer under Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;
- (iv) Penalty should not be imposed upon them under Section 112(a) and/or 114A of the Customs Act, 1962.

8. RECORDS OF PERSONAL HEARING:

- Following the Principles of Natural Justice, opportunities of personal hearing were granted to the importer. Shri Nayan Singhal, Advocate, appeared for the personal hearing on 23.12.2025 through virtual

mode. He submitted that the quantity of Boron involved was minuscule, i.e. 0.3%. He further stated that there were three items under dispute and that Boron content was present only in the product “Yaraliva Nitrabor,” while no Boron was contained in the other products covered under the Show Cause Notice. The other two products (Yaraliva Tropicote and Yaterata Calcinite) are calcium nitrate fertilisers with no boron. He referred to various judicial pronouncements already placed on record along with the written submissions. He further contended that the department was already aware of the description of the goods and, therefore, the invocation of the extended period for demand of duty was not sustainable. He also submitted that, since the goods had already been cleared, imposition of redemption fine was not warranted. He finally reiterated the submissions made in the written reply and placed on record a compilation of case laws.

- Final date of hearing, on the request of the Noticee, was granted on 24.02.2026 for submission of additional written submissions and test reports. Shri Nayan Singhal, Advocate, appeared for the personal hearing on 24.02.2026 through virtual mode and stated that they have provided Test reports issued by RFCL, Faridabad. Further, he stated that the invocation of the extended period for demand of duty was not sustainable. He requested to consider these facts, earlier submission, compilation of case laws and RFCL Test Reports while deciding the cases.

9. DEFENCE SUBMISSION

M/s Yara Fertilisers India Pvt Ltd, in their written submission dated 23.12.2025, inter alia, have submitted as follows:

9.1 The Noticees have submitted that the impugned goods imported by them were cleared for home consumption and “Out of Charge” orders issued by the proper officer. It is further submitted by the Noticees that the aforesaid “Out of Charge” orders, being quasi-judicial in nature, can be set

aside only by an order passed by the competent appellate authority in duly instituted appellate proceedings. It is contended that such quasi-judicial orders cannot be sought to be set aside merely by issuance of a Show Cause Notice, which proposes to declare the goods as liable for confiscation.

The Noticees have further submitted that, in order to substantiate that an out of charge order passed under section 47 of the Act amounts to quasi-judicial order, the case of Collector of Customs, Cochin Vs. Arvind Export – 2001 (130) ELT 54 (Tri. -LB) may be taken into consideration. The Noticee has further contended that in the case of Neelkanth Polymers Vs. CC, Kandla – 2009 (90) RLT 188 (Tri. -Ahmd.), in the context of demand under Section 28 of the Act for recovery of additional duty of Customs not levied, Hon'ble Tribunal held that the demand of duty is not sustainable when the Bill of Entry is not challenged.

Noticees have submitted that the ratio of the aforesaid judgments is equally applicable to the case of the Noticees. In absence of any appeal against the said Out of Charge orders/ bills of entries, the assessment has gained finality, which cannot be challenged or negated by issuance of the SCN.

9.2. That Yaraliva Nitrabor is a Water-Soluble Fertilizer Containing Calcium Nitrate as a major ingredient. Accordingly, it is eligible for exemption under Notification No. 50/17-Cus., Sl. No. 225 I (B)._

(i) That Noticees have submitted that the present dispute questions the availability of exemption under Sr. No.225(I)(b) of Notification No.50/2017-Cus., dated 30.06.2017 to the goods in question, namely YaraLiva Nitrabor, which is a double salt of Calcium Nitrate and Ammonium Nitrate.

(ii) The Noticees have submitted that the aforesaid exemption is available to the water-soluble fertilizers mentioned in the customs notification, which are also included in Schedule 1, Part A of the FCO. Calcium Nitrate fertilizer is specified as water soluble fertilizer in Customs Notification. The

Noticees have further submitted that Sl. No. 225(I) of the Notification No.50/17-Cus., grants exemption to other fertilizers which comply to the specific composition e.g., potassium Nitrate (13:0:45), however, no such requirement is mentioned for Calcium Nitrate. This implies that exemption shall be extended to all fertilizers which are water soluble and contain Calcium Nitrate as major constituent, irrespective of other miniscule ingredients. The Noticees have further submitted that Sl. No. 225 of Notification No. 50/2017-Cus. does not selectively grant benefit of concessional rate of duty on some of the fertilizers listed in Part A of the Schedule I of the FCO to the exclusion of the other fertilizers listed in the FCO. The same is evident from the fact that Item no. (l) NPK 12:30:15 and (m) NPK 12:32:14 of Sl. No. 225 of the said notification are not listed in Part A of Schedule I of the FCO. In view of the above, the Noticees submit that the list provided in Sl. No. 225 of the notification is not exhaustive in nature and it also includes fertilizers that have similar ingredients as the listed fertilizers.

9.3. That the presence of miniscule quantity of boron does not alter the character of fertilizer being a calcium nitrate fertilizer.

(i) The Noticees have submitted that that YaraLiva Nitrorbor is classified, marked and used as “Calcium Nitrate” fertilizer as major ingredient is calcium nitrate with 99.5%. Addition of minuscule quantity of boron does not alter either the character of it being a calcium nitrate fertilizer or its water solubility. Even the heading of Sl. No. 225(I) of Notification No. 50/2017-Cus. does not require “100% water solubility” of the imported goods to be eligible for availing benefits of the said notification. The same is evident from the fact that the heading of the Sl. No. 225(I) only states “*the following **water-soluble fertilizers** included in Schedule 1, part A of the FCO*”.

(ii) The Noticees have further submitted that, in terms of Rule 3(a) of Interpretative Rules to Customs Tariff, going by the essential character, the goods in question are to be treated as calcium nitrate, even for the customs

notification. For the purposes of classification under Heading 31.02, the Customs department has treated the goods to be calcium nitrate, a mineral based fertilizer.

(iii) The Noticee has further submitted that the presence of boron in calcium nitrate does not alter the composition of calcium nitrate, the said product remains to be calcium nitrate which is a water-soluble fertilizer. Further, the addition of 0.3% boron in calcium nitrate does not change the characteristic of the main fertilizer i.e. to provide nitrogen and calcium to the plants, it only allows the main fertilizer to work more effectively. The Noticees have referred to the following case law(s):

- Vikram Plasticizer Vs. CCE - 023-VIL-697-CESTAT-AHM-CU
- Deepak Fertilisers & Petrochemicals Vs. CC – 2002 (139) ELT 328 (Tri. – Mum.)

