कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:
CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421.
PHONE : 02838-271426/271163 FAX :02838-271425
E-mail id- adj-mundra@gov.in

A	**FILE NO.** फ़ाइल संख्या	GEN/ADJ/ADC/787/2024-Adjn-O/o Pr Commr-Cus-Mundra
B	**OIO NO.** आदेश संख्या	MCH/ADC/AKM/317/2024-25
C	**PASSED BY** जारीकर्ता	Amit Kumar Mishra/ अमित कुमार मिश्रा, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा।
D	**DATE OF ORDER** आदेश की तारीख	24.02.2025
E	**DATE OF ISSUE** जारी करने की तिथि	24.02.2025
F	**SCN No. & Date** कारण बताओ नोटिस क्रमांक	CUS/APR/SCN/197/2024-Gr. 2-O/o Pr Commr-Cus-mundra Dated 27.02.2024
G	**NOTICEE/ PARTY/ IMPORTER** नोटिसकर्ता/पार्टी/ आयातक	**M/s. Yara Fertilizers India Pvt. Ltd (IEC: 311108398)**
H	**DIN/**दस्तावेज़ पहचान संख्या	20250271MO000000AA1B

1. यहआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-
   Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

"सीमाशुल्कआयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा,अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009."

3. उक्तअपील यहआदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
   Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

(i) उक्त अपील की एक प्रति और A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं°-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

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

6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।
An appeal against this order shall lie before the Commissioner (A) 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, 08 No.'s, having details mentioned in Annexure-A, through their appointed Customs Broker M/s. Boxco Logistics India Pvt. Ltd at Custom House, Mundra, for clearance of imported goods declared as "Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)" And "Yaraliva Tropicote (Double Salt Of Calcium Nitrate)" as per the Invoice and Bill of Ladings of the respective Bills of Entry, classifying the same under Tariff item 31026000 of first schedule of the Customs Tariff Act, 1975. The details of total 08 Bills of Entry as per below table:

TABLE-I

S. N.	BE NO	BE Date	Description	Assess Value(In Rs.)	Duty paid @ 10.77% (In Rs.)	Duty payable @13.663% (In Rs.)	Diff. duty (In Rs.)
1	6359261	06-01-2020	YARALIVA NITRABOR-CALCIUM NITRATE WITH BORON (DOUBLE SALT OF - CALCIUM NITRATE	15504314	1670589.8	2118354	447765
2	6441443	13-01-2020		15601391	1681050	2131618	450568
3	6539247	20-01-2020		15486986	1668722.7	2115987	447264

			WITH BORON)(AS PER				
4	6987166	24-02-2020	YARALIVA TROPICOTE(DOUBLE SALT OF CALCIUM NITRATE) (AS PER I - NVOICE AND BL)	3495475	376637.4	477587	100949
5	7190709	11-03-2020	YARALIVA NITRABOR-CALCIUM NITRATE WITH BORON (DOUBLE SALT OF - CALCIUM NITRATE WITH BORON)(AS PER INVOICE AND BL)	7987926	860699	1091390	230691
6	7194501	11-03-2020	YARALIVA TROPICOTE(DOUBLE SALT OF CALCIUM NITRATE)(AS PER I - NVOICE AND BL)	7151805	770606.9	977151	206544
7	7310351	20-03-2020	YARALIVA NITRABOR(DOUBLE SALT OF CALCIUM NITRATE WITH BORON) - (AS PER INVOICE AND BL)	8187212	882172.1	1118619	236447
8	7313914	20.03.2020	YARALIVA TROPICOTE(DOUBLE SALT OF CALCIUM NITRATE)(AS PER IN - VOICE AND BL)	7275197	783902.4	994010	210108
Total				**80690305**			**2330336**

2. During the course of Audit, it has been observed that these subject 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 the Importer. The entry 225(1) (b) of Notification No.50/2017-Cus dated 30.06.2017 is read as under: -

. 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%

3. Under the impugned Bills of Entries, 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)" 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, 08 No.'s, the importer had 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)" 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.

4. Benefit of concessional rate of basic customs duty @ 5% is allowed to Calcium Nitrate only vide Sr. No. 225 (1) (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 has imported "Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)" And "Yaraliva Tropicote (Double Salt Of Calcium Nitrate)" and wrongly availed the benefit of Sr. No. 225 (1) (b) of Notification No.50/2017-Customs which was allowed to Calcium Nitrate only. Therefore, the importer is liable to pay differential Customs duty of **Rs. 23,30,336/- (Rupees Twenty Three Lakhs Thirty Thousand Three Hundred Thirty Six Only)**.

6. It appeared that 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 appeared that a well thought out conspiracy was hatched by the importer/ noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the description/classification of the goods imported.

7. It appeared 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 intentionally not paid correctly the customs duties on the imported goods. Therefore, it appeared that the importer had 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. 8,06,90,305/-** appeared to liable for confiscation under Section 111(m) of the Customs Act, 1962.

9. 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 respect of the impugned 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. 23,30,336/-** for 08 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 be rendered themselves liable for under Section 114A of the Customs Act, 1962.

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

(i) The goods imported vide 08 Bills of Entry as mentioned in **Annexure-A** to the SCN should not be re-assessed at correct rate of BCD i.e. @ 7.5% and consequently benefit of Sr. No. 225 (1) (b) of Notification no. 50/2017-Cus dated- 30.06.2017 should not be denied to the above said goods;

(ii) The goods having assessable value of Rs. 8,06,90,305/- covered under Bills of Entry as detailed in Annexure-A to the SCN should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

(iii) The differential duty worked out as Rs. 23,30,336/- (Rupees Twenty Three Lakhs Thirty Thousand Three Hundred Thirty Six Only) for 08 Bills of Entry 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)(ii) and/or 114A of the Customs Act, 1962.

