



**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**

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| A | File No. | VIII/48-18 /Adj/ADC/MCH/2019-20 |
| B | Order-in-Original No. | MCH/ADC/PSK/57/2019-20 |
| C | Passed by | Shri Prashant Kaduskar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra |
| D | Date of Order | 23.08.2019 |
| E | Date of Issue | 30.08.2019 |
| F | SCN NO. & Date | SCN Waived |
| G | Noticee / Party / Importer / Exporter | M/s. Gujarat Credo Alumina Chemicals Pvt. Ltd., Plot No. 5, Block-F, Sector 12N , East of Adani Wilmar, Adani Port and Special Economic Zone Ltd., Mundra (Distt. Kachchh) Gujarat – 370 421. |

PO (EAT)
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CH Mundra Website,
05/09/19

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 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/- रुपये 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.

Subject :- Import of Caustic Soda Liquid by M/s. Gujarat Credo Alumina Chemicals Pvt. Ltd., Plot No. 5, Block-F, Sector 12N , East of Adani Wilmar, Adani Port and Special Economic Zone Ltd., Mundra (Distt. Kachchh) Gujarat - 370 421 vide Bill of Entry 1000900 dated 18.03.2019 without having valid BIS Certification.

BRIEF FACTS OF THE CASE :

M/s. Gujarat Credo Alumina Chemicals Pvt. Ltd., Plot No. 5, Block-F, Sector 12N , East of Adani Wilmar, Adani Port and Special Economic Zone Ltd., Mundra (Distt. Kachchh) Gujarat, filed Bill of Entry for Ware House No.2381956 dated 12.03.2019 for clearance of Caustic Soda liquid 4173.09 MT (Gross weight 4195.065 MT) having Assessable Value of Rs. 6,39,21,667.64/- the total duty payable is mentioned as Rs.1,77,28,674.50/-. The supplier is mentioned as M/s. Mitsui & Co Ltd., Tokyo, Japan. The country of origin of goods is Japan. The Out Turn Summary dated 14.03.2019 by M/s. Adani Port & SEZ Ltd., state net receipt quantity as 4178.085 MT whereas manifested quantity is 4195.065 MT.

2. Since the unit is in SEZ, the Shipping Bill for export of duty free goods Ex-bond No.44/18.03.2018 was filed for Caustic Soda liquid 4178.085 MT for supply to SEZ unit for Authorised Operation. Later Bill of Entry No.1000900 dated 18.03.2019 was filed in SEZ EDI system for clearance of 4178.085 MT of Caustic Soda liquid (declared by the SEZ unit as Raw Materials) which is classifiable under Custom Tariff item 28151200. The Assessable Value mentioned is Rs.6,39,21,667.50/-. The Bill of Lading mentioned is MB/L-CTFV035CS-01 dated 09.02.2019. The duty other than IGST payable is stated to be Rs.52,73,538/-. The goods were warehoused in Public bonded ware house No.117 of liquid Terminal of Adani Port & SEZ Ltd. The transshipment to SEZ unit has been permitted by the Appraiser on 18.03.2019 in terms of Rule 28 & 29 of the SEZ Rules 2006. The Bill of Lading No. CTFV035CS-01 dated 09.02.2019 shows M/s Mitsui & Co Ltd., Tokyo as Shipper. The Gross weight mentioned is 4195.065 LMT (2045.094 DMT). The description of goods in Bill of Lading is Caustic Soda liquid. The port of loading mentioned is Etajima, Japan. The Invoice No. B6SE-19-8006-GCAC dated 12.02.2019 has been raised by M/s Mitsui & Co Ltd. The unit price mentioned is USD 440.00 per DMT, CFR Mundra Port. For 2045.094 DMT the total Invoice value is USD 889,841.36 CFR Mundra Port. The related packing list states that weight as 2045.094 DMT (4195.065 LMT) which is also the manifested quantity. The Certificate of Origin dated 13.02.2019 state country of origin as Japan.