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

9.4. That Yaraliva Tropicote & Yaratera Calcinit Meets The Composition Requirement Of Calcium Nitrate Covered Under The Fco. Therefore, The Subject Goods Are Correctly Eligible For Exemption Under Notification No.50/17-Cus., [Sl. No. 225(I)(B)].

(i) The Noticees have submitted that Sl. No. 225 of Notification No. 50/17-Cus., dated 30.06.17 grants concessional rate of BCD @ 5% to certain goods of Chapter 31 of the Customs Tariff. Calcium nitrate is covered under Heading 31.02 as '*Double salts and mixtures of calcium nitrate and ammonium nitrate*' under Tariff Item 3102 60 00 and as '*Double salts*

and mixtures of calcium nitrate and magnesium nitrate' under Tariff Item 3102 90 10.

(ii) The Noticees have submitted that the Customs department has not disputed the classification of the impugned goods under Heading 31.02. Therefore, there is no dispute that these are double salts of calcium nitrate. Sub-heading 1(i) to Part A of Schedule 1 to the FCO consists of nitrogen in 'ammoniacal and nitrate form'. This means that the FCO itself refers to commercial grade calcium nitrate which contains small amounts of Ammoniacal Nitrogen as nothing but Calcium Nitrate only. Therefore, the Calcium Nitrate mentioned in Sub-heading 1(i) to Part A of Schedule 1 to the FCO can also be termed as 'double salt of calcium nitrate'.

(iii) The Noticees have further submitted that in the present case, YaraLiva Tropicote and YaraTera Calcinit are a commercial grade calcium nitrate containing Ammoniacal Nitrogen in small amounts. Further, YaraLiva Tropicote and YaraTera Calcinit meets the composition requirement for 'Calcium Nitrate' at Sub-heading 1(i) to Part A of Schedule 1 to the FCO. The composition of YaraLiva Tropicote and YaraTera Calcinit is reproduced below:

YaraLiva Tropicote

Description	Percentage
Total Nitrogen (Ammonical and Nitrate Form) percent by weight, minimum	15.72
Nitrate Nitrogen as N percent by weight, minimum	14.75
Water Soluble Calcium (as Ca) percent by weight, minimum	18.81
Matter insoluble in water percent by weight, maximum	0.19

YaraTera Calcinit

Description	Percentage
Total Nitrogen (Ammoniacal and Nitrate Form) percent by weight, minimum	15.69
Nitrate Nitrogen as N percent by weight, minimum	14.85
Water Soluble Calcium (as Ca) percent by	18.66

weight, minimum	
Matter insoluble in water percent by weight, maximum	0.14

The Noticees have further submitted that in view of the above, YaraLiva Tropicote and Yaratera Calcinit meets the requirement for Calcium Nitrate covered by Sub-heading 1(i) to Part A of Schedule 1 to the FCO, which Therefore, there can be no dispute that YaraLiva Tropicote and Yaratera Calcinit are nothing but Calcium Nitrate.

The Noticees have further contended that considering the abovesaid submissions, the Noticees humbly submit that the SCN has misunderstood the nature of the imported goods and has not taken into consideration the composition of the products in question. Therefore, YaraLiva Tropicote and Yaratera Calcinit which are nothing, but 'Calcium Nitrate' are correctly eligible for the benefit of concessional rate of duty in terms of Notification No. 50/17-Cus. [Sl. No. 225(I)(b)].

9.5. That the present SCN nowhere disputes the Classification of the impugned Goods Under Tariff Item 3102 60 00 As Double Salt Of Calcium Nitrate.

The Noticees have submitted that the classification of the goods under Tariff Item 3102 60 00 of the Custom Tariff and its acceptance by the Customs department is a strong indicator of the fact that even the Customs department is of the view that calcium nitrate is the major constituent of the goods in question. Once the Customs department accepts that the goods in question are essentially calcium nitrate, there is no fathomable reason as to why it should deny the exemption benefit to the Noticees.

9.6. That where there is no statutory definition, an item given in the tariff should be interpreted in the commercial sense or in common trade parlance

(i) The Noticees have submitted that in the absence of a statutory definition, trade parlance is to be relied upon to understand the meaning of a product. In the instant case, the impugned products are used as calcium

nitrate in common trade parlance. The Noticees have referred to the following case laws:

- CCE, New Delhi Vs. Connought Plaza Restaurant (P) Ltd.–2012 (286) ELT 321 (SC)
- Akbar Badruddin Jiwani Vs. Collector of Customs–1990 (47) ELT 161 (SC)

(ii) The Noticees have further submitted that as long as what is imported is commercially treated and traded as calcium nitrate, then classification adopted should be as calcium nitrate itself for the purpose of exemption notification. This was done precisely, at the time of assessment. It has been held by the Hon'ble Supreme Court that Schedule/Tariff entry of a taxing statute should be interpreted in the commercial sense or in trade parlance and not as per its scientific or technical meaning only. The Schedule/Tariff entries are to be given a meaning, which is attached to them by those dealing in the goods specified in those entries. In this respect, the Supreme Court has in a catena of decisions held that the entries in the Customs Tariff should be interpreted by adopting the Commercial Trade Parlance Test, especially when the item of expression is not defined. On identical lines, the Noticees have placed reliance on following decisions :

- Ramavatar Budhai Prasad Vs. Assistant Sales Tax Officer reported (1962) 1 SCR 279
- Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh reported AIR 1967 SC 1454
- South Bihar Sugar Mills Ltd Vs. Union of India reported in 1978 (2) ELT 336

9.7 That the present dispute is limited to claim of exemption notification which is a matter of bona fide belief of the importer. There is no mis-statement or suppression. Accordingly, extended period of limitation cannot be invoked in the present case. Accordingly, interest is also not recovered on the differential duty.