11. **DEFENCE SUBMISSIONS:** Importer submitted reply dated 24.05.2024 (which were received on 22.01.2025 after attending personal hearing on 03.01.2025) wherein they interalia stated that:

- The Noticees import fertilizers of generally from Yara Asia Pte Ltd., Singapore (hereinafter referred to as Supplier), which is related to the Noticees in terms of Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

- On the very first import of fertilizers by the Noticees in the year 2012, the customs department had referrd the matter to Special Valuation Branch vide Fie No. S/9-167 gatt/2012 GVC to verify the correctness of declared value of the imported goods. The SVB after detailed verification, had accepted value declared as transaction value vide order-in original dated 12.06.2013. Since then, the said order dated 12.06.2013 has been renewed from time to time and the customs department has accepted the transaction value declared by the Noticees. The SVB order is valid till date. This fact is undisputed.

- **YaraLiva Nitrabor is the brand name of the product** *Calcium Nitrate with Boron (Double Salt of Calcium Nitrate with Boron)"*. It is a fertilizer. The Licence issued to the Noticee under FCO includes **YaraLiva Nitrabor.** Calcium Nitrate with Boron (Double salt of Calcium Nitrate with Boron) is covered under the category of 'Fortified Fertilizers' at Sl. No. 9, Sub-Heading 1(h) of Part A of the Schedule I of the FCO.

- In the regular course of business, the Noticees describe the imported goods as "Calcium Nitrate with Boron (Double Salt of Calcium Nitrate with Boron)" in the Bills of entry. Along with the description, the Noticee also declared the brand name "YaraLiva Nitrabor".

- The impugned goods imported by the Noticees were cleared for home consumption on the strength of duly assessed bills of entry and 'Out of Charge' orders issued by the proper officer under the authority of the provisions of Section 17 and Section 47 of the Act. There is no dispute on this factual position. It is submitted that these orders were passed on the satisfaction of the proper officer that the said goods have been properly assessed before clearance for home consumption. It is further submitted that the aforesaid orders (Out of Charge), being quasi-judicial orders, can only be set aside by an order of the competent appellate authority in appellate proceedings. It is submitted that quasi-judicial orders cannot be sought to be set aside by mere issuance of a show cause notice, which has proposed to declare the goods to be liable for confiscation. This position has been affirmed in the case of CCE Kanpur Vs. Flock (India) – 2000 (120) ELT 285 (SC), Priya Blue Industries Vs. CC (Preventive) – 2004 (172) ELT 145 (SC) , ITC Vs. CCE, Kolkata IV – 2019 (368) ELT 216 (SC), Jairath International Vs. UOI – 2019 (10) TMI 642, Vittesse Export Import Vs. CC (EP), Mumbai – 2008 (224) ELT 241 (Tri. -Mumbai), Ashok Khetrapal Vs. CC, Jamnagar – 2014 (304) ELT 408 (Tri. Ahmd.), Collector of Customs, Cochin Vs. Arvind Export – 2001 (130) ELT 54 (Tri. -LB), Neelkanth Polymers Vs. CC, Kandla – 2009 (90) RLT 188 (Tri. -Ahmd.).
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- In absence of any appeal against the said Out of Charge orders/ bills of entries which have been assessed by proper officers, it must be understood that the assessment has gained finality, which cannot be challenged or negated by issuance of the SCN. Hence, on this ground alone, the present proceeding is liable to be set aside.

- 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).

- The Noticees 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 presence of miniscule quantity of boron does not alter the character of fertilizer being a calcium nitrate fertilizer:** It is further submitted that YaraLiva Nitrabor 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"*.

- It is 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. They placed reliance on the judgement in the case of Vikram Plasticizer Vs. CCE - 023-VIL-697-CESTAT-AHM-CU, Deepak Fertilisers & Petrochemicals Vs. CC – 2002 (139) ELT 328 (Tri. – Mum.).

- YARALIVA TROPICOTE IS MEETING 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)].

- Calcium nitrate which contains Nitrogen in *"Ammoniacal and Nitrate form"* is nothing but 'double salt of calcium nitrate'. The same is evident from the fact sheet on 'calcium nitrate' published by International Plant Nutrition Institute (IPNI)[1], wherein it states as under :

  "*Phosphate rock is acidified with nitric acid to form a mixture of phosphoric acid and calcium nitrate during the nitrophosphate fertilizer manufacturing process. Ammonia is then added to neutralize excess acidity. Calcium nitrate crystals precipitate via a temperature gradient and are separated as the mixture is cooled. With the ammonia addition and crystallization, a double salt is formed [5 Ca(NO3)2•NH4NO3•10 H2O, referred to as 5:1:10 double salt] and is considered the commercial grade of calcium nitrate. Hence, small amounts of ammoniacal N may also be present in this grade of calcium nitrate.*"

- 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. In this regard, reliance is placed on CCE, New Delhi Vs. Connought Plaza Restaurant (P) Ltd. – 2012 (286) ELT 321 (SC) wherein the Apex Court distinguished the case of Akbar Badruddin Jiwani Vs. Collector of Customs – 1990 (47) ELT 161 (SC). 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.

