



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A. File No.	: F. No. VIII/48- 51,52, 54,55 & 56/Adj./ADC/MCH/2019-20
B. Order-in- Original No.	: MCH/ADC/AK/ 106 to 110/2019-20
C. Passed by	: Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra. 25300 6 FEB 2020
D. Date of order /Date of issue	: 06.02.2020/06.02.2020
E. Show Cause Notice No. & Date	: 1.VIII/48-226/Audit/CRA/Gr.II/MCH/2018-19 dtd.29.08.2019 2.VIII/48-1627/LAR-59/Gr.II/MCH/2018-19 dtd.03.09.2019 3.VIII/48-1649/HM-6/Gr.II/MCH/2018-19/LAR- dtd.11.09.2019 4.VIII/48-2044/HM-09/July-Sept.18/Gr.II/MCH/2018-19/LAR-74 dtd.25.09.2019 5.VIII/48-121/HM-15/Oct-Dec.18/MCH/2019-20/LAR-77 dtd.25.09.2019
F. Noticee(s)/Party/ Importer	: M/s Yara Fertilizer India Pvt. Ltd., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra-411001.

1. यह अपील आदेश संबन्धित 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 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- 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 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**“ सीमा शुल्क आयुक्त (अपील), कांडला
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”**

**“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश 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 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 सं०-6 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 ड्यूटी/ 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, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क 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

The 5(Five) Show Cause Notices, as detailed below, have been issued against M/s. Yara Fertilizer India Pvt. Ltd., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra-411001 (holder of IEC No. 3111008398) (hereinafter also referred to as "the importer"/" the Noticee"). The Department has alleged in the Show Cause Notices that the Importers have wrongly claimed and availed benefit of the exemption under serial No. 225(l)(b) of Notification No. 50/2017-Cus dated 30.06.2017 in the Bills of Entries filed for clearance of imported goods declared as "YARALIVA Nitrobor-Calcium Nitrate With Boron (Double Salt of- Calcium Nitrate with Boron)" and classifying the same under Customs Tariff Heading 31026000 and accordingly there are proposals therein for demand and recovery of differential customs duty under Section 28(1) along with interest at appropriate rate under Section 28AA and imposition of penalty on the importer under Section 117 of the Customs Act, 1962. Since issue involved in all the five Show Cause Notices is common, therefore, the disposal of the same are being taken up through this proceeding as mentioned in the **TABLE-A** below.

Sr. No.	SCN F.No. & Date	Period Covered	Bill of Entry No. & Date	TABLE-A
				Differential amount of Customs duty involved (in Rs.)
1	VIII/48-226/Audit/CRA/Gr.II/MCH/2018-19 Dated 29.08.2019	October-2017- Dec.-2017	3541079/09.10.17, 3541086/09.10.17, 3572770/11.10.17, 3662754/18.10.17, 3662756/18.10.17, 4042671/17.11.17	7,91,406/-
2	VIII/48-1627/LAR-59/Gr.II/MCH/2018-19 Dated 03.09.2019	January-2018- March-2018	5060708/05.02.18, 5763918/28.03.18, 5798569/30.03.18	5,58,599/-
3	VIII/48-1649/HM-6/Gr.II/MCH/2018-19/LAR-69 Dated 11.09.2019	April-2018- June-2018	5880424/06.04.18, 6245785/04.05.18, 6432520/18.05.18, 6540493/26.05.18, 6547911/26.05.18, 6624826/01.06.18, 6816062/15.06.18	15,27,171/-
4	VIII/48-2044/HM-09/July-Sept.18/Gr.II/MCH/2018-19 /LAR-74 Dated 25.09.2019	July-2018- Sept.-2018	7041737/02.07.18, 7290950/20.07.18, 7487756/03.08.18, 8047585/14.09.18, 8165636/24.09.18	12,05,842/-
5	VIII/48-121/HM-15/Oct.-Dec.18/Gr.II/MCH/2019-20/LAR-77 Dated 25.09.2019	October-2018- Dec.-2018	9162932/07.12.19, 9346816/21.12.18, 9381640/24.12.18, 9438876/28.12.18, 9439537/28.12.18	26,39,309/-

1.1 The issue in brief is that the importers M/s. Yara Fertilizer India Pvt. Ltd presented above mentioned Bills of Entry as detailed in Annexure- I to aforesaid five show cause notices, 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 classifying the same under Tariff Item 31026000 of first schedule of the Custom Tariff Act, 1975.