3. In a letter dated 19.07.2019 the matter was referred by specified officer, AP&SEZ to Deputy Commissioner (SIIB), Custom House, Mundra stating therein that as per the, Ministry of Chemicals & Fertilizer S.O. No. 1468 (E) dated 03.04.2018, the Caustic Soda Should compulsorily meet the specification IS 252:2013. It is also mentioned that Caustic Soda is one of the import chemicals that finds application in product that touch the day to day life of all

Indian such as Alumina, textile, paper & pulps etc. In order to reduce the consumption of inferior grade Caustic Soda having mercury impurity, quality standard IS 252:2013 is mandated for Caustic Soda for both domestic market as well as imports. It is mentioned that importer M/s Gujarat Credo Alumina Chemicals Pvt. Ltd. (GCACPL) vide their letter dated 19.07.2019 have stated that the Caustic Soda imported from Japan was supplied by M/s. Mitsui & Co. (Shipper) & Manufactured by M/s. Tosoh Corporation, Japan. M/s Tosoh Corporation had already applied for BIS Licence & was under process of obtaining the same. The said consignment conform to the BIS specifications & M/s Tosoh Corporation has submitted their BIS Licence to them. They also confirmed that the said goods have been brought into SEZ unit and they are not selling any Caustic Soda Lye in DTA and they only cleared their finished product which is Aluminium Hydroxide (ATH) ITS Code 2818300. It is mentioned that Aluminium Hydroxide having chemical formula $Al(OH)_3$ does not contain Caustic Soda Lye. Hence, SIIB was requested to examine the issue as per law and provisions made under the Customs Act, the specified officer has also stated that it was their view that since as per Ministry of Chemicals and Fertilizers S.O. 1468 (E) dated 03.04.2018, Caustic Soda required compulsory BIS Certification under IS 252:2013 specification for both domestic as well imports, provided that nothing in this order shall apply in relation to goods or articles (Caustic Soda) meant for export which conform to the specification required by the foreign buyer. Accordingly, as per their view the Bill of Entry No. 2381956/12.03.2019 filed at Custom House, Mundra was assessed as the SEZ unit M/s GCACPL vide their letter received in SEZ office on 10.12.2018 has stated that BIS certification of foreign producer is not required for SEZ since the end product are meant for export.

4. A letter dated 17.07.2019 by M/s Mitsui & Co. Ltd. was addressed to the Principal Commissioner of Customs, Custom House, Mundra, which state that they had procured Caustic Soda Lye of quantity 4195.065 LMT/2045.094 DMT from M/s Tosoh Corporation and M/s Tosoh Corporation have been granted licence under Bureau of Indian Standards (BIS) for supply of Caustic Soda Lye to India. The BIS Licence No. is CM/L-4100067071. The Vessel name is MT Frontier (MBL/MAWB # CTFV035CS01). Further, M/s Tosoh Corporation, Japan, the manufacturer of Caustic Soda Lye, has submitted a certificate dated 05.08.2019 to "Whomsoever It May Concern". They have stated that they confirm that the office of M/s Tosoh Corporation is situated at 4560, Kaisei-Cho, Shunan-shi, Yamaguchi, Japan-7468501. They have mentioned that they have been granted Bureau of Indian Standards (BIS) Certificate licence for their product Caustic Soda Lye as per IS is 252:2013. Reference Licence No. is

CM/L-4100067071 dated 06.06.2019 which is enclosed. They have also stated that they confirm that they have been producing Caustic Soda Lye as per same process route for past many years and did not change their process or product specification in any way for the BIS certification. They also confirm that the consignment of Caustic Soda Lye (4195.065 LMT /2045.094 DMT) supplied through vessel MT CT Frontier (MBL/MAWB # CTFV035CS01) to Mundra Port, India, for their buyer, M/s. Mitsui & Co., Japan & the consignee M/s Gujarat Credo Alumina Chemical Private Limited is manufactured by them as per same process route and Specification that they have been following for past many years. The certificate is signed by Masaki Iwasaki of M/s Tosoh Corporation Chlor-Alkali Division.

5. M/s Gujarat Credo Alumina Chemicals Pvt. Ltd. vide their letter dated Aug-9, 2019 addressed to the Additional Commissioner (Submitted to SIIB) have stated as follows :

(i) The consignment of Caustic Soda Lye was shipped from Etajima, Japan on Feb-08, 2019. Prior to loading of vessel M.T. "CT Frontier" the exporter manufacturer Tosoh Corporation had applied for BIS Certification on Jan-18, 2019 . They have enclosed communication to that effect. The consignment was loaded in vessel M.T."CT Frontier" (Voy No. 035) on Feb-8, 2019 .

