

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10241 of 2022

[Arising Out Of OIA-MUN-CUSTM-000-APP-262-263-21-22 Dated- 05/01/2022 Passed By
Commissioner of CUSTOMS-AHMEDABAD]

GRAVITAS INDIA LIMITED

Saurabh Chittora Road Harsulia
Mod Diggi Malpura Road Tehsil Phagi
Jaipur, Jaipur, Rajasthan

.....Appellant

VERSUS

C.C.-MUNDRA

Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

.....Respondent

WITH

CUSTOM Appeal No. 10242 of 2022

[Arising Out Of OIA-MUN-CUSTM-000-APP-262-263-21-22 Dated- 05/01/2022 Passed By
Commissioner of CUSTOMS-AHMEDABAD]

KRISHNA GOPAL GUPTA

General Mangar Of Gravita India Ltd Saurabh Chittora Road
Harsulia Mod Diggi Malpura Road Tehsil Phagi
Jaipur, Jaipur, Rajasthan

.....Appellant

VERSUS

C.C.-MUNDRA

Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

.....Respondent

APPEARANCE:

Shri Manish Jain, Advocate for the Appellant

Shri. Satyapal Singh Vikal, Assistant Commissioner (AR) for the Respondent

CORAM:

HON'BLE MEMBER (TECHNICAL), MR. RAJU

HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO. 10781-10782 /2024

DATE OF HEARING:19.03.2024
DATE OF DECISION:09.04.2024

RAJU

The Appellants were engaged in two types of business namely, (i) extraction of lead metal from imported lead battery scrap and (ii) local sale/trading of lead concentrate. The import of lead concentrate was made for further sale and as per the requirement of M/s Hindustan Zinc Ltd. (HZL) as they were the main buyers. The issue in the present proceeding pertains to denial of exemption under Sr. No. 117 of Notification No. 12/2012-Cus which provides concessional rate of BCD @ 2.5 % to all goods falling under heading 2601 to 2617. Appellants have imported lead concentrate under CTI 26070000 and claimed benefit of concessional rate.

S. No.	Chapter or heading or Sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
117.	2601 to 2617	All goods	2.5%	-	-

2. According to department imported goods are extracted from lead batteries because it has presence of lead sulphate instead of lead sulphide.

Further imported goods do not contain traces of gold or silver and therefore imported goods cannot be classified as "lead concentrate" and should be classified under CTI 78020090 as "Lead waste and scrap" which attracts higher rate of BCD at 5%. On the very same grounds and based on very same evidences separate SCN is already issued vide F. No. DRI/AZU/GRU/INT-24/2014 dated 23.11.2016 which covers demand of duty in respect of finally assessed Bills of entry. Present SCN is issued in respect of Bill of entries which were assessed provisionally and finalisation of said Bills of entry was pending. The present SCN covered only those bills of entries where goods were imported from foreign related party in name of Gravita. Appellants aggrieved by the impugned orders as per details below have filed the present appeals:-

Appeal No. and Impugned Orders	Period of Dispute	Classification	Amount involved
Appeal- C/0241/2022 Impugned Orders- Order-in-Appeal No. MUN-CUSTOM-000-APP-262 to 263-21-22 dated 05.01.2022 Order-in-Original No. MCH/ADC/AK/68/2 020-21 dated 25.09.2020 Show Cause Notice- S/20-13/Misc.SCN. Gravita/SIIB/CHM/17-18 dated 20.12.2017	September, 2011 – August, 2014	By Appellant – CTI 26070000 (Lead Concentrate) Ordered by AA – CTI 78020090 (lead waste and scrap)	Customs duty - Rs. 33,74,039/- Penalty u/s 114A- Rs. 33,74,039/- Confiscation u/s 111- 1697.278 MT valued to Rs. 7,10,18,510/-

Appeal- C/0242/2022 Mr. Krishna Gopal Gupta, General Manager, Gravita India Ltd.			Penalty- Rs. 25,00,000/- u/s 112(a) Rs. 10,00,000/- u/s 114AA
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3. It was submitted by the appellant that whole case of department in the present show cause notice is based on various documents in respect of consignments/ bills of entries which are not part of present proceedings. Thus said evidences cannot be relied upon in present proceedings. In the present proceeding whole case is based on assumptions and presumptions. In fact, The SCN categorically states this, wherein it is mentioned that references to other consignments (finally assessed bills of entry) are for the purposes of clarifying the subject matter and / or for relying upon as evidences. Further test reports of CRCL, New Delhi, vide Test Reports C. No. 35/CRCL/2016-17/CL-67(DRI) dated 05.08.2016, C. No. 25/CRCL/2016-17/CL-68(DRI) dated 05.08.2016, C. No. 35-Cus/CRCL/2016/CL-65-DRI/27.06.2017 dated 29.08.2016, C. No. 35-Cus/CRCL/2016/CL-66-DRI/27.06.2016 dated 01.09.2016 and C. No. 26-Cus/C-9/2016-17 dated 03.10.2016 were not issued in respect of goods imported in Bills of entries which are subject matter of present show cause notice. Thus said test reports cannot be relied upon or applied to the goods which are imported under different bills of entries.