1.2 The subject Bills of Entry were assessed wherein benefit provided at serial No. 225(I)(b) of Notification No. 50/2017-Cus dated 30.06.2017 of concessional rate of basic Customs duty @ 5% was granted. The said entry 225(I)(b) reads as under:

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

1.3 Under the impugned Bills of Entry, the importer imported “YARALIVA Nitrabor-Calcium Nitrate with Boron (Double Salt of- Calcium Nitrate with Boron)” and availed benefit of concessional rate of duty under the above said notification which is available only to Calcium Nitrate. The declared description suggests that the impugned imported goods were different than Calcium Nitrate. Thus, it appears that in the subject Bills of Entry, the importers have wrongly availed the exemption under serial No. 225 (I)(b) of Notification No. 50/2017-Cus dated 30.06.2017 for imported goods i.e. “YARALIVA Nitrabor-Calcium Nitrate With Boron (Double Salt of- Calcium Nitrate with Boron)” which is not calcium Nitrate and only calcium Nitrate is covered under the said notification. Therefore, it appears that in the impugned Bills of Entry Basic Customs duty was liable to be charged at the prevailing tariff rate i.e., 7.5%.

1.4 Further, it appears that though the importer was aware that the exemption under serial number 225(I)(b) of Notification No. 50/2017-Cus dated 30.06.2017, was not available to the impugned goods but the importer wrongly availed the exemption under said notification. Thus, it appears that the subject Bills of Entry are liable to be re-assessed by denying the claimed exemption and the differential Customs duties involved in the cases are liable to be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Further, it appears that the importer has contravened the provisions of Section 17(1) of the Customs Act, 1962 and have rendered themselves liable to penalty under Section 117 of the Customs Act, 1962.

1.5 In view of the above, the 05 (five) Show Cause Notices, as detailed in TABLE-A above, were issued whereby the importers M/s. Yara Fertilizer India Pvt. Ltd., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra- 411001 were called upon to show cause to the Additional Commissioner of Customs (Import), Custom House, Mundra having office at PUB Building 5B, Adani Port, Mundra, as to why:

- (i) The exemption under serial No. 225(I)(b) of Notification No. 50/2017-Cus dated 30.06.2017, claimed and availed by them in the Bills of Entries detailed in Annexure-I of the show cause notices should not be denied and the said Bills of Entries be re-assessed accordingly.
- (ii) The differential Customs duties as mentioned above, not paid by the importers in respect of the Bills of Entries mentioned in Annexure- I of the show cause notices Mentioned in TABLE-A above by wrongly availing exemption under serial No. 225(I)(b) of Notification No. 50/2017-Cus dated 30.06.2017 should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid.
- (iii) Penalty should not be imposed on them under section 117 of the Customs Act, 1962.

DEFENCE SUBMISSION

2. The Noticee vide their letters dated nil, submitted to the department on 17.12.2019, filed reply to the aforesaid Show Cause Notices dated 29.08.2019, 03.09.2019 and 11.09.2019 respectively, mentioned at Sr.No. 01, 02 and 03 of Para 01, wherein, they have denied every allegations in the SCN. They have, interalia, mainly contended in their defence as under-

2.1 The very issue regarding eligibility of exemption benefit under Sr. No.202 I(B) of Notification No.12/2012-Cus., on import of Yaraliva Nitrabor is pending with the Hon'ble CESTAT, Bengaluru in Appeal No. C/21092/2017 filed by them. It is submitted that since the issue is sub-judice before the Hon'ble CESTAT, the present proceeding be kept in abeyance till the final disposal of the appeal by the Hon'ble CESTAT.

2.2 The present dispute is limited to 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, it being a double salt of Calcium Nitrate and Ammonium Nitrate.