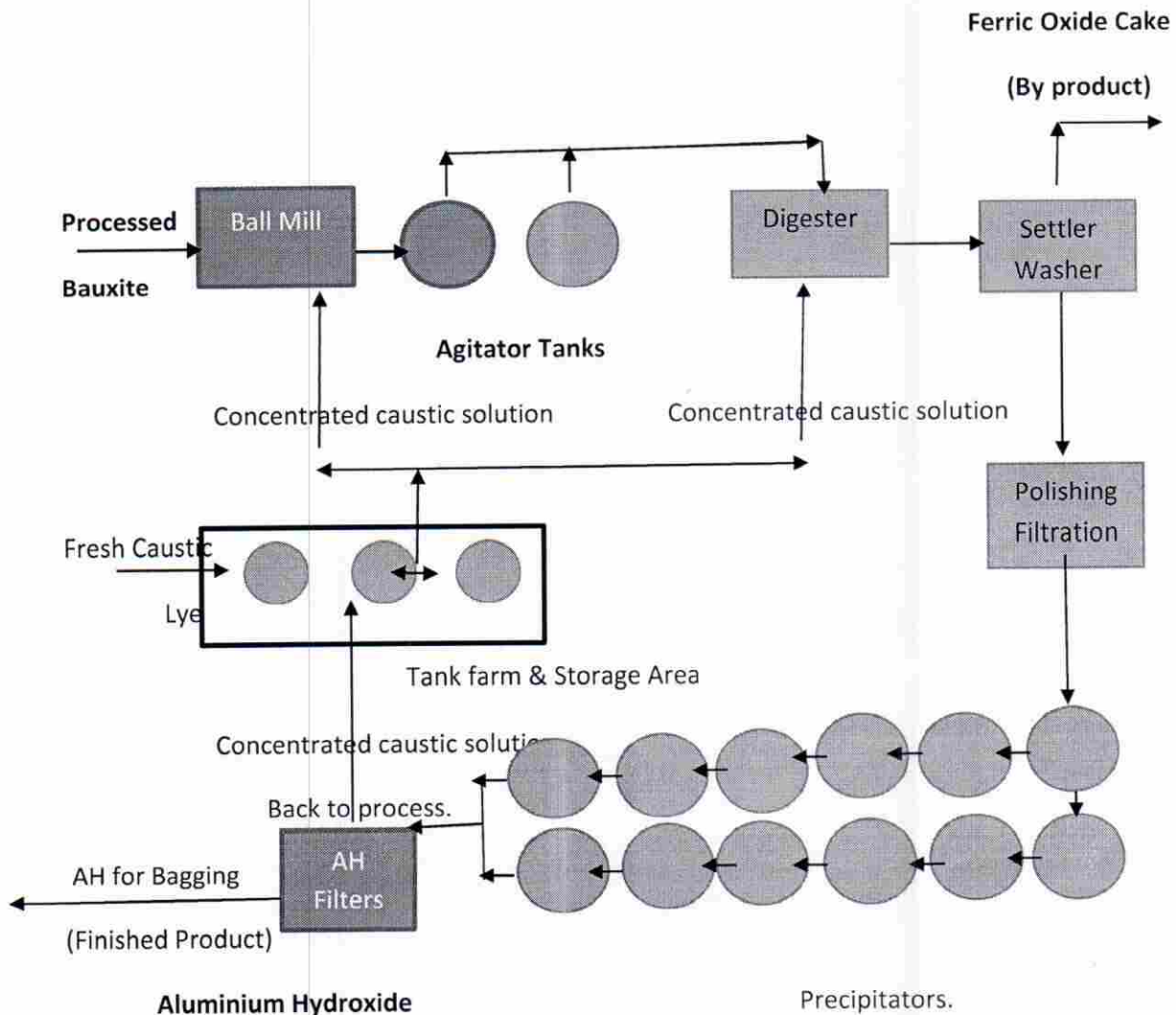
(ii) The BIS Authority approved the application (of M/s Tosoh Corporation) & issued that licence No. 4100067071. Thus, It was stated that the import consignment imported is having BIS Certification. They have stated that they were not removing Caustic Soda lye in domestic market at all.

(iii) They have requested that Aluminium Hydroxide & by-product Ferric Oxide may be allowed without imposing any penalty.

6. The importer has submitted yet another letter dated 16.08.2019 in SIIB addressed to Additional Commissioner stating that they do not require personal hearing or a Show Cause Notice and they have requested to adjudicate the issue. The clearance of the final product Aluminium Hydroxide and by-product Ferric oxide is being held up since last two weeks.