4. Department has relied on load port customs export documents filed by M/s. Sharif Metals Intl (Shipper) at load port in respect to the consignments imported under Bill of Lading ("B/L") dated 28.05.2013 and 20.05.2013. It was submitted that the said consignments are not subject matter of present SCN.

4.1 Further, department had relied upon 6 nos. of PSICs out of which five are related to the subject BoEs filed through the Jaipur ICD / Mundra port. In these PSICs it was mentioned that *"the imported item(s) is actually a metallic scrap/waste/seconds/defective as per the internationally accepted parameters for such a classification"*. However, under the head 'description of metallic scrap', these PSICs describe the goods as '*lead concentrate*'.

5. It was submitted that all evidences / allegations with respect to current set of bills of entry imported from related party are limited to test reports dated 18.11.2014 of CRCL, New Delhi and the remaining evidences like PSICs, weighment slips etc. relate to goods imported under the BoEs are subject matter of different proceedings and not subject matter of present proceedings.

6. It was submitted that test report issued by CRCL New Delhi dated 30.12.2015 on the basis of samples drawn from stock available on 18.11.2014. Thus, this test report cannot be applied on all the goods imported under various Bills of entries mentioned in present SCN. Further,

stocks available as on 18.11.2014 were imported from various Bills of Entry and all the Bills of Entry are not subject matter of present proceedings.

7. In any case, the conclusion of test report was not legally correct as imported goods cannot be considered as waste and scrap. Further, as per composition the imported goods are nothing but lead concentrate. The impugned order has classified the goods under CTH 7802 which covers 'lead waste and scrap'. The Section note 8 of Section XV, under which chapter 78 falls, provides for the definition of waste and scrap as under:

"(a) waste and scrap:

metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons."

8. It was submitted that the goods imported in the present case are not 'metal waste and scrap' arising from the manufacture of metal. In fact, the lead concentrate was itself used to extract lead metal by HZL in its Chanderia Smelter. Further, the goods also do not arise out of mechanical working of metals. In any case, the imported lead concentrate is not in the nature of metal goods which are not usable as such because of breakage, cutting-up, wear etc. On the contrary, overwhelming evidences produced above showed that the goods were sold to HZL as such which was then used by HZL for extraction of lead metal. Hence, the goods did not satisfy the definition of 'waste and scrap' to fall under CTH 7802.

9. It was submitted that department had assumed that the Appellants were using the imported lead concentrate in its own factory for extraction of lead. The assumption based upon CPCB letter F. No. B-29016/1(Misc.)/15/HWMD/9418 dated 21.08.2015 wherein it was stated that the Appellants has a secondary metallurgical factory. It was stated in the letter that "*secondary metallurgical process is a process where lead metal is recovered by recycling of lead scrap*". Department ignored the fact that appellants were also engaged in trading of lead concentrate.

10. Reliance was placed upon Chemical Technology, namely, Kirk-Othmer Encyclopaedia of Chemical Technology, Fifth Edition, Volume 14 (hereinafter referred to as 'Kirk-Othmer') which provides at page 734 that lead concentrate is a product having lead content between 45% to 75%, from which lead metal can be extracted economically by employing either primary or secondary methods of extraction. In the instant case, the lead concentrate imported by the Appellants has a high lead content mostly in the range of 60% to 70%. As per Kirk-Othmer (page 734 - table 3), the composition of lead concentrate is as provided below.

Constituent	Wt %	Constituent	Wt %
Lead (Pb)	45-75	Iron (Fe)	1.0-8.0
Zinc (Zn)	0-15	Insolubles	0.5-4
Gold (Au)	0-0.01	CaO	trace-3.0
Silver (Ag)	0-0.15	Sulfur (S)	10-30
Copper (Cu)	0-3	Bismuth	trace-0.1
Arsenic (As)	0.01-0.4	Antimony (Sb)	0.1 - 2

11. The impugned order observed that non-presence of gold and silver traces and presence of lead sulphate instead of lead sulphide is decisive in determining whether the product is a lead concentrate or a lead waste and scrap. In fact, the Kirk-Othmer clearly states in above table that percentages of gold and silver can range from 0% to 0.1%.