9.8. That the goods in dispute are not liable to confiscation under 111(m) of the customs act, 1962.

(i) The Noticees have submitted that it is submitted that confiscation provisions under Sections 111 of the Act can be pressed into service only in cases where the Noticees has acted with a mala fide intention, and it is proved beyond doubt that there was *mens rea* on part of the Noticees. Bonafide conduct on part of the Noticees does not entail the goods liable to confiscation. Support for the above proposition is found in the following:

- Allseas Marine Contractors S.A. Vs. CC – 2011 (272) ELT 619 (Tri.-Del.);
- Sutures India Vs. CC – 2009 (245) ELT 596 (Tri.-Bang); Affirmed by Hon'ble Supreme Court in 2010 (255) ELT A85 (SC).
- Kirti Sales Corpn. Vs. CC – 2008 (232) ELT 151 (Tri.-Del)
- Ace Kargoways Pvt. Ltd. Vs. CC 2003(158) ELT 505
- CC Vs. Maruti Udyog Ltd. 2002 (141) E.L.T. 392,
- J K Industries Vs. CC – 1996 (88) ELT 41
- Hindustan Lever Ltd. Vs. CC 1996 (83) ELT 520
- Metro Tyres Ltd. Vs. Collector of Central Excise 1994 (74) ELT 964.
- CC Vs. Gaurav Enterprises 2006 (193) ELT 532 (Bom.)

(iii) The Noticees have further submitted that from the discussion of various case laws cited above, it is obvious that mere claim to an exemption does not amount to mis-declaration so long as the description given in the bill of entry is correct. In the instant case, the submitted had given the description of the imported goods correctly. Also, various supporting documents have been furnished like commercial invoice, packing list, bill of lading and certificate of origin confirming the description of the goods as per the Bill(s) of Entry. No attempt has been made to mis-declare / mis-classify the goods and wrongly avail benefits of the exemption notification. Hence, the imported goods cannot be confiscated under Section 111(m) of the Act.

(iv) The Noticees have further submitted that the provisions of Section 111 of the Customs Act, 1962 not invocable for goods already cleared.

9.9. That penalty under Section 112(a) of the customs act, 1962 cannot be imposed on the noticees: The Noticees have submitted that the present SCN proposes to impose penalty on the Noticees under Section 112(a) of the

Act. As submitted in the foregoing paragraphs, the demand of duty is not sustainable, therefore, the question of imposition of penalty under Section 112(a) of the Act would also not arise. Please refer to the decisions of the Hon'ble Supreme Court in CCE Vs. H.M.M. Limited – 1995 (76) ELT 497 (SC) and CCE Vs. Balakrishna Industries – 2006 (201) ELT 325 (SC), the Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable.

9.10. That Penalty under Section 114A of The Customs Act, 1962 cannot be imposed on the Noticees:

(i) The Noticees have submitted that the present SCN proposes to impose penalty under Section 114A of the Customs Act, 1962 on the ground that the Noticees have wrongly claimed the exemption benefit. The Customs department has always been aware of all the facts and the practice undertaken by the Noticees. Therefore, as submitted in the foregoing paragraphs, the SCN has failed to establish mis-statement and wilful suppression on part of the Noticees. Accordingly, proposal to impose penalty in bad in law. The ingredients of Section 114A of the Act are not satisfied in the instant case.

(ii) The Noticees have further submitted that based upon the above referred judgments, it can be said that to invoke penalty provisions under Section 114A of the Act, it has to be proved that there was a conscious or intentional act of collusion, wilful mis-statement or suppression of fact, on the part of the importer. The intention or deliberate attempt, on the part of the importer, to evade duty has to be proved beyond reasonable doubt to justify invocation of Section 114A of the Act.

(iii) The Noticees have further submitted that the extended period of limitation cannot be invoked in the present case in the absence of any wilful mis-statement or suppression of facts. Hence, by virtue of the same, penalty under Section 114A of the Act has been wrongly proposed on the Noticees and the present SCN is liable to be dropped forthwith.

DISCUSSION AND FINDINGS:

10. I have gone through the Show Cause Notice, audit observations, and case records and written submissions. The principles of natural justice, particularly *audi alteram partem*, have been duly complied with by granting adequate opportunity to the noticees to present their defence. I find that following main issues are involved in this case, which are required to be decided:

- (i) Whether the imported goods namely, 'Yaraliva Nitrabor (Calcium Nitrate with Boron)', 'Yaraliva Tropicote (Double salt of Calcium nitrate)' and 'Yaratera Calcinit (Calcium Nitrate)', are eligible for benefit of Sr. No. 225 (1) (b) of Notification no. 50/2017-Cus dated-30.06.2017 or otherwise.
- (ii) Whether the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 or otherwise.
- (iii) Whether the differential duty is liable to be recovered under the provisions of Section 28(4) of the Customs Act, 1962 or otherwise.
- (iv) Whether penalty is imposable upon the importer under Section 112(a) and/or 114A of the Customs Act, 1962.

11. I find that the Show Cause Notice proposed denial of the benefit of concessional rate of 5% Basic Customs Duty availed by the Importer under Serial No. 225(I)(b) of Notification No. 50/2017-Customs i.e. "Calcium Nitrate" in respect of imports effected through 32 Bills of Entry during the relevant period. The details of Bills of Entry are as below:

TABLE-1

S. N.	BE NO	BE Date	Item Description	Quantity in Kgs	Assess Value(In Rs.)

1	2387530	1/17/2021	YARATERA CALCINIT(CALCIUM NITRATE)	48000	1118880
2	2919562	2/26/2021	YARATERA CALCINIT(CALCIUM NITRATE)	96000	2228688
3	9896676	12/10/2020	YARALIVA TROPICOTE-CALCIUM NITRATE	276670	5993502
4	2193130	1/1/2021	YARALIVA TROPICOTE-CALCIUM NITRATE	498590	10764807
5	2788243	2/16/2021	YARALIVA TROPICOTE-CALCIUM NITRATE	303885	6503747
6	2920772	2/26/2021	YARALIVA TROPICOTE-CALCIUM NITRATE	27555	588933
7	9140926	10/12/2020	YARALIVA TROPICOTE(CALCIUM NITRATE)	220620	4766495
8	9664351	11/23/2020	YARALIVA TROPICOTE CALCIUM NITRATE	330720	7212342
9	9753407	11/29/2020	YARALIVA TROPICOTE CALCIUM NITRATE	275370	6005269
10	2070833	12/22/2020	YARALIVA TROPICOTE CALCIUM NITRATE	330460	7134797
11	2071392	12/22/2020	YARALIVA TROPICOTE CALCIUM NITRATE	275150	5940626
12	9315934	10/26/2020	YARALIVA TROPICOTE (DOUBLE SALT OF CALCIUM NITRATE)	331710	7142546
13	2087102	12/23/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE WITH BORON	664080	16068246
14	2186234	12/31/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	275290	6660986
15	2187761	12/31/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	274510	6642113
16	2188943	12/31/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	330662	8000780
17	2489337	1/25/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	275750	6618344
18	2924547	2/26/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	668150	16003863
19	3161341	3/16/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	442180	10620058
20	9315483	10/26/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	665530	16060071
21	9324517	10/26/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	658440	15888980
22	9333824	10/27/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	331120	7990340
23	9408174	11/2/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	663720	16016393
24	9495311	11/9/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	659600	16109906
25	9497082	11/9/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	328990	8035170
26	9589244	11/17/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	331650	8100137
27	2036078	12/21/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	275250	6660018
28	2071628	12/22/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	330340	7992989