7. Summons was issued to Shri Gururaj Kulkarni, Deputy General Manager (DGM) of M/s. Gujarat Credo Alumina Chemical Pvt. Ltd., on 19.08.2019 by Superintendent (SIIB) and his statement under Section 108 was recorded in SIIB. Shri Gururaj Kulkarni interalia stated that he is B.E. (Mechanical) and is supervising and responsible for plant operation activities of M/s. Gujarat Credo Alumina Chemicals Pvt. Ltd. He stated that DMT stand for

Dry Metric Tons and LMT stands for Liquid Metric Tons. The Caustic Soda Lye is represented universally in terms of LMT & DMT. He also gave a flow diagram where is Caustic Soda Lye is used in manufacture of final product Aluminium Hydroxide.



7.1 He added that in manufacture of Aluminium Hydroxide (ATH) there is loss of Caustic Soda Lye, only due to heating and cleaning of pipes, and that the quality/chemical composition of Caustic Soda Lye does not change/remains the same, while being used in the manufacturing process. He stated that they had two consignments of Caustic Soda Lye which did not have BIS Certification on the date of import; however M/s. Tosoh Corporation of Japan procured BIS Certification for Caustic Soda Lye on 06.06.2019.

| Sr. No. | Bill of Entry No. | Date | Quantity (LMT) | Supplier |
|---------|-------------------|------------|----------------|---------------------------------|
| 01 | 1000900 | 18.03.2019 | 4178.085 | Tosoh Corporation, Japan |
| 02 | 1001643 | 14.05.2019 | 4008.81 | Tricon Energy Ltd., Netherlands |

He stated that Caustic Soda Lye is used as medium in manufacturing of Aluminium Hydroxide and the final product was cleared in DTA on payment of appropriate duty.

7.2 He added as regards Caustic Soda Lye (Non – BIS) received from Japan and covered under Bill of Entry No.1000900 dated 18.03.2019 that out of 4178.085 LMT they have received 3259.75 LMT of Caustic Soda Lye in plant for use in production of Aluminium Hydroxide (final product) & Ferric Oxide (by-product). He stated that the production had commenced from 19.06.2019. He stated that using dip stick method they had found that by 26.07.2019 they had lost 264.412 LMT Caustic Soda Lye due to heating & cleaning of pipes & tanks during production of Aluminium Hydroxide. Shri Kulkarni further stated that Caustic Soda Lye is being used as medium for manufacture of finished product Aluminium Hydroxide & by product Ferric oxide in the plant, and that **there is no Caustic Soda Lye in the products manufactured in the plant.** Aluminium hydroxide produced in their plant is being consumed by their customers i.e. Grasim Industries Ltd. & Hindustan Lever Ltd. etc.

8. The 4178.085 LMT of Caustic Soda Lye covered under Bill of Entry No. 1000900 dated 18.03.2019 imported from M/s Mitsui & Co. and manufactured by M/s Tosoh Corporation of Japan and valued at Rs. 6,39,21,667.56/- was mandatorily required to bear the Standard mark under Licence from Bureau of Indian Standard IS:252:2013 as per the Ministry of Chemicals & Fertilizers (Deptt. of Chemicals & Petrochemicals) order dated 03.04.2018 issued by the Joint Secretary. However, the Standard Mark under licence from B.I.S. (IS:252:2013) was not available with them when the Consignment was shipped from Japan on Feb 08,2019 and when the Bill of Entry No. 1000900 filed on 18.03.2019, though the manufacturer M/s Tosoh Corporation had applied for Licence under BIS on 08.01.2019. The BIS for Caustic Soda Lye is mandatory as per Notification dated 03.04.2018 mentioned supra. Hence, it appeared that 4178.085 LMT of imported Caustic Soda Lye is liable for confiscation in term of Section 111(d) of the Customs Act,1962 for importation of goods contrary to the prohibition imposed by the Customs Act or any other law for the time being in force. The other law in force is order dated 03.04.2018 issued under Bureau of Indian Standard (Caustic Soda) order 2018 read with Section 16(1) & 16(2) of BIS Act, 2016 read with Section 11(2) (h) & (v) of the Customs Act, 1962. I also find that M/s Gujarat Credo Alumina Chemicals Pvt. Ltd. (M/s GCACPL) is also liable for penalty under Section 112(a)(i) of the Customs Act, 1962 for their acts & omissions making the goods liable for confiscation under section 111 of the Customs Act,1962.