12. It was submitted that the presence of 'lead sulphate' instead of 'lead sulphide' is not the deciding factor to determine if the subject goods are lead concentrate or lead scrap/waste. Kirk-Othmer states that lead was found in various ore minerals i.e. PbS (lead Sulphide), PbSO_4 (lead sulphate) and PbCO_3 (lead carbonate) i.e. lead ore was found in nature in the form of lead sulphide (Galena ore), lead sulphate (Anglesite ore) and lead carbonate (Cerussite ore). This clears the fact that one of the form in which lead was present in mineral ore is lead sulphate. Therefore, the whole premise of the impugned order that presence of lead in the form of lead sulphate proves that the subject goods are battery waste was incorrect and not sustainable. In fact, the test reports of CRCL, New Delhi on which the impugned order places reliance itself confirm the fact that anglesite was present in the samples of impugned goods.

13. Further, the test reports issued by various testing labs of the Customs at Kandla and Jaipur proved this point beyond doubt that the subject goods

were lead concentrate. Again, the test report obtained by DRI from JHCH Customs lab confirmed that the goods were lead concentrate.

14. The impugned order therefore it was prayed was liable to be set aside on this point alone as on the entire order the Ld. Commissioner (Appeals) had assumed that the imported goods are used by the Appellants to manufacture lead and as the Appellants did not have the suitable permission to manufacture primary lead from lead concentrate the imported goods were waste scraps. Further, the fact that the Appellants were engaged in selling the imported goods to HZL has been conveniently ignored. It is also important to note that during the investigation DRI had failed to call for any evidence from HZL on the purchase of lead concentrate from Appellants as it was well known that HZL has purchased almost the entire imported quantity of lead concentrate from the Appellants. Again, it is important to note that DRI had recorded statements of various persons during investigations including calling for evidences from foreign shipping lines, agents and PSIAs located abroad but deliberately omitted to record any statements from officials of HZL.

15. The impugned order further observed that the goods were battery scrap/waste if the lead was present in the form of lead sulphate relying on the statements given by the officials of Customs House Laboratory, Kandla. It is submitted that presence of lead sulphate to prove lead scrap/waste is an incorrect premise as per the Kirk-Othmer wherein it has been stated that

lead ore is found in ore mineral i.e. PbS , PbSO_4 and PbCO_3 i.e. the lead ore is found in nature in the form of lead sulphide (Galena ore), lead sulphate (Anglesite ore) and lead carbonate (Cerussite ore). This clears the fact that one of the form of lead ore is lead sulphate as well. Therefore, the presence of lead sulphate cannot be decisive as to determine the nature of goods being lead concentrate or lead scrap. On the contrary, presence of lead sulphate would establish that the lead concentrate has been derived from Anglesite ore.

16. The impugned order further observed that there was mis-declaration of goods on the basis of the statements of Pre-shipment Inspection Agencies (hereinafter referred to as "PSIA") wherein it has been stated that PSICs are issued in respect to waste/scraps as per the requirements of the FTP. Since, PSICs have been issued for imports made by the Appellants, therefore, the goods are lead waste/scrap. Appellants submitted that it was also important to mention here that the PSICs under the head 'description of metallic scrap', themselves described the goods as 'lead concentrate'. Therefore, the PSIC also certified that the goods were 'lead concentrate'. Further, it was submitted that PSICs were issued in order to certify that the imported goods did not contain any hazardous, toxic waste, radioactive contaminated waste/scrap containing radio-active material, any type of arms, ammunitions, mines, shells, live or used cartridge or any type of explosive material in any form. PSIA never undertook any activity to test whether the

goods were lead concentrate or lead waste/scrap. Without prejudice, it was submitted that although the mandatory requirement of PSICs arose only in case of waste etc., there was otherwise no bar in law on getting the goods testing by PSIA if the goods imported were lead concentrates. The tests done were merely to rule out the existence of any hazardous, toxic radioactive or explosive material in any form.