2.3 Relevant portion of the Notification No.50/17-Cus., reads as under:

S. No.	Chapter or Heading or Sub-Heading or tariff item	Description of Goods	Standard Rate	Additional Duty Rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
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%	1%	-
	(b) Calcium nitrate	5%	1%	-
	(c) Mono ammonium phosphate	5%	1%	-
	(d) Mono potassium phosphate (0:52:34)	2.5%	1%	-
	(e) 13:40:13 NPK fertilizers	2.5%	1%	-
	(f) 18:18:18 NPK fertilizers	2.5%	1%	-
	(g) NPK 13: 05:26	2.5%	1%	-
	(h) 20:20:20 NPK fertilizers	2.5%	1%	-
	(i) 6:12:36 NPK fertilizers	2.5%	1%	-
	(j) Potassium magnesium sulphate	2.5%	1%	-
	(k) 19:19:19 NPK fertilizers			
	(l) NPK 12:30:15			
	(m) NPK 12:32:14			
	II. The following Liquid fertilizers included in schedule 1 part A of the Fertilizers Control Order, namely: -	5%	1%	-
	(a) Super phosphoric acid (70% P ₂ O ₅)	5%	1%	-
	(b) Ammonium poly phosphate (10 -34 -0) (Liquid)	5%	1%	-
	(c) Zincated phosphate (Suspension)			

2.4 They submitted that the aforesaid exemption is available to the water-soluble fertilizers mentioned in the customs notification, which are also included in Schedule 1, part A of the FCO. Calcium Nitrate fertilizer is specified as water soluble fertilizer in Customs Notification and also in FCO.

2.5 They 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. There is no 100% water solubility mentioned as for as calcium nitrate is concerned, either in the Customs Notification or under the FCO. Whereas, for e.g. mono-potassium phosphate (0-52-34), NPK (13-40-13), NPK (18-18-18), NPK (13-5-26), NPK (6-12-36), and NPK (20-20-20), the FCO contemplates 100% water solubility. Further, in terms of Rule 3(a) of Interpretative Rules to Customs Tariff, going by the essential character, the goods in question

are to be treated as calcium nitrate, even for the customs notification. For the purposes of classification under Heading 31.02, the customs department has treated the ISERS goods to be calcium nitrate, a mineral based fertilizer. Hence, the SCN is incorrect in denying the exemption under Sr. No.225(I)(b) to the goods in question.

2.6 They submitted that when the presence of boron in calcium nitrate does not alter the composition of calcium nitrate, the said product remains to be calcium nitrate which is a water-soluble fertilizer and not boron which is a fortified fertilizer.

2.7 They submit that the present SCN nowhere disputes (on the other hand accepts) classification of the imported goods under Heading 3102 60 00 which covers double salts and mixture of calcium nitrate and ammonium nitrate, however, on the contrary, denies the exemption benefit on the ground that boron is present in the miniscule quantity.

2.8 Calcium Nitrate, as provided in the FCO has almost the same specifications, minus the boron. Merely adding 0.3% of Boron does not change the nature of the product. Since boron itself is a non-soluble element, getting mixed with calcium nitrate, it loses its property of insolubility. This shows that the essential constituent of the impugned goods is 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.

2.9 They submitted that since the imported goods fulfil all the conditions, merely because the fertilizer contains a miniscule amount of boron and put in a different category of FCO does not take the product out of the exemption benefit, moreover when the notification refers to entire Schedule I Part A.

2.10 It is pertinent to note that Sr. No.225(I)(b) of the Notification No.12/12-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 contains Calcium Nitrate as major constituent, irrespective of other miniscule ingredients.

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

2.12 It is settled law that exemption notification should be read strictly. Therefore, had there been any intention to extend exemption to 100% water soluble complex fertilizer, the legislature would have explicitly mentioned in the exemption notification itself. In absence of specification, exemption is correctly available to all water-soluble fertilizers which has Calcium Nitrate as major constituent, subject to same is listed in Schedule I Part A to the FCO.



2.13 They submitted that YaraLiva Nitrabor has Calcium Nitrate as major ingredient, and has 99.5% water solubility, therefore, it satisfies all the conditions required for extending the exemption benefit under Sr. No.225(I)(b) of Notification No.50/2017-Cus., dated 30.06.2017. Hence, the present SCN is incorrect to deny the exemption benefit.