- It is a settled legal position that in case of any delay in the issuance of a show cause notice by the department, after having knowledge about the alleged transactions, extended period of limitation cannot be invoked. In other words, what has been done now could have been done at the time of assessment or within normal period of limitation. They placed reliance on the judgement in the case of M/s. Nizam Sugar Factory Vs. CCE – 2008 (9) STR 314 (SC), in ECE Industries Vs. CCE- 2004 (164) ELT 236 (SC) [Para 4-7], Cosmic Dye Chemical Vs. CCE, Bombay – (1995) 6 SCC 117, CCE, Aurangabad Vs. Bajaj Auto Limited – 2010 (260) ELT 17 (SC).

- The SCN has not proved any conscious or intentional act of collusion, wilful mis-statement, or suppression of fact on the part of the Noticees. Based on the documents available with the department, they could have

[1]

issued the SCN within the normal period of limitation. Thus, the present proceedings are vitiated by delay at the end of the department. Thus, in such a case there has been substantial delay on the part of the department. The Courts have time and again held in respect of invocation of extended period of limitation under indirect tax laws that something positive other than mere inaction or failure on the part of the Noticees or conscious or deliberate withholding of information when the Noticees knew otherwise, is required before they are saddled with any liability beyond the period of normal period of limitation had to be established. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful mis-statement or suppression or contravention of any provision of any act, is a question of fact depending upon the facts and circumstances of a particular case. Reliance is placed on the following decisions:

a) Padmini Products Vs. CC – 1989 (43) ELT 195 (SC);

b) CCE Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC);

c) Gammon India Ltd. Vs. CCE – 2002 (146) ELT 173 (Tri.), Affirmed by the Hon'ble Supreme Court in 2002 (146) ELT A313;
d) Lovely Food Industries Vs. CCE – 2006 (195) ELT 90 (Tri.);
e) Vaspar Concepts (P) Ltd. Vs. CCE – 2006 (199) ELT 711 (Tri.).

- The Hon'ble Courts (including Hon'ble CESTAT) without any deviation have been holding that claim of particular classification or an exemption benefit does not amount to mis-declaration. The Noticees place reliance on the case of Northern Plastic Vs. CCE – 1998 (101) ELT 549 (SC), wherein the Hon'ble Supreme court has held that mere classification and claiming the benefit of exemption under the bill of entry does not amount to mis-declaration under the Act.

- Reliance is also placed on following cases, wherein the Hon'ble CESTAT has held that any error in classification or exemption claimed on a bill of entry cannot be misdeclaration with the intention to evade payment of duty and there is no mis-declaration as far as description of the goods in dispute is concerned, demand cannot be confirmed by invoking extended period of limitation, even in cases where goods were self-assessed :
  a) Sirthai Superware India Vs. CC – 2020 (371) E.L.T. 324 (Tri. – Mum.), at paras 5.1-5.5;

  b) Raghav Industrial Vs. CC – 2019-TIOL-2559-CESTAT-DEL, at paras 6 – 9;

  c) Lewek Altair Vs. CC – 2019 (366) ELT 318 (Tri.-Hyd.), at para 7 Affirmed in Hon'ble Supreme Court 2019 (367) ELT A328 (SC);

  d) Kohler India Vs. CC – 2017 (1) TMI 584 – CESTAT NEW DELHI, at para 4.

- The SCN has proposed and demanded interest in terms of Section 28AA of the Act. In this regard, it is respectfully submitted that the question of levy of interest arises only if the demand of duty is sustainable. As submitted in the foregoing paragraphs, the demand of duty is not sustainable,

therefore, the question of levy of any interest under Section 28AAof the Act on such duty would not arise.

- 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:

  a) Allseas Marine Contractors S.A. Vs. CC – 2011 (272) ELT 619 (Tri.-Del.);

  b) Sutures India Vs. CC – 2009 (245) ELT 596 (Tri.-Bang);
  Affirmed by Hon'ble Supreme Court in 2010 (255) ELT A85 (SC).

  c) Kirti Sales Corpn. Vs. CC – 2008 (232) ELT 151 (Tri.-Del.)

- In the case of Bussa Overseas & Properties Vs. C.L. Mahar, ACC —2004 (163) ELT 304 (Bom.), the Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Act and consequently are not liable to confiscation under Section 111 of the Act.

- 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.

- The Noticees submit that penalty under Section 114A of the Act is imposable where any duty of customs has not been levied or paid or has been short levied or short paid by reason of collusion or any wilful mis-statement or suppression of facts. It is settled law that in order to impose penalty under Section 114A of the Act, an assessee should have engaged in collusion or wilful mis-statement or suppression of facts with an intent to evade payment of duty. The ingredients of Section 114A of the Act are not satisfied in the instant case. Reliance is placed on the Hon'ble Supreme Court in Tamil Nadu Housing Board Vs. CCE - 1994 (74) ELT 9 (SC), and CCE Vs. Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC). The Noticees also rely on the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. Vs. The State of Orissa reported in AIR 1970 (SC) 253.