17. It was submitted that the Appellants were also importing other lead scrap from the same suppliers for use in its factory for which the PSICs requirements were mandatory. Therefore, the said suppliers also arranged for PSICs in respect of a few of the consignments of lead concentrates for which otherwise there was no mandatory requirement for procuring and producing the PSICs to Indian Customs. It may be mentioned that total no of subject BoE for import of lead concentrate from both the ports in the SCN are 124 whereas PSICs were only found for 6 nos. of consignments which proves that these 6 PSICs were an exception rather than a rule in respect of import of lead concentrate. It would be noticed that in respect of said lead concentrates the PSICs clearly described the goods as 'lead concentrate'. The reliance placed by DRI on the heading '*Description of metallic scrap*' and clause (1) of the PSICs is entirely misplaced as it may have been retained by PSIAs while issuing the PSICs in their standard format which are generally issued for scrap and waste.

18. The lead bearing product was a powdered material with lead content around 62.9% and is known as lead concentrate in trade parlance/ common parlance. It is submitted that the common parlance test has been recognised by the Supreme court in the case of Pleasantime Products vs. Commissioner of Central Excise, Mumbai-I, 2009 (243) E.L.T. 641 (S.C.). The above Supreme Court judgment has been followed in the recent case of Indian Wood Products Co. Ltd. vs. Commr. Of Cus. & C. Ex., Meerut-II, 2017 (349) E.L.T. 524 (Tri. – All.), wherein it has been held that 'common trade parlance test' is to be considered for deciding classification of goods, unless the statute provides that reference is to be made to its technical meaning. In the present case, the statute does not provide for reference to any technical meaning. Once, it is admitted that in the trade parlance the subject goods are lead concentrates then they are to be classified as lead concentrates under the Customs Tariff.

19. The other document relied upon in the impugned order to rule that the product is lead scrap is the weighment slips issued by weighing agencies before loading the goods for shipment. It was submitted that the weighed agency merely weighs the goods already stuffed in containers. The containers were not opened for testing the nature of goods and hence, weighment slips cannot be relied upon to opine on the nature of the goods being weighed.

20. It was submitted that in the present SCN, department has preferred the reports of the CRCL, New Delhi obtained by them during investigations over the reports of Government Customs House Laboratory at Kandla alleging that CRCL reports obtained by them during investigations are more precise and technical and due to the apex nature of the CRCL, New Delhi over the Kandla Laboratory, thereby alleging that the report of Kandla Laboratory is meaningless as compared CRCL report. Further, it has been stated that the test reports of Customs House Laboratory Kandla did not appear to be correct inferences of test parameters and thus could not be relied upon.

21. That the samples drawn at the time of import were sent by Jaipur Customs to Government labs at National Test House, Jaipur, and private labs of Team Test House, Jaipur, for testing. In response to question as to *'whether the imported goods are lead concentrate or otherwise'*, the test reports of National Test House, Jaipur, stated that the goods of the description 'lead concentrate' have been tested for lead content and then it reported the content of lead in the sample. Again it nowhere stated that the goods are not lead concentrate. Further, the test reports of Team Test House, Jaipur, had categorically opined that the material is lead concentrate and the other heavy materials are less than 1%. Further, the testing used is mentioned as APHA Method 3111 approved by American Public Health Association

22. Despite the tests done from the National Test House and Team Test House, Jaipur on instructions of Jaipur Customs, the DRI alleged that the test reports issued by said laboratories could not be relied upon as these laboratories have only tested for lead content and the latter laboratory is of private sector. Similarly, the test reports of Customs JNCH labs obtained by DRI themselves after the start of investigations had categorically stated the samples to be of composition containing lead concentrate. This report had also been said to be not reliable by DRI.

23. Without prejudice to above it is submitted that statements of various persons cannot be relied upon in absence of cross examination. Thus statements cannot be relied upon in the present case. It was alleged that Appellants had mis-declared the subject goods. It was submitted that the goods imported by the Appellant shall be considered as "lead concentrate" and are correctly classified under CTI 2607 because:

(i) The imported goods have 60%-70% lead content which is in consonance with the composition of "lead concentrate" as defined in the book of Kirk-Othmer (45%-75%).

(ii) Kirk-Othmer states that percentages of gold and silver can range from 0% to 0.1% so absence of gold and silver traces in the imported goods cannot be the ground to classify the imported goods as lead scrap/waste instead of lead concentrate.

(iii) Presence of 'lead sulphate' instead of 'lead sulphide' is not the deciding factor to determine if the subject goods are lead concentrate or lead scrap/waste since the lead ore is found in the form of lead sulphide, lead sulphate and lead carbonate.