9. Waiver of Show Cause Notice & Personal Hearing

The Importer M/s GCACPL vide letter dated 16.08.2019 addressed the Additional Commissioner (SIIB) has waived their right for a show cause notice and Personal Hearing . They have also requested to adjudicate the case.

Discussion and Findings:

10. I have gone through the various correspondence, the Bill of Entry & related documents like invoice, packing list, Bill of lading, BIS order dated 03.04.2018, the statement of Shri Gururaj Kaulkarni, DGM of importing company recorded under Section 108 of the Customs Act, 1962 & the Panchnama dated 29.07.2019. I find that importer has waived their right of issuance of Show Cause Notice & personal hearing in the matter. Hence, I proceed to decide the case on the basis of available record.

11. I find that Ministry of Chemicals & Fertilizers, Department of Chemicals & Petrochemicals vide an order dated 03.04.2018, issued as Bureau of Indian Standard (Caustic Soda) Order, 2018, issued under powers conferred under Section 16 (1) & 16 (2) of the BIS Act, 1962 makes it mandatory that Caustic soda shall conform to the Indian standard IS 252:2013 and bear the standard mark under a license from the Bureau of Indian Standards. The order is issued from F.No. 51020/78/2008/CH-III by the Joint Secretary. As per the order the Caustic Soda Lye except for Caustic Soda meant for export, all other Caustic Soda mandatorily has to conform to IS:252:2013 & been standard mark under License from Bureau of Indian Standard.

12. I find that the goods were shipped from Etajima, Japan for Mundra Port, vide vessel MT CT Frontier on 09.02.2019 & the shipper is M/s. Mitsui & Co., Japan. The weight is 4195.065 LMT (Manifested Quantity) or 2045.094 DMT. At that point of time the manufacturer M/s Tosoh Corporation had not obtained the requisite BIS License, though they had applied for it on 18.01.2019. I also find that the Bill of Entry No. 1000900 was filed on 18.03.2019 by importer M/s. Gujarat Credo Alumina Chemicals Pvt Ltd., Mundra Kutch, the importer had no intimation from the supplier that the impugned 4178:085 LMT (Net Quantity) Caustic Soda liquid conformed IS:252:2013 in conformity with the order dated 03.04.2018 mentioned Supra. I find that the order of Ministry of Chemicals & Fertilizers dated 03.04.2019 is a mandatory requirement & goods not conformity to such prescribed mandatory standard are liable for confiscation in terms of Section 111 (d) of the Customs Act, 1962. I also find that importer M/s. Gujarat Credo Alumina Chemicals Pvt Ltd. are liable for penalty in terms of Section 112 (a) (i) of the Customs Act, 1962 for their actions and omission for making the goods liable for confiscation under Section 111 of the Customs Act 1962.

13. I find that the importer has addressed one letter to the Deputy Commissioner (SIIB) wherein it is mentioned that Caustic Soda lye is being used as medium in plant & is not a part or ingredient of the finished product. The Caustic Soda Lye remains within the SEZ unit and only a small quantity of loss of Caustic Soda Lye occurred due to heating, cleaning of pipes, equipment & tank in the plant. It was submitted that there is no Caustic Soda Lye contained in the product, Aluminium Hydroxide & in by product Ferric oxide cake. They have also informed that no quantity of Caustic Soda Lye has been cleared in DTA. They have informed that the production of Aluminium Hydroxide commenced on 19th June 2019 & they had cleared 2056.73 MT of the finished product (Aluminium Hydroxide) amount of 4853.1 MT produced on payment of all Customs Duties on the products.

13.1 I find that yet another letter dated 31.07.2019 has been addressed to the Additional Commissioner, SIIB, Custom House Mundra wherein it is again reiterated that Caustic Soda Lye is being used as a medium in the plant & not a part or ingredient of the finished product. The Caustic Soda Lye remains in the SEZ unit & only small quantity of loss of Caustic Soda Lye occurred due to heating, Cleaning of pipes, equipment & Tanks in the plant. During Plant life minor losses of Caustic Soda Lye takes place at their SEZ unit for which fresh small quantity of Caustic Soda Lye is required to be brought on monthly basis which is estimated to be 250DMT/ 500LMT. No quantity of Caustic Soda Lye is contained in their product Aluminium Hydroxide & the by product Ferric oxide. They requested for provisionally release of their final product (Aluminium Hydroxide) & by product (Ferric oxide) for DTA till the time the matter is considered at Customs end.

