



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.	VIII/48-1914/LAR-69/Gr-II/MCH/2018-19
B	Order-in-Original No.	MCH/DC/LD/651/2019-20
C	Passed by	Lokesh Damor Deputy Commissioner of Customs, Custom House, Mundra.
D	Date of Order	25.02.2020
E	Date of Issue	25.02.2020
F	SCN NO. & Date	1. VIII/48-226/Audit/CRA/Gr-II/MCH/2018-19 dated 30.08.2019 2.VIII/48-1914/LAR-69/Gr.II/MCH/2018-19 Dated 09.09.2019 3.VIII/48-334/LAR-77/Oct-Dec-18/Gr-II/MCH /2019-20 dated 24.09.2019
G	Noticee/Party/Importer/ Exporter	M/s. Positive Chemicals Pvt. Ltd., 7, Shopan Apartment, Nirmala Convent Road, Rajkot, Gujarat-360007
H	DIN No.	20200271MO0000AD53B

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),  
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA  
Having his office at 7<sup>th</sup> 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 3 (Three) Show Cause Notices, as detailed below, have been issued to M/s. Positive Chemicals Pvt. Ltd., 7, Shopan Apartment, Nirmala Convent Road, Rajkot, Gujarat-360007 (holder of IEC No. 2412006334) (hereinafter also referred to as "*the importer*"). The Department has alleged in the Show Cause Notices that the importer wrongly claimed and availed benefit of the exemption under serial No. 225(I)(b) of Notification No. 50/2017-Cus dated 30.06.2017 in the Bills of Entry filed for clearance of imported goods declared as '*Nitrogen Calcium Compound Fertilizer- Double Salt of Calcium Nitrate with Boron*' and classifying the same under Customs Tariff Item 31026000 and accordingly it has been proposed to demand and recover differential customs duty under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA *ibid*. It has also been proposed to impose penalty on the importer under Section 117 of the Customs Act, 1962. Since issue involved in all the three Show Cause Notices is common, disposal of the three Show Cause Notices is being taken up through this common order.

**TABLE-A**

<b>Sr. No.</b>	<b>SCN F.No. &amp; Date</b>	<b>Period Covered</b>	<b>Bill of Entry No. &amp; Date</b>	<b>Differential amount of Customs duty involved (in Rs.)</b>
1	VIII/48-226/Audit/CRA/Gr-II/MCH/2018-19 dated: 30.08.2019	Oct-17 to Dec-17	4089039 dated 21.11.2017	12,564/-
2	VIII/48-1914/LAR-69/Gr.II/MCH/2018-19 Dated 09.09.2019	April-2018-June-2018	6415462 dated 17.05.2018	37,581/-
3	VIII/48-334/LAR-77/Oct-Dec-18/Gr-II/MCH/2019-20 dated: 24.09.2019	Oct-18 to Dec-18	8819602 dated 12.11.2018	28,910/-

**1.1** The issue in brief is that the importer presented above mentioned Bills of Entry through their appointed Customs Broker M/s ACT Infraport Ltd., at Custom House, Mundra, for clearance of imported goods declared as '*Nitrogen Calcium Compound Fertilizer- 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 '*Nitrogen Calcium Compound Fertilizer- 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 appeared that in the subject Bills of Entry, the importer 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. '*Nitrogen Calcium Compound Fertilizer- Double Salt of Calcium Nitrate with Boron*' which is 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%.

**1.4** Further, it appeared 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, subject Bills of Entry appeared 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 *ibid*. Further, it appeared that the importer contravened the provisions of Section 17(1) of the Customs Act, 1962 and rendered themselves liable to penalty under Section 117 *ibid*.

**1.5** In view of the above, the 03 (three) Show Cause Notices, as detailed in TABLE-A above, were issued whereby the importer were called upon to show cause to the Deputy Commissioner of Customs (Import) Group-II, 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 Entry mentioned in the show cause notices should not be denied and the said Bills of Entry be re-assessed accordingly.