(iv) In the OIA, it was assumed that the imported goods were utilized in the Appellant's factory and they imported waste scraps in the guise of lead concentrate. It is submitted that the appellants have been importing lead concentrate for the purpose of selling it to M/s Hindustan Zinc Ltd. (HZL) as per their requirements and there is direct correlation between the imports and the sale made to HZL.

24. Without prejudice to above submissions, the impugned order analysed the method of production adopted by specific suppliers who supplied lead concentrate to the Appellants. It was shown that the same was produced from used lead acid batteries and therefore the import product is 'lead scrap.' It was submitted that the goods were to be assessed as per their nature at the time of import. Merely because some of the suppliers of the imported goods were producing the 'lead concentrates' from used lead acid batteries, it could not conclude the form of goods as waste/scrap of batteries. Moreover, Kirk-Othmer provides 2 methods for extraction of lead. It says that the physical and chemical properties of the lead concentrate obtained from used lead acid batteries (used by the said suppliers) and from primary processing of Ore (1st method) are similar.

25. It was submitted that provisions of Section 111 are not invocable for confiscation of goods because:

- (i) This Section is applicable only to the "imported goods" and in the present case the goods are already cleared for home consumption so they cease to be imported goods as defined u/s 2(25).
- (ii) This Section cannot be invoked for BOE provisionally assessed.
- (iii) Section 111(d) is not applicable because the goods were correctly classified as lead concentrate which were not restricted by FTP so, there was no need of prior permission from DGFT/MoEF.
- (iv) Section 111(m) is not applicable as there was not mis-declaration in respect of CTH.
- (v) Section 111(o) is not applicable as there is no post-import condition in Not. 12/2012-Cus.

26. The demand of interest u/s 28AA and penalty u/s 114A are not sustainable because the principal demand of customs duty is not justified on the ground of collusion, wilful misstatement, or suppression of facts. Therefore, for the same reasons the penalty cannot be imposed upon Mr. Krishna Gopal Gupta, General Manager, Gravita India Ltd. in individual capacity.

27. The A.R for the department relying extensively on impugned order submitted as follows:-

27.1 That the Lead from Lead concentrate is produced using blast furnace, whereas. Lead from Lead Scrap/ Waste can be recovered using a simple rotary furnace. That the Lead mostly occurs with Zinc, Silver and copper and in many mines value of Silver content often exceeds that of Lead however, the appellant company has not reported any manufacturing/ sale of even a single kilogram of Silver. It was noted that HZL is the only producer of primary Lead in India, i.e., producing Lead metal from Lead concentrate and the appellant company is not involved in production of primary Lead from Lead concentrate. The appellant company runs recycling plant and is engaged in recovery of Lead metal from various types of Lead Scraps and Wastes and is registered under Hazardous Wastes (Management, handling and Trans-boundary Movement) Rules, 2008 as recyclers of various types of Lead Scrap/ Waste. That in Central Pollution Control Board (CPCB)'s letter dated 21.08.2015 clarified that the nature of metallurgical plant of the appellant company and finds that environment clearance was required to be obtained even before setting up a processing plant or while enhancing capacity of existing plant and the appellant company has not obtained such clearance for primary metallurgical plant and are not allowed to process Lead concentrate for production of Lead. This confirms that the appellant company is a secondary producer of Lead. i.e., engaged in recovery of Lead

metal by recycling Lead Scrap and is not allowed to process Lead concentrate for production of Lead. It was found that that the description mentioned in load port customs export documents showed description of imported goods as Lead Waste/ Scrap and tariff classification as 7802 confirming that the goods were actually Lead Waste/ Scrap; that even where description was Lead concentrate, the customs tariff classification is declared as 7802 suggesting clearly the waste and Scrap nature of the subject goods. That even in pre-shipment certificates, the subject goods have been certified to be metallic scrap; that the PSIAs authorized by proper authority to conduct specified inspections have confirmed in their certificates and through their statements/ correspondence that the goods are metallic Scrap/ Waste. That there was no manufacture/ clearance of Gold/Silver/ Zinc. That even in his statement dated 08.04.2015. Shri Gopal Krishna Gupta, General Manager (Commercial) has confirmed that the goods imported by them as Lead concentrate did not contain Silver or Gold. That as per literature about Lead concentrate, Silver and Zinc are necessary ingredients of Lead concentrate and are recovered from Lead concentrate for sustainable profitability and therefore, nil production of metals like Silver/ Zinc by the appellant company suggests that the raw material used by them in their factory was not Lead concentrate as it did not contain Silver, Zinc or Gold. With regard to chemical testing of the product, it was found that the chemical examiners/ joint director of Kandla Laboratory have admitted in their statements that