29	2812238	2/18/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	166670	3997580
30	2926945	2/26/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	552880	13242858
31	3047995	3/8/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	221800	5327082
32	3190337	3/18/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	495030	11889383

11.1 The above said Bills of Entry were filed on self-assessment basis under Section 17 of the Customs Act, 1962, wherein the Noticee had declared the imported goods as (i) “Yaraliva Nitrorbor (Calcium Nitrate with Boron)”, (ii) “Yaraliva Tropicote (Double Salt of Calcium Nitrate)” and (iii) “Yaratera Calcinit (Calcium Nitrate)” and claimed benefit of Serial No. 225(I) (b) of Notification No. 50/2017-Customs 50/2017-Cus which is pasted below:

225.	31	<p>I. The following Water Soluble Fertilizers included in Schedule 1, part A of the Fertilizers Control Order, namely:-</p> <p>(a) Potassium nitrate (13:0:45) 5%</p> <p>(b) Calcium nitrate 5%</p> <p>(c) Mono ammonium phosphate 5%</p> <p>(d) Mono potassium phosphate (0:52:34) 2.5%</p> <p>(e) 13:40:13 NPK fertilizers 2.5%</p> <p>(f) 18:18:18 NPK fertilizers 2.5%</p> <p>(g) NPK 13:05:26 2.5%</p> <p>(h) 20:20:20 NPK fertilizers 2.5%</p> <p>(i) 6:12:36 NPK fertilizers 2.5%</p> <p>(j) Potassium magnesium sulphate 2.5%</p> <p>(k) 19:19:19 NPK fertilizers 2.5%</p> <p>(l) NPK 12:30:15 2.5%</p> <p>(m) NPK 12:32:14 2.5%</p> <p>II. The following Liquid fertilizers included in schedule 1 part A of the Fertilizers Control Order, namely:-</p> <p>(a) Super phosphoric acid (70% P₂ O₅) 5%</p> <p>(b) Ammonium poly phosphate (10-34-0) (Liquid) 5%</p> <p>(c) Zincated phosphate (Suspension) 5%</p>			
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11.2 The above Notification's Sr. No. 225[1](b) requires confirmation of the imported goods to the specifications prescribed for ‘Calcium Nitrate’ under Schedule-I, Part-A of the Fertiliser (Control) Order, 1985. The Noticee through their defence submissions claimed that out of three, two products i.e. “Yaraliva Tropicote” & “Yaratera Calcinit”, which are squarely eligible for

the said Notification benefit as both products (mentioned at Table-1 from sr. no. 1 to 28) qualify the criteria prescribed under FCO, 1985.

12. I note that Water soluble Fertilizers namely 'Calcium Nitrate' listed in Schedule-I, Part-A of the Fertilizers Control Order, 1985 is required to meet the following standards:-

3. Calcium Nitrate

(i) Total nitrogen (Ammoniacal and Nitrate form) per cent by weight, Minimum	15.5
(ii) Nitrate nitrogen as N per cent by weight, minimum	14.5
(iii) Water soluble calcium (as Ca) per cent by weight, minimum	18.5
(iv) Matter insoluble in water per cent by weight, maximum	1.5



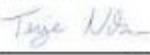
12.1 I further note that the noticee has produced analysis reports in respect of the aforesaid two products. I also observe that test/analysis reports were uploaded by the noticee at the time of filing the Bills of Entry through e-Sanchit, wherein the composition of the materials is clearly mentioned. I further note that additional test reports (wherein tests were conducted by CFQCTI, Faridabad) were also submitted by the importer during the adjudication proceedings. One of the analysis reports and test reports is reproduced below for better appreciation.

I. Yaraliva Tropicote (Double Salt of Calcium Nitrate).

- An Analysis Report uploaded by the Noticee at the time of import, corresponding to Bill of Entry No. 2788243 dated 16.02.2021 (mentioned at sr. no. 16 of Table-1 above) is pasted below for reference purpose:



Certificate of Weight and Analysis

Date 09.01.2021		Delivery Number 692690423		Cust. Ref. No. 4400000777(05/2021)		Order Ref. SC109034, PC109033	
Buyer YARA ASIA PTE. LTD. CO. REG. NO.: 199504383E 1 HARBOURFRONT PLACE #09-01/04 HARBOURFRONT TOWER ONE SINGAPORE 098633 Tel: 6309 5600				Notify YARA FERTILISERS INDIA PRIVATE LIMITED 402 SUYOG FUSION DHOLE PATIL ROAD SANGAMWADI PUNE/MAH. PIN-411001 , INDIA			
Precarriage		From HEROEYA, NORWAY		Marks *SCHEPERS V.101S			
Main transport MV KATHARINA*		From BREVIK, NORWAY					
Port of discharge MUNDRA, INDIA		Destination INDIA					
Product name YARALIVA TROPICOTE(CALCIUM NITRATE) BULK IN CONTAINER				Gross weight 331,740 MTS		Net weight 331,440 MTS	
Number and description of goods				<p>The goods have been analysed on dispatch from the works and were found to contain</p> <p>TOTAL N 15,5% Water Soluble Calcium 18,5% Water insoluble <1,5% (TYPICAL ANALYSIS)</p>			
				Above statement are true and correct			
				 Duty authorized weigher		 Chemist	

Postal address
Yara Norge AS
Yara Postgrunn
PO Box 1123
NO-2004 Skovvassnes

Office address
Herøya Industripark
Postgrunn

Telephone
00 47 24 15 70 00

Telefax
00 47 24 15 81 40

Registered No.
NO984015566NVA

- Further, test report issued by CFQCTI, Faridabad, corresponding to Bill of Entry No. 2788243 dated 16.02.2021 (mentioned at sr. no. 16 of Table-1 above) is pasted below for reference purpose:

No. 17-1/2020-CFTI
GOVERNMENT OF INDIA
MINISTRY OF AGRICULTURE & FARMERS WELFARE
(DEPTT. OF AGRICULTURE, COOPERATION & FARMERS WELFARE)
CENTRAL FERTILIZER QUALITY CONTROL & TRAINING INSTITUTE
N.H. IV-FARIDABAD-121001 (HARYANA)

Tele Fax : 0129-241-
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स्पीड पोस्ट
SPEED POST

Dated: 11 MAR 2021

ANALYSIS REPORT OF DECANALISED/CANALISED IMPORTED FERTILISER

Lab No. 2721/20/4706

1. Name of the fertilizer and Grade : CALCIUM NITRATE
2. Contract/BE No. : 2788243 dated 16.02.2021
3. Name of the importer : M/s YARA FERTILISERS INDIA PVT. LTD.
4. Name of the country being imported from : NORWAY
5. Name of the vessel : M.V. BIANCA RAMBOW
6. Quantity of consignment : 303.885 MT
7. Date and port from where the sample was collected : 24.02.2021, MUNDRA
8. Code number of sample as indicated by Inspector : RG-100/21
9. Date of receipt of sample in laboratory : 02.03.2021
10. Date of submission of analysis report : 11.03.2021
11. Chemical analysis of fertilizer

FCO/Contractual Specification (Vide S.O. No. 349(E) dated 06.02.2017)		Composition as per Analysis %	Variation	Permissible Tolerance Limit	Remarks
Chemical Analysis					
1.	Total nitrogen (Ammonical and Nitrate form) per cent by weight, Min.	15.5	15.68		
2.	Nitrate nitrogen as N per cent by weight, Min.	14.5	14.70		Standard
3.	Water soluble Calcium as per cent by weight, Min.	18.5	18.56		मानक STANDARD
4.	Matter insoluble in water per cent by weight, Max.	1.5	0.00		

Remarks—The Sample is according to specifications.

(SHYAM BABU)
DIRECTOR

To




- The Secretary (Fertilizer), Ministry of Chemicals & Fertilizers, Shastri Bhavan, New Delhi.
- The Joint Secretary (INM), DAC&FW, New Delhi.
- The Director of Agriculture, Govt. of Gujarat, Gandhinagar.
- The Commissioner of Custom, Mundra (Gujarat)
- The Director (F & A) Room No. 473-*A, Udyog Bhavan, New Delhi.
- ✓ The General Manager (Mktg), Yara Fertilisers India Pvt. Ltd., 402, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra-411001.

II. YARATERA CALCINIT

- An Analysis Report uploaded by the Noticee at the time of import corresponding to Bill of Entry No. 2919562 dated 26.02.2021 (mentioned at sr. no. 02 of Table-1 above) is pasted below for reference purpose:



Certificate of Weight and Analysis

Date 21.01.2021	Delivery Number 692749978	Cust. Ref. No. 4400000802(28/2021)	Order Ref. S003-28
Buyer YARA ASIA PTE. LTD. CO. REG. NO.: 199504383E 1 HARBOURFRONT PLACE #09-01/04 HARBOURFRONT TOWER ONE SINGAPORE 098633 Tel: 6309 5600		Notify YARA FERTILISERS INDIA PRIVATE LIMITED 402 SUYOG FUSION DHOLE PATIL ROAD SANGAMWADI PUNE/MAH. PIN-411001, INDIA	
Precarriage	From	Marks	
Main transport MV BENEDKIT V.BF102R	From BREVIK, NORWAY		
Port of discharge MUNDRA, INDIA	Destination INDIA		
Product name YARATERA CALCINIT(CALCIUM NITRATE) IN 1200KG NET BIG BAGS		Gross weight 96,192 MTS	Net weight 96,000 MTS
Number and description of goods		The goods have been analysed on dispatch from the works and were found to contain TOT.N 15,5% Water Soluble Calcium 18,5% Water insoluble <1,5% (TYPICAL ANALYSIS)	
		Above statement are true and correct	
		 	
Duty authorized weigher		Chemist	

Postal address
Yara Norge AS

Office address
Herøya Industripark

Telephone
00 47 24 15 70 00

Telefax
00 47 24 15 81 40

Registered No.
NO984015685MVA

- Further, test reports issued by CFQCTI, Faridabad, corresponding to Bill of Entry No. 2919562 dated 26.02.2021 (mentioned at sr. no. 02 of Table-1 above) is pasted below for reference purpose:

No. 17-1/2020-CFTI
GOVERNMENT OF INDIA
MINISTRY OF AGRICULTURE & FARMERS WELFARE
(DEPTT. OF AGRICULTURE, COOPERATION & FARMERS WELFARE)
CENTRAL FERTILIZER QUALITY CONTROL & TRAINING INSTITUTE
N.H. IV-FARIDABAD-121001 (HARYANA)

Tele Fax : 0129-241471
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स्पीड पोस्ट
SPEED POST

Dated: 30 MAR 2021

ANALYSIS REPORT OF DECANALISED/CANALISED IMPORTED FERTILISER

Lab No. 1079/20/4847

1. Name of the fertilizer and Grade : CALCIUM NITRATE
2. Contract/BE No. : 2919562 dated 26.02.2021
3. Name of the importer : M/s YARA FERTILISERS INDIA PVT. LTD.
4. Name of the country being imported from : NORWAY
5. Name of the vessel : M.V. BENEDIKT
6. Quantity of consignment : 96.00 MT
7. Date and port from where the sample was collected : 08.03.2021, MUNDRA
8. Code number of sample as indicated by Inspector : U-246/20
9. Date of receipt of sample in laboratory : 19.03.2021
10. Date of submission of analysis report : 25.03.2021
11. Chemical analysis of fertilizer

FCO/Contractual Specification *(Vide S.O. No. 349(E) dated 06.02.2017)		Composition as per Analysis %	Variation	Permissible Tolerance Limit	Remarks
Chemical Analysis					
1.	Total nitrogen (Ammonical and Nitrate form) per cent by weight, Min.	15.5	15.79		
2.	Nitrate nitrogen as N per cent by weight, Min.	14.5	14.67		Standard
3.	Water soluble Calcium as per cent by weight, Min.	18.5	18.69		मानक STANDARD
4.	Matter insoluble in water per cent by weight, Max.	1.5	0.19		

Remarks—The Sample is according to specifications.