2.14 They submitted that in the absence of a statutory definition, trade parlance is to be relied upon to understand the meaning of a product. In the instant case, the impugned products are calcium nitrate with boron however the said product is used as calcium nitrate in common trade parlance.

In this regard, they have placed reliance on the various judgements- 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), Ramavatar Budhaiprasad 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.

2.15 On the issue of penalty they submitted that It is a well settled position in law that claiming of exemption notification or claiming a particular heading for the purposes of classification does not amount to mis-declaration. In this connection, they placed reliance on decisions/judgements- Northern Plastic Ltd. Vs. CCE 1998 (101) ELT 549 (SC), Ace Kargoways Pvt. Ltd. Vs. CC 2003(158) ELT 505.

They submitted that penalty cannot be imposed where duty demand is not sustainable and placed reliance on various decisions- Collector of Central Excise Vs. H.M.M. Limited - 1995 (76) ELT 497 (SC), Commissioner of Central Excise, Aurangabad 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.

They also submitted that whenever there is a difference in interpretation, no penalty is imposable on them and reliance is placed on the decisions in the case of- Vadilal Industries Ltd. Vs. Commissioner Of C. Ex., Ahmedabad 2007 (213) ELT 157 (Tri. - Ahmd.).

2.16 They have further submitted that in terms of various decisions of the Supreme Court and various other High Courts and Tribunals, penalty cannot be imposed on the assessee in absence of mens rea on part of the assessee. It is a settled law that when an assessee is under a bona fide belief that a particular exemption is available under the provision of law, penalty cannot be imposed on the assessee, if ultimately it is found that the exemption benefit is not available. They have placed reliance on decisions in case of- Hindustan Steel Ltd. Vs. State of Orissa - 1978 (2) ELT (J159).

2.17 In view of the foregoing submissions, they prayed the Adjudicating Authority that the proceedings initiated under Show Cause Notices should be dropped and said SCN must be

discharged forthwith with consequential relief to them and a personal hearing may be granted to them before passing any order in this case.

3. The Noticee in their reply to Show Cause Notices both dated 25.09.2019, mentioned at Sr. no. 04 & 05 of Para 01, submitted to the department on 08.01.2020, have only repeated their earlier written submissions made on dated 17.12.2019 in respect of the remaining three Show Cause Notices dated 29.08.2019, 03.09.2019 and 11.09.2019 and have also quoted and placed their reliance on the same case laws/judgments/decisions. Since submissions of the Noticee are on the same set of issues with same contentions which have been discussed above in details, the same are not repeated here for the sake of brevity.

PERSONAL HEARING

4. The personal hearing in the case of aforesaid SCN's at Sr. no. 01 to 03 of para 01 was fixed on 19.12.2019 whereas in respect of SCN's at Sr. no. 04 to 05 of para 01, the same was fixed on dated 20.12.2019. On behalf of the Noticee Ms. Shruti Agrawal, Advocate appeared on 19.12.2019 itself for all the 05 (five) hearings, however, she did not had any "Vakalatnama" with her, so she vide her letter dated 19.12.2019 requested that the matter be heard on 10.01.2010. As per their request, the personal hearing was granted to the noticee on 10.01.2020, however, now their authorised representative M/s Laxmi Kumaran & Sridharan vide their letter dated 07.01.2020 requested to prepone the hearing in the case matter to 08.01.2020 citing the reason that they have to attend another hearing on 08.01.2020 at Mundra before Principal Commissioner in the case matter of SCN No. DRI/KZU/CF/ENQ-164(INT-09)/2018 dated 28.08.2019 to New India Detergent Limited and council appointed for both the matters will be travelling from Ahmedabad to attend the hearing. Their request was considered wherein Ms. Shruti Agrawal, Advocate appeared for personal hearing conducted on 08.01.2020. She said that the content of the Personal hearing can be used for all the cases of M/s Yara Fertilizer India Pvt. Limited. During course of personal hearing, she further said that the Notification provides exemption to calcium Nitrate and the product imported by the noticee was double salt of calcium Nitrate with Boron. She further added that the exemption is for "boronated Calcium Nitrate" also, because the imported product is also a soluble product and satisfy the condition of Sr. No. 225 of the said Notification and is covered within Schedule – I. Further she submitted that the classification of the goods is same as Calcium Nitrate i.e. Item No.31026000 of CTH. She also placed reliance on the Judgment of M/s. Sirthai Superware India Ltd Vs [2019 (10) TMI 460-CESTAT Mumbai]. She further relied upon the Judgment of CESTAT Chennai, in case of M/s. M.J. Joshi; for the purpose of imposition of penalty as the description is correctly provided in the Bill of Entries. Further reliance is placed on the Judgment of ITC [2019 (9) TMI (802) (SC)] and Judgment 2019 [10] TMI (642)] to state that self-assessment Bill of Entry is an order which must be challenged before Commissioner (A) and the impugned SCN is issued without the challenge of the finally assessed B/E is liable to be set aside as Section 28 of