12. RECORDS OF PERSONAL HEARING.

(i) Following the principles of natural justice, opportunities of personal hearings were granted on dated 03.01.2025 & 17.02.2025. Shri Nayan Singhal, Advocate authorised representative appeared for personal hearing through virtual mode for both hearing and stated that:

i. The issue involved in the captioned matter relates to denial of concessional rate of duty benefit in terms Sl. No. 225 (I)(b) of

Notification No. 50/2017-Cus., dated 30.06.2017 to the imported goods namely, 'Yaraliva Nitrabor (Calcium Nitrate with Boron)' and 'Yaraliva Tropicote (Double salt of Calcium nitrate') classified under Tariff Item 31026000 of the Customs Tariff.

ii. Yaraliva Tropicote is a commercial grade calcium nitrate containing Ammoniacal Nitrogen and its composition meets the requirement for Calcium Nitrate covered by Sub-heading 1(i) to Part A of Schedule 1 to the FCO. Therefore, there can be no dispute that Yaraliva Tropicote is nothing but Calcium Nitrate and correctly eligible for the benefit of concessional rate of duty in terms of Notification No. 50/2017-Cus., [Sl. No. 225(I)(b)].

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

iv. He further referred the following judgment

(a) Deepak Fertiliser & Petrochemicals Vs. CC-2002 (139) ELT328(Tri-Mum)

(b) Vikram Plasticizer Vs. CCE - 023-VIL-697-CESTAT-AHM-CU

(c) Deepak Agro Solutions.

v. The present Show Cause notice(s) have been issued by invoking an extended period of limitation as per section 28(4) of the Customs Act, 1962. The period of imports is between October 2019 to March 2020, and the Show Cause Notice(s) have been issued on 27.02.2024. Therefore, the entire demand is barred by limitation. Further, the only allegation in the present case is of claim of concessional rate of duty under Notification 50/2017-Cus. dated 30.06.17. It is a settled law that claim to an exemption notification is a matter of bona fide belief and no mis-declaration can be alleged in such cases. Reliance is placed on the decisions cited at Serial No. 7- 10 of the Compilation.

vi. He further stated that on similar matter regarding eligibility of exemption benefit YaraLiva Nitrabor is pending before the Hon'ble CESTAT, Bengaluru in Appeal No. C/21092/2018 by the Noticee.

DISCUSSIONS AND FINDINGS

13. I have gone through the facts of the case, Show Cause Notice dated 27.02.2024 and the noticee's submissions both, in written and in person. I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

i. Whether the goods imported under dispute 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 goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 or otherwise.

iii. Whether duty alongwith interest demanded under the SCN is required to be confirmed or otherwise.

iv. Whether the Importer is liable for penalty under Section 112(a) and/or 114A of the Customs Act, 1962.

14. I find that Importer has filed total 08 Bills of Entry which were self-assessed by the Importer M/s. Yara Fertilizers India Pvt. Ltd by classifying the goods under CTH 31026000 and availing the benefit of Sr. No. 225(I)(b) of Notification No. 50/2017-Cus. dated 30.06.2017. I find that two types of goods were imported by the Importer which are in dispute for notification benefit of Sr. No. 225(I)(b) of Notification No. 50/2017-Cus. dated 30.06.2017. The goods are as follows:

(i) Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt of Calcium Nitrate With Boron)'

(ii) 'Yaraliva Tropicote (Double Salt of Calcium Nitrate).

15. I find that show cause notice did not dispute the classification for the goods, it's only talks about the eligibility of the benefit availed by the Importer. Hence, Importer's contention that classification is not disputed bear not contradictory view. It would be appropriate to reproduce the relevant extract of the Notification No. 50/2017-Cus and Tariff are reproduced below for better appreciation:

Notification No. 50/2017-Cus dated 30.06.2017

225.	31	I. The following Water Soluble Fertilizers included in Schedule 1, part A of the Fertilizers Control Order, namely:-			
		(a) Potassium nitrate (13:0:45)	5%	-	-
		(b) Calcium nitrate	5%	-	-
		(c) Mono ammonium phosphate	5%	-	-
		(d) Mono potassium phosphate (0:52:34)	2.5%	-	-
		(e)13:40:13 NPK fertilizers	2.5%	-	-
		(f) 18:18:18 NPK fertilizers	2.5%	-	-
		(g) NPK 13:05:26	2.5%	-	-
		(h) 20:20:20 NPK fertilizers	2.5%	-	-
		(i) 6:12:36 NPK fertilizers	2.5%	-	-
		(j) Potassium magnesium sulphate	2.5%	-	-
		(k) 19:19:19 NPK fertilizers	2.5%	-	-
		(l) NPK 12:30:15	2.5%	-	-
		(m) NPK 12:32:14	2.5%	-	-
		II. The following Liquid fertilizers included in schedule 1 part A of the Fertilizers Control Order, namely:-			
		(a) Super phosphoric acid (70% P2 O5)	5%	-	-
		(b) Ammonium poly phosphate (10-34-0) (Liquid)	5%	-	-
		(c) Zincated phosphate (Suspension)	5%	-	-

Custom Tariff Heading 3102

3102		**MINERAL OR CHEMICAL FERTILISERS, NITROGENOUS**			
3102 10	-	*Urea, whether or not in aqueous solution :*			
3102 10 10	---	Fertilizer grade, conforming to Standard IS 5406	kg.	10%	-
3102 10 90	---	Other	kg.	10%	-
	-	*Ammonium sulphate; double salts and mixtures of ammonium sulphate and ammonium nitrate:*			
3102 21 00	--	Ammonium sulphate	kg.	5%	-
3102 29	--	*Other :*			
3102 29 10	---	Ammonium sulphonitrate	kg.	7.5%	-
3102 29 90	---	Other	kg.	7.5%	-
3102 30 00	-	Ammonium nitrate, whether or not in aqueous	kg.	10%	-

		solution			
3102 40 00	-	Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances	kg.	7.5%	-
3102 50 00	-	Sodium nitrate	kg.	Free	-
3102 60 00	-	Double salts and mixtures of calcium nitrate and ammonium nitrate	kg.	7.5%	-
3102 80 00	-	Mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution	kg.	7.5%	-
3102 90	-	*Other, including mixtures not specified in the foregoing sub-headings :*			
3102 90 10	---	Double salts or mixtures of calcium nitrate and magnesium nitrate	kg.	7.5%	-
3102 90 90	---	Other	kg.	7.5%	-

From the above, it may be seen that Calcium Nitrate is classifiable under CTI 31026000 and benefit for concessional rate of BCD @5% is available only for Calcium Nitrate only. Other item viz. Boronated Calcium Nitrate etc. attracts merit rate of duty @7.5% as per Customs Tariff.