14. To understand the role of Caustic Soda in the process of manufacture of Aluminium Hydroxide, I refer to the literature from Wikipedia for “Bayers Process” which state that Bauxite ore is a mixture of hydrated aluminium oxides and compounds of other elements such as iron. The aluminium compounds in the bauxite may be present as gibbsite $2(\text{Al}(\text{OH})_3)$, boehmite ($\gamma\text{-AlO}(\text{OH})$) or *diaspore* ($\alpha\text{-AlO}(\text{OH})$); the different forms of the aluminium component and the impurities dictate the extraction conditions. Aluminium oxides and hydroxides are amphoteric, meaning that they are both acidic and basic. The solubility of Al(III) in water is very low but increases substantially at either high or low PH. In the Bayer process, bauxite ore is heated in a pressure vessel along with a **sodium hydroxide solution (caustic soda)** at a temperature of 150 °C to 200 °C. At these temperatures, the aluminium is dissolved as sodium aluminate (primarily $[\text{Al}(\text{OH})_4]^-$) in an extraction process by filtering, gibbsite is precipitated when the liquid is cooled & then seeded with fire-grained aluminium hydroxide crystals from previous extractions. The precipitation may take several days without addition of seed crystals. It is

mentioned that extraction process converts aluminium oxide in the ore to soluble sodium aluminate, 2NaAlO_2 , according to the chemical equation:-



The original process was that the alkaline solution was cooled and treated by bubbling carbon dioxide through it, by which aluminium hydroxide precipitates:



Aluminium Hydroxide (Precipitated)

But later, this gave way to the sending the supersaturated solution with high-purity aluminium hydroxide (Al(OH)_3) crystal, which eliminated the need for cooling the liquid and was more feasible.



Aluminium Hydroxide + Sodium Hydroxide (Caustic Soda)

The importer may or may not be using Bayer process, but one thing is certain and confirmed that Caustic Soda does not go in the product and is used merely as solvent for Aluminium which forms Sodium Aluminate. The word used by the importer in correspondence is "Medium". I find that there is force in argument of the importer and the DGM in his statement dated 29.07.2019 recorded under Section 108 of the Customs Act, 1962 that Caustic Soda Lye is as medium /solvent only and Sodium Hydroxide/Caustic Soda is not a part of product and that it is also not a raw material but merely a medium/solvent and that small quantity of loss of Caustic Soda Lye occurred due to heating, cleaning of pipes, equipment and tanks in the plant which is required to be replenishment and monthly requirement of such replenishment is 250 DMT. I agree with the contention of the importer and their DGM Shri Gururaj Kulkarni in this context.

15. I find that importer has produced a copy of letter dated 06.06.2019 from Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi - 110 002 has been submitted to Additional Commissioner (SIIB), Custom House, Mundra vide their letter dated 09.08.2019. The letter dated 06.06.2019 from BIS, New Delhi is addressed to M/s. Tosoh Corporation, 4560, Kaisei-cho, Shunan-shi, Yamaguchi, Japan - 746-8501 informing them that Certification Marks Licence has been granted them to use Standard Mark in respect of the:

| | |
|-------------------------|-----------------|
| Product: | :Caustic Soda |
| Type/Size/Grade/Variety | : Lye (Grade I) |
| IS | : 252:2013 |

The number assigned to this licence is CM/L-4100067071 which has been made operative from 06.06.2019 and is valid upto 05.06.2020. The licence is granted for their manufacturing premises situated at 4560, Kaisei, Shunan-shi, Yamaguchi, Japan, 746-8501 the letter is signed by Scientist F & Head (CMD & FMCS) Shri Kancherla Raja of BIS, New Delhi – 110 002.