- (ii) The differential Customs duties, not paid by the importer in respect of the Bills of Entry mentioned in the show cause notices and discussed 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 of the Customs Act, 1962.
- (iii) Penalty should not be imposed on them under section 117 of the Customs Act, 1962.

### **DEFENCE SUBMISSION**

**2.** The importer vide their letter dated 21.09.2019, submitted to the department on 04.10.2019, filed reply to the aforesaid Show Cause Notices dated 30.08.2019, 09.09.2019 and 24.09.2019, respectively, wherein, they have denied every allegations in the SCN. They have, interalia, mainly contended in their defence are as under;

**2.1** Boron is the important micronutrient and G.O.I. intends to promote the uses of boron. The G.O.I gives additional subsidy under NFSM on fertilizers fortified NPK's with boron.

**2.2** From the classification point of view, the product has been correctly classified under HS code 31026000 which describe double salt and mixture of Calcium Nitrate and Ammonium Nitrate. As per Chapter Notes 2(a)(v) of Chapter 31 covers "double salts (weather or not pure) or mixture of Calcium Nitrate and Ammonium Nitrate,". Their imported product '*Boronated Calcium Nitrate*' is double salt and mixture of Calcium Nitrate and Ammonium Nitrate which is commonly known as Calcium Nitrate, here Boronated Calcium Nitrate is produced by coating boron on calcium nitrate in percentage of 0.2 to 0.3 which is essential for any plants, vegetables or fruits etc., for growth. As per chapter 31 Note 2(a)(v), product under 31026000 can be pure or not. Here by coating of boron on calcium nitrate do not change the classification of boronated calcium nitrate.

**2.3** Boron is one of the important micronutrients for any plant, which affect any plant or fruits, vegetable etc., all over growth in similar way we can see, any NPK fertilizer with trace elements (like boron, zinc, manganese, copper etc.), neem coated urea, Water Soluble fertilizers like NPK 19-19-19 + 0.1% Zn +0.1% Boron which is NPK + TE similar way there are many grades of fertilizers with micronutrient or trace elements.

**2.4** In all of the above products quantum of micronutrient is less than 0.5% and in their product 'Boronated Calcium Nitrate' boron is 0.2% - 0.3% in all of the cases whether or not pure product, do not affect classification or applicable notifications. For duty benefits as the product remains same in their original form i.e. Calcium Nitrate, but since it's containing boron also so they have declared product as 'Boronated Calcium Nitrate' and they are eligible for concessional rate of customs duty benefit. As Boronated Calcium Nitrate contains 0.2- 0.3% Boron it reduces input cost of farming.

### **PERSONAL HEARING**

**3.** The personal hearing in the aforesaid 3 (three) SCNs was fixed on 11.02.2020. Shri Bhargav Chovatiya, Director of M/s. Positive Chemicals Pvt. Ltd. appeared for personal hearing on 11.02.2020 and reiterated the submissions dated 21.09.2019. Further, they requested for dropping of proceedings initiated under above three SCNs.

### **DISCUSSION AND FINDINGS**

**4.** I have carefully gone through all the 03 (three) Show Cause Notices, the written submissions filed by the importer as well as the oral submissions made during the course of personal hearing and the available records of the case. I find that in all the Show Cause Notices, the issues involved are identical, hence I am taking up all 3 (three) Show Cause Notices in this 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 Entry mentioned in all the 03 show cause notices is liable to be denied and the said Bills of Entry 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 Entry mentioned in all the 03 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 is liable for penalty under section 117 of the Customs Act, 1962.

**4.1** The facts of the case indicate that the importer imported 'Nitrogen Calcium Compound Fertilizer- Double Salt of Calcium Nitrate with Boron' classifying the same 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 availed. The department has claimed in each of the subject Show Cause Notices that the importer 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. 'Nitrogen Calcium compound Fertilizer- Double Salt of Calcium Nitrate with Boron' which is not Calcium Nitrate and only Calcium Nitrate is covered under the claimed serial number of the said notification and therefore, in the impugned Bills of Entry, the Basic Customs duty appeared 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) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid and imposition of penalty on the importer under Section 117 ibid.