16. I find that the show cause Notice proposes that the Product "*Yaraliva Tropicote''* is also not eligible for the benefit of lower BCD @5%. On careful perusal of the Noticee's submissions, description of the goods, analysis report, product literature and documents submitted at the time of import; I noticed that the product does not contain boron content. Thus, there is no ambiguity that the product "*Yaraliva Tropicote''* is eligible for the benefit of lower BCD @5%. Accordingly, I hold the same. The details of the item against which demand not-sustainable are as per below table:

Sr. no.	**BE NO**	**BE Date**	**Description**	**Assess Value(In Rs.)**	**Duty paid @ 10.77% (In Rs.)**	**Duty payable @13.663 % (In Rs.)**	**Diff. duty (In Rs.)**
1	6987166	24-02-2020	YARALIVA TROPICOTE(DOUBLE SALT OF CALCIUM NITRATE) (AS PER I - NVOICE AND BL)	3495475	376637.4	477587	100949
2	7194501	11-03-2020		7151805	770606.9	977151	206544
3	7313914	20.03.2020		7275197	783902.4	994010	210108
Total				**17922477**			**517601**

17. I noticed that Water soluble Fertilizers namely 'Calcium Nitrate and others' falling under Chapter Tariff Heading (CTH) 31 and listed in Schedule-I, Part-A of the Fertilizers Control Order (may be read as FCO) attract concessional rate of BCD at 5% under Serial No. 225(I) (b) of Notification No. 50/2017-Cus dated 30.06.2017. Schedule-I (Part A) of the Fertilizers Control Order specified quantum (minimum/maximum percent by weight) of ingredients of 'Calcium Nitrate' which included 'Total Nitrogen (15.5%min)', 'Ammonical Nitrogen1.1%max)', 'Nitrate Nitrogen (14.4%min.)" Water soluble Calcium (18.8% min.) and 'Water insolubles (1.5% min.). I observed that 'Boron' has not been mentioned in the said ingredient list. However, the Importer had availed the benefit of concessional BCD @5% on "Calcium Nitrate with Boron" which was actually not available on the imported goods. I also find that in trade parlance, these are separately recognized fertilizer vis-à-vis ingredient, specific use and price. Therefore, I find that their Analysis Reports do not satisfy the

above specifications. Accordingly, I hold that the exemption benefit under Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017 which is applicable to water soluble fertilizer calcium nitrate only and the same is not applicable to the impugned goods, i.e., 'Boronated Calcium Nitrate Fertilizer', which is said to be a Fortified Fertilizer and cannot be treated as 'Water Soluble Fertilizer'. The concept of "Plain reading of Notification" has been established by various judicial for a in their judgments. A plain reading of Notification exempts the goods "Calcium Nitrate" and not "Calcium Nitrate with Boron". In the case of M/s Andrew Yule & Co. Ltd., Hon'ble Supreme Court observed that if goods which are not covered in the description as specified in Column of the table to the Notification, then they are not exempted. Just a certificate from a Department does not entitle the assesse to clear the goods without payment of duty as the goods have to meet the description of goods specified in Column of the table to the Notification.

18. I find that the Importer in their written submissions have placed reliance on various case laws/judgements in support of their contention on some issues raised in the SCN. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same cannot be extended to other case(s) without looking to the hard realities and specific facts of each case. Those decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori Tobacco Products [2004(170) ELT 135(SC)] has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs. CCE, Delhi [2004(173)ELT 113(SC)] wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC(Port), Chennai Vs Toyota Kirloskar [2007(213)ELT 4 (SC)], it has been observed by the Hon'ble Supreme Court that the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced therefrom.

19. It has been noticed that at no point of time, the said notice has disclosed full, true and correct information about the appropriate rate of Customs duty or intimated to the Department that has come to the notice only after objection raised by the department. The Government has from the very beginning placed full trust on the importer/exporter and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. Government had made a legislative provision to let importers and exporters make self-assessment of their customs duty liability, which will be subject to checks and re-assessment by the Customs Officer, if found necessary. The objective of the trust based system of Self-Assessment of Customs duty by importers or exporters is to expedite release of imported/export goods. The system operates on an electronic Risk Management System (RMS). It is essential for the correct classification of goods and for ensuring the adherence of imported goods to exemption by

virtue of particular Notification issued in this regard categorically. From the evidences, it is evident that the Importer has knowingly suppressed the facts regarding rate of Customs duty and thereby not paid/short paid/not deposited differential Customs duty thereof. Thus, it is understood that there is a deliberate withholding of essential and material information from the department about rate of Customs duty. It is seen that these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of proper Customs duty.