Customs Act, do not provide the authority to reassess the already finally assessed Bill of Entry. She further stated that she has nothing more to add.

DISCUSSION AND FINDINGS

5. I have carefully gone through all the 05 (five) Show Cause Notices, the written submissions filed by the Noticee as well as the oral submissions made during the course of personal hearing on 08.01.2020 and the available records of the case and I find that in all the Show Cause Notices, the issues involved are identical, hence I am taking up all 5(Five) Show Cause Notices in a common Order. I find that following main issues are involved in all the SCNs, which are required to be decided-

- (i) Whether the exemption under serial No. 225(I)(b) of Notification No. 50/2017-Cus dated 30.06.2017, claimed and availed by the importer in the Bills of Entries detailed in Annexure-I of all the 05 show cause notices is liable to be denied and the said Bills of Entries are liable for re-assessment accordingly.
- (ii) Whether the differential Customs duties as mentioned above in TABLE-A, not paid by the importer in respect of the Bills of Entries mentioned in Annexure- I of all the 05 show cause notices by wrongly availing exemption under serial No. 225(I)(b) of Notification No. 50/2017-Cus dated 30.06.2017 are required to be demanded and recovered from the importer under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA *ibid*.
- (iii) Whether the importer M/s. Yara Fertilizer India Pvt. Limited is liable for penalty under section 117 of the Customs Act, 1962.

5.1 The facts of the case indicate that the importers M/s Yara Fertilizer India Pvt Ltd., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra- 411001 imported "**YARALIVA Nitrabor-Calcium Nitrate with Boron (Double Salt of Calcium Nitrate with Boron)**" falling under Customs Tariff item 31026000 by claiming BCD exemption under Sr. No. 225(I) (b) of Notification No. 50/2017-Cus-dated 30.06.2017. The subject Bills of Entry were self-assessed wherein benefit provided at serial No. 225(I)(b) of Notification No. 50/2017-Cus dated 30.06.2017 of concessional rate of basic Customs duty @ 5% was taken. The department has claimed in the each Show Cause Notices that the importers have wrongly availed the exemption under serial No. 225 (I)(b) of Notification No. 50/2017-Cus dated 30.06.2017 for imported goods i.e. "YARALIVA Nitrabor-Calcium Nitrate With Boron (Double Salt of- Calcium Nitrate with Boron)" which is not calcium Nitrate and only calcium Nitrate is covered under the said notification and therefore, in the impugned Bills of Entry, the Basic Customs duty was liable to be charged at the prevailing tariff rate of 7.5%. The Show Cause Notices have accordingly proposed denial of the benefit of exemption claimed under above said notification, demand of differential customs duties under Section 28(1) along with interest at appropriate rate under Section 28AA and imposition of penalty on the importer under Section 117 of the Customs Act, 1962.