**4.2** The foremost issue to be decided in the instant case is that whether the importer is eligible to avail benefit under the serial No. 225(I)(b) of Notification No. 50/2017-Cus dated 30.06.2017 on import of goods declared as 'Nitrogen Calcium Compound Fertilizer- 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	Std. Rate	IGST	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) (b) Calcium nitrate (c) Mono ammonium phosphate (d) Mono potassium phosphate (0:52:34) (e) 13:40:13 NPK fertilizers	5%  5% 2.5% 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%		

**4.3** 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 available only 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 (Ammonical 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, minimum - 18.8%

**4.4** 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-

<b>Description</b>	<b>Percentage</b>
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

**4.5** 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. '*Nitrogen Calcium compound Fertilizer- Double Salt of Calcium Nitrate with Boron*', 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.

**4.6** As regard proposal in the above said Show Cause Notices for demand of differential Customs duty along with applicable interest, I find that 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 '*Nitrogen Calcium Compound Fertilizer- Double Salt of Calcium Nitrate with Boron*' 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 is liable to pay the differential Customs duty as demanded separately in the subject 03 (three) 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

**4.7** As regard proposal in all the three 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 is attracted on the importer.

5. 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(l)(b) of Notification No. 50/2017-Cus dated 30.06.2017, in the Bills of Entry as detailed in Annexure-I of the subject 03 (three) Show Cause Notices mentioned in **TABLE-A** in Para 1 above and order to re-assess the said three Bills of Entry accordingly.
- (ii) I confirm and order to recover the differential Customs duty, as detailed below, from M/s. Positive Chemicals Pvt. Ltd., 7, Shopan Apartment, Nirmala Convent Road, Rajkot, Gujarat-360007 for wrongly availing exemption under serial No. 225(l)(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	Bill of Entry No. & Date	Differential Customs duty confirmed for recovery (in Rs.)
1	VIII/48-226/Audit/CRA/Gr-II/MCH/2018-19 dated: 30.08.2019	4089039 dated 21.11.2017	12,564/- (Twelve Thousands Five Hundred Sixty Four Only)
2	VIII/48-1914/LAR-69/Gr.II/MCH/2018-19 Dated 09.09.2019	6415462 dated 17.05.2018	37,581/- (Thirty Seven Thousands Five Hundred Eighty One Only)
3	VIII/48-334/LAR-77/Oct-Dec-18/Gr-II/MCH/2019-20 dated: 24.09.2019	8819602 dated 12.11.2018	28,910/- (Twenty Eight Thousand Nine Hundred Ten Only)

- (iii) I order to charge and recover interest from M/s. Positive Chemicals Pvt. Ltd., 7, Shopan Apartment, Nirmala Convent Road, Rajkot, Gujarat-360007, on the confirmed duty at Sr. No. (ii) above, under Section 28AA of the Customs Act, 1962.

- (iv) I impose penalty, as under, on M/s. Positive Chemicals Pvt. Ltd., 7, Shopan Apartment, Nirmala Convent Road, Rajkot, Gujarat-360007 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: 30.08.2019	10,000/- (Ten Thousand only)
2	VIII/48-1914/LAR-69/Gr.II/MCH/2018-19 Dated 09.09.2019	30,000/- (Thirty Thousand only)
3	VIII/48-334/LAR-77/Oct-Dec-18/Gr-II/MCH/2019-20 dated: 24.09.2019	20,000/- (Twenty Thousand only)

6. 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.

  
(Lokesh Damor)

Deputy Commissioner  
(Import Group-II)  
Custom House, Mundra

F. No. VIII/48-1914/LAR-69/Gr-II/MCH/2018-19

Dated 25.02.2020

**BY SPEED POST**

To  
M/s. Positive Chemicals Pvt. Ltd.,  
7, Shopan Apartment, Nirmala Convent Road,  
Rajkot, Gujarat-360007



**Copy to:**

1. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
2. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
- ✓ 3. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
4. The Deputy/Assistant Commissioner (Audit), Custom House, Mundra.
5. Guard File