The 14 conditions of the Licence No. CM/L-4100067071 are also attached. I find that M/s. Tosoh Corporation, Japan vide a Certificate dated 05.08.2019 has informed to "Whomsoever It May Concern" that they having address 4560, Kaisei-cho, Shunan-shi, Yamaguchi, Japan – 7468501 have been granted Bureau of Indian Standards BIS Certification Licence for their product Caustic Soda Lye as per IS 252:2013 and their Licence No. is CM/L-4100067071 dated 06.06.2019. They have confirmed that consignment of 4195.065 LMT/2,045.094 DMT) [Manifested Quantity] supplied through vessel MT CT Frontier (MBL/MAWB# CTFV035CS01) to Mundra Port is supplied by them to M/s. Mitsui & Co., Japan for the importer and has been manufactured by them as per same process route and specification that we have been following for past many years. I find that Certificate bears the signature of Masaki Iwasaki of Tosoh Corporation/Chlor-Alkali Division.

15.1 Thus, I hold that the condition of imported Caustic Soda to conform the IS :252:2013 as per BIS (Caustic Soda) order 2018, has not been fulfilled when 4178.085 LMT (Net Quantity) was imported under Bill of Entry No.1000900 dated 18.03.2019 filed by M/s. GCACPL, Mundra and hence the said Caustic Soda Lye valued at Rs.6,39,21,667.56 (assessable value) liable for confiscation under Section 111 (d) of Customs Act, 1962 for violation of Bureau of Indian Standard (Caustic Soda) Order 2018 read with Section 11 (h) & (v) of the Customs Act, 1962. However, belatedly the manufacturer has obtained the said compulsory standard mark Under License No. CM/L-4100067071 dated 06.06.2019 granted to the manufacturer of the subject consignment M/s. Tosoh Cooperation, Japan to whom the said Licence has been granted on 06.06.2019 by the Bureau of Indian Standard vide their letter dated 06.06.2019. I also find that the importer has started a new factory and commenced production on 19th June 2019 only. Hence, the imported Caustic Soda Lye when used in production aluminium hydroxide was compliant with the Bureau of Indian Standard (Caustic Soda) Order 2018. Thus, I hold that though the impugned Caustic Soda Lye 4178.085 LMT (Net Quantity) having assessable value of Rs. 6,39,28,667.56/- is liable for confiscation under section 111 (d) of the Customs Act, 1962, the mitigating factor does exist in the form of BIS License produced by the manufacturer though belatedly and it calls for leniency in imposition of redemption fine and penalty under section 112 (a) (i) of the Customs Act, 1962 which I find is imposable on M/s Gujarat Credo Alumina Chemical Pvt Ltd., for their acts & omissions to do certain acts, which

made the impugned goods liable for confiscation under section 111(d) of the Customs Act, 1962. I find that Caustic Soda Lye is mere solvent/medium & not used up in product manufactured & is available for confiscation.

16. In view of the above, I pass the following order;

ORDER

16.1 I order the confiscation of, 4178.085 LMT (Net Quantity) of Caustic Soda Lye covered under Bill of Entry No. 1000900 dated 18.03.2019 having value of Rs. 6,39,21,667.56/-, under Sec 111 (d) of the Customs Act, 1962. However, I allow the redemption of confiscated cargo on payment of redemption fine of Rs. 40,00,000/- (Rupees Forty Lakh Only) in terms of Sec. 125 of the Customs Act, 1962.

16.2 I also impose penalty of Rs. 6,00,000/- (Rupees Six Lakh only) on M/s Gujarat Credo Alumina Chemicals Pvt. Ltd., Mundra in terms of Section 112 (a) (i) of the Customs Act, 1962.

I have taken a lenient view while imposition of fine & penalty for the reason mentioned in the Findings and Discussion portion of the order as above.

The fine and penalty be paid forthwith.

The importer is warned that no leniency will be shown in future if similar violation is done.



(PRASHANT KADUSKAR) 30/8/2019
Additional Commissioner
Custom House, Mundra.

F. No. VIII/48-18/Adj/ADC/MCH/2019-20

Date: 30.08.2019

By Speed post

To,
M/s. Gujarat Credo Alumina Chemicals Pvt. Ltd.,
Plot No. 5, Block-F, Sector 12N,
East of Adani Wilmar,
Adani Port and Special Economic Zone Ltd.,
Mundra (Distt. Kachchh) Gujarat-370 421.



Copy to:

- (i) The Principal Commissioner, Custom House, Mundra
- (ii) The Deputy Commissioner (RRA), Custom House, Mundra.
- (iii) The Deputy Commissioner (SIIB), Custom House, Mundra.
- (iv) The Deputy Commissioner (TRC), Custom House, Mundra.
- (v) The Deputy Commissioner (EDI), Custom House, Mundra.
- (vi) Guard File.