5.2 The foremost issue to be decided by me in the instant case is that whether the importer is eligible to avail benefit under the serial No. 225 (I) of Notification No. 50/2017-Cus dated 30.06.2017 on import of goods declared as “YARALIVA Nitrabor-Calcium Nitrate With Boron (Double Salt of- Calcium Nitrate with Boron)”. In this context, I have gone through the serial No. 225 (I) of Notification No. 50/2017-Cus dated 30.06.2017 as amended. The serial no. 225(I) of the said Notification No.50/17-Cus., reads as under:

S. No.	Chapter or Heading or Sub-Heading or tariff item	Description of Goods	Standard Rate	IGST	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
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 2.5%</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>			

I find that as per the said exemption Notification No. 50/2017 -Cus read with Fertilizer (Control) Order 1985 as amended, the benefit of the said exemption is only available to Water soluble Calcium Nitrate Fertilizer'.

I further find that the exemption under serial No. 225 (I) of Notification No. 50/2017-Cus dated 30.06.2017 can be extended to the fertilizer "Calcium Nitrate" only when it meets the required specifications of the Fertilizer (Control) Order 1985 as indicated at Sr. no. 2 of 1 (i), Part A, Schedule I, wherein the said fertilizer should contain:

- (i) Total Nitrogen (Ammoniacal and Nitrate form) per cent by weight minimum - 15.5%
- (ii) Ammonical Nitrogen percent by weight, max-1.1%
- (iii) Nitrate Nitrogen as N per cent by weight, minimum-14.4%
- (iv) Water soluble Calcium as per cent by weight, mimimum - 18.8%

Further, in Certificates of Weight and Analysis in these cases, the analysis report indicates the percentage of various constituents present in the fertilizers under import, as under-


Description	Percentage
Total Nitrogen	15.4%
Nitrate-N	14.1%
Ammonium-N	1.3%
Total Cao	25.6%
Calcium	18.3%
Boron	0.3%
Granulometry	>2mm: 90%
	<2mm: 10%
Water insoluble	0.5%
Bulk Density (Loose)	1.10 KG/L

All such above ingredients clearly differentiate fertilizer of calcium nitrate with that of Boronated calcium nitrate vis-à-vis solubility; Boron content, bulk density, granulometry etc. 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 30.06.2017 which is applicable to water soluble fertilizer 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 fora 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 assessee 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.

5.3 I find that the Noticee in their defence submission have submitted that after due verification all the Bills of Entry were finally assessed by the Customs authorities and Section 28 of the Customs Act, 1962 do not provide the authority to reassess the already finally assessed Bills of Entry. However, 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 a wrong Customs duty benefit in terms of serial number 225(I)(b) of the Notification No. 50/2017-cus dated 30.06.2017. 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.

5.4 As regard proposal in the above said Show Cause Notices for demand of differential Customs duty of along with applicable interest, Since exemption under serial No. 225 (I)(b) of Notification No. 50/2017-Cus dated 30.06.2017 is not available to the goods declared as " Calcium Nitrate with Boron ('Double salt of Calcium Nitrate with Boron Yaraliva Nitrabor)" under tariff item 31026000, I hold that the said exemption is liable to be denied and the impugned Bills of Entry are liable to be re-assessed and accordingly, Basic Customs duty at the prevailing tariff rate i.e. 7.5% is liable to be charged. Accordingly, I hold that the importer M/s Yara Fertilizer India Pvt. Limited is required to pay the differential Customs duty as demanded separately in the 05 (five) Show Cause Notices under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA of the Customs Act, 1962

5.5 As regard proposal in all the five Show Cause Notices for imposition of penalty on the importer under Section 117 of the Customs Act, 1962, I find that Section 117 of the Customs Act, 1962 stipulates that any person who contravenes any provisions of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees]. I further find that Section 17(1) of the Customs Act, 1962 authorises any Importer or exporter of the goods to self assess the duty leviable on the Import or export of goods. In the instant case, I find that the importer was aware that the exemption under serial No. 225(I)(b) of Notification No. 50/2017-Cus dated 30.06.2017, was not available to the impugned goods but they deliberately assessed the said Bills of Entry under Section 17(1) of the Customs Act, 1962 by wrongly availing the said exemption. Thus, I find that the importer has contravened the provisions of Section 17(1) of the Customs Act, 1962 and accordingly I hold that the penalty under Section 117 of the Customs Act, 1962 are attracted on the importer M/s. Yara Fertilizer India Pvt. Ltd., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra- 411001.