20. Importer is mainly contending that the classification is not disputed by the department, hence, notification benefit cannot be denied. I think Importer's contention is not tenable, as the notification specifically mandate that goods falling under Chapter 31 having description as "Calcium Nitrate" only will be eligible for lower BCD, I find that the Noticee have self-assessed the above said Bills of Entry in terms of Section 17 of the Customs Act, 1962 and therefore contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they had intentionally availed/taken wrongly Customs duty benefit in terms of Serial No. 225(I)(b) of Notification No. 50/2017-Cus., dated 30.6.2017. I find no force in this contention because Section 28 of the Customs Act, 1962 does not differentiate or debar demand in such situation. The assessments under Section 17 are without prejudice to Section 46 and subsequent action including demand of differential duty with interest or any other action under the provisions of the Customs Act, 1962. Also I find that this submission is out of ignorance to the provision made under the Section 17 of the Customs Act, 1962, with effect from 08-04-2011. According to the sub-section (1) of the Section 17 of the Act, an importer shall self-assess the duty, if any leviable on the goods imported. Therefore, I do not find any merit in the Importer's contention, as discussed above.

21. Further, Importer's contention that he obtained FCO licence wherein the products in dispute are mentioned as water soluble fertiliser, hence, benefit is available for the subject goods. With respect to this noticee's contention, I observed that entry of a specific item in Fertiliser Control Order does not mean that it will automatically eligible for lower rate of BCD which was actually meant for a particular product having specific description. Further, it is important to mention here that Registration under FCO is mandatory for importation of fertilisers into India and sell in domestic market, hence, obtaining of registration is governed by the Fertiliser Control Order, 1985, as amended. Registration of a particular product under FCO Certification does not give right to the Importer to claim a notification benefit which was actually not eligible for the said product.

22. Further, the Importer contended that sample were drawn at discharge port and send for testing to ascertain standards. The drawing of sample and testing is done every time any fertiliser is imported into India. These products were found to be met the specification of "Calcium Nitrate" mentioned in 1(h) of Part A of Schedule 1 to the FCO. Accordingly, benefit of the notification NO. 50/2017 was extended to the Importer.

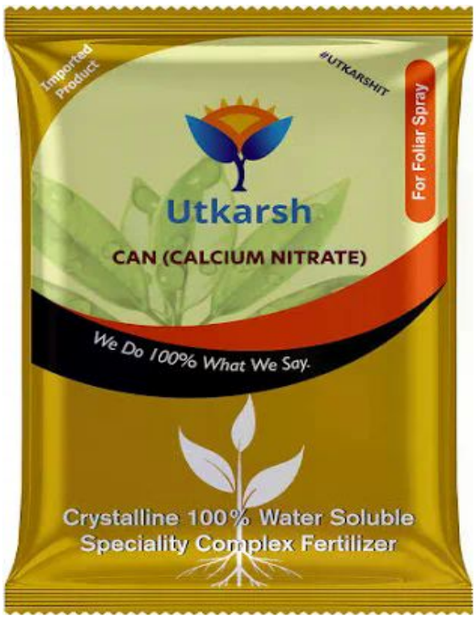
With respect to this contention, I find that testing of the fertilisers is mandated under the Fertiliser Control Order to ascertain that the quality/standard product is being imported and supplied in the domestic market. Sampling of the fertilisers is mandate under the Fertiliser Control Order which is required to be followed by each and every Importer who intend to Import fertilisers into India. Hence, sampling at the time of importation of goods in compliance of the provisions of the Fertiliser Control Order, 1985 and meet the standards to sell that product into domestic market does not mean that

Importer at the time of Importation of that product can claim a wrong notification benefit.

23. Importer contested that the presence of miniscule quantity of boron does not alter the character of fertiliser being a calcium nitrate fertilizer. Further, Importer contested that the products are a water-soluble fertilizer containing Calcium Nitrate as a major ingredient, hence, eligible for exemption notification No. 50/17-Cus. Sl. No. 225 I(b).

From the above, I construed that the Importer also in consonance that the product have the ingredient boron.

20. From the open sources i.e. google, I have found that there are many products available wherein boron is not available and they are pure Calcium Nitrate Fertiliser. Some Images are reproduced here for reference purpose, however, the list is not exhausted and taken as a reference only for better appreciation:



From the above, it may be seen that the products contains only Calcium Nitrate and does not have Boron. The fact which cannot be overlooked here is that the product imported in the impugned shipments have a specific brand names i.e. "*Yaraliva Nitrabor''*. Thus there is no doubt that the composition of the product with boron is not natural. The boron was added to differentiate the product from the others product i.e "Calcium Nitrate based fertlisers". Further, I also observed from the website of yara India wherein the company claim that "*YaraLiva Nitrabor" is a* ***unique granular fertilizer*** *which contains fully soluble calcium and boron in combination with fast acting nitrate nitrogen to give a top quality, highly marketable produce*." The fact is also corroborated from the fact that the Importer's own product "*Yaraliva Tropicote''* does not contain boron content. Thus, there is no doubt that the product "*Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)*" is not eligible for the notification benefit sr. no. 225 (I)(b) of Not. No. 50/2017.

24. I find the Importer had wrongly availed the benefit of said notification as the product "*Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)*" does not qualify the criteria for eligibility of the said notification benefit. Therefore, the benefit of exemption from payment of duty under Notification No. 50/2017-Customs dated 30.06.2017 is not available to "*Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)*"/

25.1. I find that *'Ignorantia Juris Non Excusat'* is an important principle in law. This principle places the responsibility on individuals to know and follow the law, regardless of whether they were aware of the law or not. In other words, a person cannot avoid liability by claiming that they did not know the law.