Kanchan
(KANCHAN)
ASSTT. DIRECTOR
FOR DIRECTOR

To

1. The Secretary (Fertilizer), Ministry of Chemicals & Fertilizers, Shastri Bhavan, New Delhi.
2. The Joint Secretary (INM), DAC&FW, New Delhi.
3. The Director of Agriculture, Govt. of Gujarat, Gandhinagar.
4. The Commissioner of Custom, Mundra (Gujarat)
5. The Director (F & A) Room No. 473-*A, Udhog Bhavan, New Delhi.
6. The General Manager (Mktg), Yara Fertilisers India Pvt. Ltd., 402, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra-411001

12.2 On careful examination of the above said test reports, along with the product description and supporting technical literature, I find that both

items imported under declared description as “Yaraliva Tropicote (Double Salt of Calcium Nitrate)” and “Yaratera Calcinit (Calcium Nitrate)” satisfy the minimum and maximum limits prescribed under the FCO, 1985 for ‘Calcium Nitrate’. I also find that these two products do not contain boron or any other fortifying micronutrient which would take them outside the scope of ‘Calcium Nitrate’ as specified under the FCO, 1985. Further, the exemption under Serial No. 225(I)(b) of Notification No. 50/2017-Customs is product-specific and condition-based, and the decisive factor for eligibility is conformity with the standards laid down under the FCO, 1985. In the present case, since the above two products demonstrably conform to the prescribed standards of ‘Calcium Nitrate’, I find no legal basis to deny the benefit of the said notification in respect of these goods.

12.3 In view of the above findings, I hold that the benefit of concessional rate of Basic Customs Duty @5% under Serial No. 225(I)(b) of Notification No. 50/2017-Customs dated 30.06.2017 has been correctly availed by the Noticee in respect of the imported goods namely “Yaraliva Tropicote (Double Salt of Calcium Nitrate)” and “Yaratera Calcinit (Calcium Nitrate)”. Consequently, the demand of differential duty, proposal for confiscation, and imposition of penalties in respect of these goods mentioned at Sr. No. 1 to 12 of Table-1, are not sustainable and are liable to be dropped.

13. I find that the remaining dispute in the present proceedings pertains to the product declared as “YaraLiva Nitabor – Calcium Nitrate with Boron”, in respect of which the Noticee has claimed the benefit of concessional rate of Basic Customs Duty @5% under Serial No. 225(I)(b) of Notification No. 50/2017-Customs.

13.1 The presence of boron content in the product “YaraLiva Nitabor – Calcium Nitrate with Boron” is clearly visible from the analysis reports submitted/uploaded by the importer at the time of filing of bills of entry as well as from tests conducted by CFQCTI, Faridabad. An Analysis Report uploaded by the Noticee at the time of import, corresponding to 3161341

dated 16.03.2021 (mentioned at sr. no. 19 of Table-1 above) is pasted below for reference:

- Further, test report issued by CFQCTI, Faridabad, corresponding to Bill of Entry No. 3161341 dated 16.03.2021 (mentioned at sr. no. 19 of Table-1 above) is pasted below for reference purpose:

No. 17-1/2021-CFTI
GOVERNMENT OF INDIA
 MINISTRY OF AGRICULTURE & FARMERS WELFARE
 (DEPTT. OF AGRICULTURE, COOPERATION & FARMERS WELFARE)
CENTRAL FERTILIZER QUALITY CONTROL & TRAINING INSTITUTE
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Tele Fax : 0129-2414712
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स्पीड पोस्ट
 SPEED POST

Dated:

09 APR 2021

ANALYSIS REPORT OF DECANALISED/CANALISED IMPORTED FERTILISER

Lab No. 06/21/29

1. Name of the fertilizer and Grade : BORONATED CALCIUM NITRATE
2. Contract/BE No. : 3161341 dated 16.03.2021
3. Name of the importer : M/s YARA FERTILIZER INDIA PVT. LTD.
4. Name of the country being imported from : NORWAY
5. Name of the vessel : M.V. BENEDKIT V. BF104R
6. Quantity of consignment : 442.18 MT
7. Date and port from where the sample was collected : 23.03.2021, MUNDRA
8. Code number of sample as indicated by Inspector : RG-106/21
9. Date of receipt of sample in laboratory : 05.04.2021
10. Date of submission of analysis report : 09.04.2021
11. Chemical analysis of fertilizer

FCO/Contractual Specification	Composition as per Analysis %	Variation	Permissible Tolerance Limit	Std/ Non Std.
Chemical Analysis				
1. Total nitrogen (Ammoniacal & Nitrate N) per cent by weight, Min.	14.5	14.56		
2. Nitrate nitrogen as N per cent by weight, Min.	13.5	13.65		STANDARD
3. Water soluble Calcium as per cent by weight, Min.	17.0	17.36		मानक STANDARD
4. Boron per cent by weight, Min.	0.2-0.3	0.20		मानक STANDARD

Remarks—The Sample is according to specifications.

Kanchan
 (KANCHAN)
 ASSTT. DIRECTOR
 FOR DIRECTOR

To

1. The Secretary (Fertilizer), Ministry of Chemicals & Fertilizers, Shastri Bhavan, New Delhi.
2. The Joint Secretary (INM), DAC&FW, Krishi Bhawan, New Delhi.
3. The Director of Agriculture, Govt. of Gujarat, Gandhinagar.
4. The Commissioner of Custom, Mundra (Gujarat)
5. The Director (F & A) Room No. 473-*A, Udhyog Bhavan, New Delhi.
6. The General Manager (Mktg), Yara Fertilisers India Pvt. Ltd, 402, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune-411001

13.2 The above report does not establish conformity with the prescribed standards of 'Calcium Nitrate' under the FCO, 1985 inasmuch as the product is a fortified fertilizer and not a standalone calcium nitrate fertilizer contemplated under Schedule-I, Part-A of the said FCO. It is notable that while 'Calcium Nitrate' is specified as a water-soluble fertilizer under Schedule-I, Part-A, the **product "Boronated Calcium Nitrate" is separately covered under Schedule-I, Part-A, item 1(h) as a Fortified Fertiliser**. The relevant entry under the FCO, 1985 is reproduced below for reference:

1(h). FORTIFIED FERTILISERS

9. Boronated Calcium Nitrate

(i) Total nitrogen (ammoniacal and Nitrate N) per cent by weight, Minimum	14.5
(ii) Nitrate nitrogen as N per cent by weight, minimum	13.5
(iii) Water soluble calcium as per cent by weight, minimum	17
(iv) Boron (as B) per cent by weight	0.2-0.3

13.3 The inclusion of "Boronated Calcium Nitrate" under a separate entry meant for Fortified Fertilisers clearly proves the legislative intent to treat plain 'Calcium Nitrate' and 'Calcium Nitrate with Boron' as two different fertilizer products. Once the statutory authority itself has recognised "Boronated Calcium Nitrate" as a fortified fertiliser under a separate heading, it would be impermissible to treat the same as 'Calcium Nitrate' for the purpose of extending an exemption which is specifically restricted to 'Calcium Nitrate' alone. Further, the presence of boron is not incidental but is the very basis on which the product is classified separately as a fortified fertiliser under the Fertiliser (Control) Order, 1985. Therefore, I find no merit in the contention of the Noticee that "YaraLiva Nitabor – Calcium Nitrate with Boron" should be treated as calcium nitrate for the purpose of exemption. Further, even if the product "Yaraliva Nitrobor" is classifiable under Heading 3102, the same does not automatically entitle it to exemption

unless it strictly conforms to the description and conditions of the notification. The burden to prove the eligibility of exemption notification is on importer; and the exemption notification are subject to strict interpretation. I place reliance upon following relevant legal pronouncements:

- Hon'ble Supreme Court in the case of **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai [2009(234) ELT-389(SC)]** held that the burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense.
- Hon'ble Supreme Court in the case of **Krishi Upaj Mandi Samiti v/s. CCE reported in 2022 (58) GSTL 129 (SC)** held that law of the issue of interpretation of taxing statute has been laid down in catena of decisions that plain language capable of defined meaning used in a provision has to be preferred and strict interpretation has to be adopted except in cases of ambiguity in statutory provisions.
- Hon'ble Supreme Court in the case of **Uttam Industries V/s. CCE reported in 2011 (265) ELT 14(SC)** held that it is well settled law that exemption notification should be construed strictly and exemption notification is subject to strict interpretation by reading it literally.
- The constitutional bench dated July 30, 2018 of Hon'ble Supreme Court of India in the case of **COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI ...APPELLANT(S) VERSUS M/S. DILIP KUMAR AND COMPANY & ORS. (CIVIL APPEAL NO. 3327 OF 2007)** held that the benefit of ambiguity in exemption notification cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue/state. Exemption notifications are subject to strict interpretation.

Relevant Para the said judgement is reproduced hereunder;

"41.After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more

than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.”

13.4 The Noticee has argued that after grant of Out-of-Charge under Section 47, the Bills of Entry attains finality and cannot be questioned by way of a Show Cause Notice. With respect to this claim, I find the Customs Act itself provides statutory mechanism under Section 28 for recovery of duty that has not been levied or has been short-levied, notwithstanding grant of OOC. Issuance of a Show Cause Notice under Section 28 does not amount to setting aside the OOC order, but only seeks to recover duty legally payable but not levied earlier. The reliance placed on judgments relating to finality of assessment is misplaced, as those decisions do not deny the statutory power under Section 28 to recover duty liability.

14. I note that the impugned Bills of Entry were filed under the self-assessment in terms of Section 17 of the Customs Act, 1962, under which the responsibility to correctly declare the nature of goods, determine eligibility of exemption and discharge the correct duty liability rests upon the importer. Section 17 of the Customs Act, 1962, read with the definition of “assessment” under Section 2(2) *ibid*, mandates the importer to make a true and correct self-assessment. Any incorrect self-assessment arising from wrongful availment of exemption renders the importer liable to recovery under Section 28 of the Customs Act, 1962. Further, in a catena of judgements by the court (as discussed in foregoing paras), it has been held that burden to prove eligibility of notification benefit on the imported goods lies with claimant only. In the present case, the Noticee claimed the benefit of Serial No. 225(I)(b) of Notification No. 50/2017-Customs dated 30.06.2017 in respect of the product “YaraLiva Nitabor – Calcium Nitrate

with Boron”, despite the fact that the said notification restricts the benefit to ‘Calcium Nitrate’ and does not extend to "Boronated Calcium Nitrate" which is a fortified fertilisers. The composition and nature of the product were also fully within the knowledge of the Noticee at the time of import. Despite this, the Noticee repeatedly wilfully claimed concessional Basic Customs Duty applicable to ‘Calcium Nitrate’ in respect of the said product across multiple Bills of Entry. The above wilfull incorrect availment of exemption came to light only during audit scrutiny and not through any voluntary disclosure by the Noticee. Had the audit not been conducted, the availment would have remained undetected. Accordingly, I hold that the differential duty on the product is liable to be recovered under the provisions of Section 28(4) alongwith the applicable interest under the provision of Section 28AA of the Customs Act, 1962.

15. Calculation of Duty:- I have already discussed that while three items are under dispute in the present Show Cause Notice, the demand is sustainable only in respect of one item declared as “YARALIVA NITRABOR-CALCIUM NITRATE WITH BORON”. Thus it is necessary to calculate duty for the purpose of confirmation of demand and imposition of penalty. The duty payable in respect of the item YARALIVA NITRABOR-CALCIUM NITRATE WITH BORON" is worked out as per the table below:

TABLE-2

S. N.	BE NO	BE Date	Item Description	Assess Value(In Rs.)	Diff. duty (In Rs.)
1	9315483	10/26/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	16060071	463735
2	9324517	10/26/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	15888980	458794
3	9333824	10/27/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	7990340	230721
4	9408174	11/2/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	16016393	462473
5	9495311	11/9/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	16109906	465174

6	9497082	11/9/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	8035170	232016
7	9589244	11/17/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	8100137	233891
8	2036078	12/21/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	6660018	192308
9	2071628	12/22/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	7992989	230798
10	2087102	12/23/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	16068246	463971
11	2186234	12/31/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	6660986	192336
12	2187761	12/31/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	6642113	191791
13	2188943	12/31/2020	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	8000780	231023
14	2489337	1/25/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	6618344	191105
15	2812238	2/18/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	3997580	115430
16	2924547	2/26/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	16003863	462112
17	2926945	2/26/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	13242858	382388
18	3047995	3/8/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	5327082	153819
19	3161341	3/16/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	10620058	306654
20	3190337	3/18/2021	YARALIVA NITRABOR-BORONATED CALCIUM NITRATE	11889383.03	343306
			TOTAL	207925297	6003843

Hence, differential duty amounting to **Rs. 60,03,843/- (Rupees Sixty Lakhs Three Thousand Eight Hundred and Forty Three only)** is liable to be recovered from the Importer/Noticee under Section 28 (4) of the Customs Act, 1962. As stated above, applicable interest under section 28AA of Customs Act, 1962 on the said amount is also liable to be recovered from the Importer.