5.6 I find that the Consultant/authorized representative of the Noticee in their written defence submissions quoted and 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)ELT4(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 there from.

6. In view of the forgoing discussions and findings, I pass the following order:-

ORDER

- (i) I reject the importer's claim of exemption under serial No. 225 (I)(b) of Notification No. 50/2017-Cus dated 30.06.2017, in the Bills of Entry as detailed in Annexure-I of the 05 (five) Show Cause Notices mentioned in **TABLE-A** in Para 1 above and order to re-assess those Bills of Entry accordingly.
- (ii) I confirm and order to recover the differential Customs duty, as detailed below, from the importer M/s Yara Fertilizers India Pvt Ltd., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra- 411001 for wrongly availing exemption under serial No. 225 (I)(b) of Notification No. 50/2017-Cus dated 30.06.2017, under Section 28(1) of the Customs Act, 1962.


Sr. No.	SCN F.No. & Date	Differential Customs duty confirmed for recovery (in Rs.)
1	VIII/48-226/Audit/CRA/Gr.II/MCH/2018-19 29.08.2019	Dated 7,91,406/-(Rupees Seven lakh Ninty One Thousand four Hundred Six only)
2	VIII/48-1627/LAR-59/Gr.II/MCH/2018-19 03.09.2019	Dated 5,58,599/-(Rupees Five Lakh Fifty Eight Thousand Five Hundred Ninty Nine only)
3	VIII/48-1649/HM-6/Gr.II/MCH/2018-19/LAR-69 11.09.2019	Dated 15,27,171/-(Rupees Fifteen Lakh Twenty Seven Thousand One

		Hundred Seventy One only)
4	VIII/48-2044/HM-09/July-Sept.18/Gr.II/MCH/2018-19/LAR-74 Dated 25.09.2019	12,05,842/-(Rupees Twelve Lakh Five Thousand Eight Hundred Forty Two Only)
5	VIII/48-121/HM-15/Oct.-Dec.18/MCH/2019-20/LAR-77 Dated 25.09.2019	26,39,309/-(Rupees Twenty Six lakh Thirty Nine Thousand Three Hundred Nine only)

- (iii) I order to charge and recover interest from the importer M/s Yara Fertilizers India Pvt Ltd., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra-411001, on the each confirmed duty at Sr. No. (ii) above under Section 28AA of the Customs Act, 1962
- (iv) I also impose a penalty, as under, on the importer M/s Yara Fertilizers India Pvt Ltd., 42, Suyog Fusion, Dhole Patil Road, Sangamwadi, Pune, Maharashtra- 411001 under Section 117 of the Customs Act, 1962.

Sr. No.	SCN F.No. & Date	Penalty imposed (in Rs.)
1	VIII/48-226/Audit/CRA/Gr.II/MCH/2018-19 Dated 29.08.2019	1,00,000.00(Rupees One Lakh only)
2	VIII/48-1627/LAR-59/Gr.II/MCH/2018-19 Dated 03.09.2019	1,00,000.00(Rupees One Lakh Only)
3	VIII/48-1649/HM-6/Gr.II/MCH/2018-19/LAR-69 Dated 11.09.2019	2,00,000.00(Rupees Two Lakh only)
4	VIII/48-2044/HM-09/July-Sept.18/Gr.II/MCH/2018-19 /LAR-74 Dated 25.09.2019	2,00,000.00(Rupees Two Lakh only)
5	VIII/48-121/HM-15/Oct.-Dec.18/ MCH/2019-20/LAR-77 Dated 25.09.2019	3,00,000.00(Rupees Three Lakh only)

7. This order is issued without prejudice to any other action that may be contemplated against the importer or any other person under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.


(AJAY KUMAR)
Additional Commissioner
Custom House, Mundra

F. No. VIII/48-55/Adj./ADC/MCH/2019-20

Date: 06.02.2020

BY SPEED POST

To

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

Copy to:

1. The Chief Commissioner (In Situ), Custom House, Mundra.
2. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
3. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
4. ✓ The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
5. The Deputy/Assistant Commissioner (GR-II), Custom House, Mundra.
6. The Deputy/Assistant Commissioner (Audit), Custom House, Mundra.
7. Guard File