25.2. In this connection, I observe that the burden to prove the eligibility of exemption notification is on importer; and that 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 stict 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 statue 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."*

25.3 I observe that entry made at Sr. No. 225(1)(b) of Notification No. 50/2017-Customs dated 30.06.2017 is available only for the product i.e. "Calcium Nitrate". Other product having different compositions are not eligible for the said benefit of concessional rate of BCD @5% and liable to pay merit rate of duty @7.5%. In the instant case, I find that the importer has violated the basic requirement in order to wrongly avail benefit of Notification No. 50/2017-Customs, dated 30.06.2017. In view of above, I hold that the Importer M/s. Yara Fertiliser have wrongly availed the benefit under Notification no. 50/2017-Customs dated 30.06.2017 [Sr. No. 225(1)(b)]; therefore, the benefit of concessional rate of duty is not available to them on the item product "*Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)*".

Hence, from above discussions, I find that that the importer had resorted to willful mis-declaration of correct classification of goods and their further use and wrongly availed benefit of exemption notification in the Bills of Entry of the said imported goods by suppressing the said material facts, which shows the ulterior motive of the importer to evade payment of applicable Customs Duty in respect of said imported goods cleared for home consumption.

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

(i). I find that it is alleged in the subject 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/wilfully filed bills of entry by availing benefit of sr. no. 225(1)(b) of Not. No. 50/2017 dated 30.06.2017 with the malafide intention to evade duty despite kowing the fact that the product under import is not eligible for the concessional rate of duty. Further by way of mis-declaration, they have wrongly availed benefit of Notification No. 50/2017 they have wilfully suppressed the fact that the goods are other than the pure "Calcium Nitrate' and not eligible for the benefit. I have already held that the product "Yaraliva Tropicote" is eligible for the benefit as the same

does not contain boron and the other item i.e. "Yaraliva Nitrabor" is having different characteristics. These both item were imported by the Importer at the same period, however, claim same benefit despite knowing the fact that the both have different compositions. Thus, I have no doubt in my mind that the Importer suppressed that fact that their product is not eligible for the benefit and remain silent despite the fact that burden to prove for availment of notification benefit is lies with the them/Importer. If the department had not initiated the inquiry, the duty evasion would not have been unearthed. In light of these acts of wrong claim of notification benefit in the bills of entry, 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 1[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."*

***Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [3] [no such fine shall be imposed]:*

***Provided** further that] , without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

[4] [(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

[5] [(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

***Explanation** .-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]*

first proviso which was introduced vide Finance Act, 2018 which says that *where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section*

in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply. Behind the proviso, there is an assumption that goods become liable for confiscation when there is demand under Section 28. Interestingly, the liability to confiscation is assumed to arise even in cases that do not involve an extended period of limitation not being cases of collusion or wilful mis-statement or suppression of facts.

At this point, one has to understand that there cannot be a demand of duty, where the goods are seized and are in the possession of the government. It is a basic principle that goods and duty travel together. Thus, when the goods are in the possession of the government having been seized, there cannot be a demand for duty. Duty payment, even differential duty payment arises when the goods are confiscated and ordered for release to the importer. Section 125(2) which provides that *where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods,* makes this above position clear.

Thus, the proviso which is inserted in Section 125 referring to cases under Section 28 which are essentially in respect of demand of duty where the goods are not seized/ detained by the department, gives room for interpretation that Redemption fine is imposable even if the goods are not seized and are not 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."

Further, In the case of ***M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai)*** it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the misdeclaration in respect of the parallel invoices issued prior to the date of filing of the Bills of Entry. Hence, there is

misdeclaraiion and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

In case of M/s Asia Motor Works vs Commissioner of Customs 2020 (371) E.L.T. 729 (Tri. - Ahmd.) Hon'ble tribunal have demarcated between the words, ***"Liable for confiscation" and "Confiscation".***

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 in view of judgement in case of ***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.)].***

27. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962

27.1. 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."*

27.2. 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, interest at the appropriate rate also recoverable from Noticee.

27.3. I find it pertinent to discuss assessment of impugned Bills of Entry filed by the importer to import the impugned goods and wrongly availing the benefit of Notification No. 50/2017- Customs dated 30.06.2017 impugned goods by resorting to wrong availment of notification benefit. Further, in terms of section 17 of the Customs Act, 1962, read with the definition of assessment specified under Section 2(2) ibid, it is obligatory for the importer to correctly self-assess the duty on the imported goods, with reference to the classification of the goods. It is specified that an incorrect self-assessment results in re-assessment of the duty and renders the importer liable to action in terms of the provisions of the Customs Act, 1962. I find that after introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. Further, the position

has already been cleared in a catena of judgements by the court (as discussed in foregoing paras) that burden to prove for eligibility of notification benefit on the imported goods claimed by the Importer is lies with them only. In the instant case, entire onus is on the said importer to make truthful declarations and assess and pay their Govt. duty correctly. The said importer had wrongly availed benefit of exemption of BCD under Notification No. 50/2017-Cus dated 30.06.2017 (Sr.No. 22591)(b)) and paid only the BCD@5% instated of applicable BCD@7.5%. Therefore, it amounts to willful mis-statement on the part of importer leading to evasion of duty. They were very well aware that their product is not eligible for notification benefit due to its different composition being boron content added additionally. Despite the fact, they continued filing bills of entry by claiming said benefit just to avail the inadmissible duty exemption benefit. Had the customs department not initiated inquiry against them, the said fact would have not come to the notice.