16. I notice that the SCN has proposed confiscation of the said goods under Sections 111(m) of the Customs Act, 1962. I find that in the present case, the dispute relates primarily to wrongful availment of exemption under Serial No. 225(I)(b) of Notification No. 50/2017-Customs dated 30.06.2017 in respect of the said product. As discussed in the foregoing paragraphs, the

Noticee declared the impugned goods as eligible for concessional rate of duty applicable to 'Calcium Nitrate', despite the product being "Calcium Nitrate with Boron", which is not covered by the said exemption. I observe that such declaration, which resulted in incorrect self-assessment and short payment of duty, constitutes a mis-declaration in respect of a material particular having a bearing on the rate of duty applicable to the goods. The rate of duty is a material element of assessment, and any incorrect declaration affecting the same squarely attracts the provisions of Section 111(m) of the Customs Act, 1962. Accordingly, I find that the imported goods declared as "YaraLiva Nitrabor – Calcium Nitrate with Boron" are liable to confiscation under Section 111(m) of the Customs Act, 1962.

16.1 As the impugned goods are found to be liable for confiscation under Section 111 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. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of *M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad* [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in **C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]**. Para 23 of the said Judgment is as follows:

"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other

charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

16.2 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements. I find that goods are liable for confiscation and redemption fine can be imposed.

16.3 I further observe that present case does not involve import of prohibited or restricted goods. The description of the goods declared in the shipping bills has not been found to be false or misleading. There is no evidence on record to suggest any deliberate attempt to smuggle goods. The

dispute in the present case is confined to availment of notification benefit. I further note that the entire undue benefit that had accrued to the importer on account of such incorrect availment of wrong Notification benefit is already ordered to be recovered in the form of differential duty. I also find that a penalty equal to the duty amount is also going to be imposed under Section 114A of the Customs Act, 1962.

16.4 Considering the nature of the violation and the principle that redemption fine should not be excessive, the ends of justice would be met if the redemption fine is restricted to approx. 50% of the differential duty.

17. PENALTY UNDER SECTION 112 (a) and/or 114A OF THE CUSTOMS ACT, 1962: Now I decide the issue of penalty proposed under Section 112(a) and/114A of the Customs Act, 1962. I have already decided that the goods are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 for the reasons explained under foregoing paras. Consequently penalty under Section 114A is also found leviable on the Importer as the elements for penalty as per said Section 114A is *pari materia* with Section 28(4) of the Act. Further, fifth proviso to Section 114A provides that no penalty under Section 112(a) to be imposed if penalty under Section 114A is levied. Since I have already upheld the imposition of penalty under Section 114A, penalty under Section 112(a) is not liable to be imposed.

18. In view of above discussions and findings supra, I pass the following order.

ORDER

- (i) I order to deny the benefit of Sr. No. 225(I)(b) of Notification No. 50/2017-custtoms dated 30.06.2017 for the item having description as "*Yaraliva Nitrabor-Calcium Nitrate With Boron*" imported through total 20 bills of Entry (*as mentioned in Table-2 under para 15 above*) and order to re-assess these bills of entry without notification benefit on merit rate of duty. Further, I do not

- deny the benefit of the said Notification in respect of remaining 12 Bills of Entry (*as mentioned at sr. no. 1 to 12 of table-1 at para 11 above*) having description as "Yaraliva Tropicote (Calcium Nitrate)" & "Yaratera Calcinit (Calcium Nitrate)" for the reasons stated above.
- (ii) I hold that the goods having assessable value of Rs. 20,79,25,297/- (*as detailed under Table-2 at para 15 above*) are liable for confiscation under Section 111(m) of the Customs Act, 1962. I impose redemption fine of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)** under Section 125(1) of the Customs Act, 1962, in lieu of confiscation. Further, for the reasons discussed under above paras, I do not confiscate the goods mentioned at sr. no. 1 to 12 of table-1 at para 11 above.
- (iii) I confirm the demand of **Rs. 60,03,843/- (Rupees Sixty Lakhs Three Thousand Eight Hundred and Forty Three only)** against these 20 Bills of Entry having description as "*Yaraliva Nitrabor-Calcium Nitrate With Boron*" under Section 28(8) of the Customs Act, 1962 and order to recover the same from the Importer alongwith applicable interest under the provisions Section 28AA of the Customs Act, 1962. Further, I drop the demand of Rs. 18,88,443/- for the goods imported under remaining bills of entry mentioned at sr. no. 1 to 12 of table-1 at para 11 above.
- (iv) I impose penalty equal to the confirmed duty i.e **Rs. 60,03,843/- (Rupees Sixty Lakhs Three Thousand Eight Hundred and Forty Three only)** under Section 114A of the Customs Act, 1962. However, in case the said importer pays the duty along with interest within 30 days of the communication of the order, the amount of penalty payable shall be reduced to 25% of the penalty amount, as per provisions of Section 114A of the Customs Act, 1962. Further, I

don't impose penalty under Section 112 of the Customs Act, 1962 in terms of fifth proviso to Section 114A of the Customs Act, 1962.

19. This Order-in-Original is issued without prejudice to any other action that may be taken against the importer under the Customs Act, 1962 or any other law for the time being in force.

(Nitin Saini)

Commissioner of Customs
Customs House, Mundra

DIN: 20260271MO0000709677

By Mail/Speed Post & through proper/official channel

To,

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

Copy to:

- (i) The Chief Commissioner of Customs, CCO, Ahmedabad.
- (ii) The Dy./Assistant Commissioner (Legal/Prosecution), CH, Mundra.
- (iii) The Dy./Assistant Commissioner (Recovery/TRC), CH, Mundra.
- (iv) The Dy./Assistant Commissioner (EDI), Customs House, Mundra.
- (v) Guard file/Office Copy.