Hence from above discussions, I find that that the importer had resorted to willful mis-declaration/mis-statement to avail wrong benefit of exemption notification in the Bills of Entry of the said imported goods by **suppressing the said material facts,** which shows the ulterior motive of the importer to evade payment of applicable Customs Duty in respect of said imported goods cleared for home consumption. Thus, I hold that duty by applicability of extended period under Section 28(4) of the Customs Act, 1962 is liable to recovered from the Importer.

27.4 Calculation of Duty:_ I have already discussed that there are 02 Item are under dispute in the present Show Cause Notice dated 27.02.2024. However, demand is sustainable only against the item having description as *"YARALIVA NITRABOR-CALCIUM NITRATE WITH BORON (DOUBLE SALT OF - CALCIUM NITRATE WITH BORON)"*. Thus it is imperative here to calculate duty for imposition penalty and confirmation of duty amount under the provisions of Section 28 of the Customs Act, 1962. The duty against item *"YARALIVA NITRABOR-CALCIUM NITRATE WITH BORON (DOUBLE SALT OF - CALCIUM NITRATE WITH BORON*)" is as per below table:

TABLE-A

S. N.	BE NO	BE Date	Description	Assess Value(In Rs.)	Duty paid @ 10.77% (In Rs.)	Duty payable @13.663% (In Rs.)	Diff. duty (In Rs.)
1	6359261	06-01-2020	YARALIVA NITRABOR-CALCIUM NITRATE WITH BORON (DOUBLE SALT OF - CALCIUM NITRATE WITH BORON)(AS PER INVOICE AND BL)	15504314	1670589.8	2118354	447765
2	6441443	13-01-2020		15601391	1681050	2131618	450568
3	6539247	20-01-2020		15486986	1668722.7	2115987	447264
4	7190709	11-03-2020		7987926	860699	1091390	230691
5	7310351	20-03-2020		8187212	882172.1	1118619	236447
Total				**62767829**			**1812735**

Hence, I find that Differential duty amounting to **Rs. 18,12,735/- (Rupees Eighteen Lakhs Twelve Thousand Seven Hundred and Thirty**

Five Five only) short paid/not paid by Importer should be demanded under Section 28 (4) of the Customs Act, 1962. As stated above, applicable interest under section 28AA of Customs Act, 1962 should also be demanded from Importer.

28. 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) (ii) and/ 114A of the Customs Act, 1962. I already decided that the fact 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)(ii) is not liable to be imposed.

29. 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 (Double Salt Of Calcium Nitrate With Boron)"* Imported through total 5 bills of Entry (as mentioned in Table-A under para 27.4 above) and order to re-assess these bills of entry without notification benefit at merit rate of duty.

ii. I confirm the demand of **Rs. 18,12,735/- (Rupees Eighteen Lakhs Twelve Thousand Seven Hundred and Thirty Five Five only)** against these 05 Bills of Entry having description as "*Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)"* under Section 28(8) of the Customs Act, 1962 and order to recover the same from the Importer alongwtih applicable interest under the provisions Section 28AA of the Customs Act, 1962.

iii. I order to confiscate the goods having total assessable value of Rs. **6,27,67,829**/- imported under these 09 Bills of Entry having description as *"Yaraliva Nitrabor-Calcium Nitrate With Boron (Double Salt Of Calcium Nitrate With Boron)"* under Section 111(m) of the Customs Act, 1962. However, since the goods have been cleared and are not available physically, therefore I impose redemption fine of **Rs. 18,00,000/- (Rupees Eighteen Lakhs Only)** under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

iv. I do not confiscate the goods and drop the demand against 03 Bills of Entry having description as "*Yaraliva Tropicote (Double Salt Of Calcium Nitrate)"* for the reasons stated above.

v. I impose a penalty of **Rs. 18,12,735/- (Rupees Eighteen Lakhs Twelve Thousand Seven Hundred and Thirty Five only)** upon the Importer under Section

vi. 4A of the Customs Act, 1962.

vii. I do not impose penalty upon the Importer under Section 112(a) of the Customs Act, 1962.

30. 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.

31. The Show Cause Notice bearing No. CUS/APR/SCN/197/2024-Gr. 2-O/o Pr Commr-Cus-mundra dated 27.02.2024 stands disposed off in above terms.

Signed by
Amit Kumar Mishra
Date: 24-02-2025 18:04:54

अपर आयुक्त सीमा शुल्क,
(अधिनिर्णयन अनुभाग)
कस्टम हाउस, मुंद्रा।

फ़ाइल संख्या: GEN/ADJ/ADC/787/2024-Adjn.

DIN/दस्तावेज़ पहचान संख्या**:** 20250271MO000000AA1B

By RPAD/ By Hand Delivery/Email/Speed Post

M/s.Yara Fertilizers India Pvt. Ltd,
402, Suyog Fusion, Dhole Patil Road,
Sangamwadi, Pune, Maharashtra 411001.
{Email: india.operation@yara.com }.

Copy to:

1. The Deputy/Assistant Commissioner (Legal/Prosecution), CH, Mundra.
2. The Dy./Asstt. Commissioner (Review Cell), Customs House, Mundra
3. The Dy./Asstt. Commissioner (RRA/TRC), CH, Mundra.
4. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately in terms of Section 153 of the Customs Act, 1962)*
5. The Dy. Commissioner of Customs, Assessment Gr. 2, CH, Mundra
6. Guard File.