the test parameters analyzed by their Laboratories were not sufficient to ascertain whether goods were Lead concentrate or Waste/ Scrap of Lead batteries. The adjudicating authority finds that the Customs Laboratory, Nhava Sheva opined that the subject goods had the composition of Lead concentrate, however, when the Joint Director was asked to clarify the term "it has the composition of Lead concentrate", no reply was received and when the remnant sample was sent to CRCL, New Delhi, it was confirmed that the goods were not having any characteristics of Lead concentrate and instead the goods were having the characteristics of Lead Scrap/ Waste. The similar reports were also received in respect of five samples taken from the goods cleared from Jaipur. That CRCL, New Delhi is the apex laboratory headed by a Director and CRCL, New Delhi has tested more parameters and its opinion confirmed that the goods are not having any characteristics of Lead concentrate, and instead having the characteristics of Lead Scrap/ Waste.

27.2 The Learned Commissioner (Appeals) has concluded that the subject goods imported by the appellant company are Lead Waste/ Scrap originating from Lead Batteries and the same are appropriately classifiable under T.I. 7802 0090. He also supported through the finding, the levy, interest and penalty.

Findings

28. We have considered the rival submissions. We find that the issue involved in the instant case, is if the goods imported by the appellants are classifiable under heading 78020090 has claimed by the revenue. The appellants had imported goods declaring the same as 'lead concentrate'. The revenue was of the opinion that the goods are lead scrap falling under chapter 78 of the schedule to the Customs Tariff Act. The lower authorities have relied on the test reports obtained by the DRI. DRI has not only drawn the samples from the fresh consignment of the material but also relied upon the remanent samples of the earlier imports made by the appellant at ICD Jaipur.

29. The DRI drew a sample from consignment and sent it for testing to the Customs lab at JNCH Navashiva with the following letter:-



Directorate of Revenue Intelligence
Gandhidham Regional Unit
Plot No. 193, Sector - 4, Oslo,
Gandhidham (Kutch)
Tel: 02836-227891, 234948, 225298
Fax: 02836-239051, email id: driganru@nie.in

F. No: DRI/AZU/GRU/LEAD/INT-24/2014

Date: 02.03.2015

TEST MEMO NO. 37/2014-15

Sl. No.	Declared description :	"Lead Concentrate"
1	Sample collected from:	From factory premises of M/s. Gravita India Ltd., Jaipur as per Panchnama dated 18.11.2014 conducted at the factory premises.
2	Marks/ Description	Sealed with lac seal of Customs, Jaipur, Envelope containing representative sample drawn from factory premises of M/s. Gravita India Ltd., Jaipur.
3	Test for:	1. (a) Percentage of 'Lead' content. (b) In which compound form lead is present. (c) Percentage of different lead compounds viz lead oxide, lead sulphate viz a viz total sample. (d) Description and identity of each of remaining matter / compounds (i.e. total sample minus lead compounds) with respective percentage. 2. Whether it is lead concentrate obtained from naturally occurring Lead Ore or otherwise. If it is obtained from Lead Ore then nature of Ore viz. (i) Anglesite (Lead sulphate), (ii) Cerussite (Lead carbonate), (iii) Galena (Lead sulphide) (iv) Pyromorphite (Phosphate and Chloride of lead) 3. Whether it is 'Lead ash / lead residue / lead scrap' of spent lead acid battery (i.e. derived from re cycling of Lead Batteries). If it is neither obtained from natural Lead Ore and nor from Spent Battery then specific identity / description of the sample may be ascertained.



(Dr. S. J. Singh)
Deputy Director,
DRI, Gandhidham

To,
The Joint Director,
JNCH Laboratory, JNCH Custom House
Nhava Sheva, Tal: Uran, Dist: Raigad
Maharashtra-400707

The test report received from JNCH, Navashiva was as follows:-

Test memo NO. 7 / 14-15

2 Lab No 174 DR 1
413/15

Report → The sample is in the form of mixture of grey colour powder and grey colour friable lumps along with few wooden sticks pieces.
The lumps are composed of off-white, brown yellow colour powder.

The composition of -

	Grey powder (dry basis)	Lumps (dry basis)
Lead	60.83%	64.5%
Iron	1.5%	1.38%
Zinc	1.7%	1.1%
Cadmium	0.2%	0.18%

Powder = 57.1%
Lumps = balance

It has the composition of Lead concentrate
Sealed sample returned

Reviewed
29/4/15

RAJEEV ANAND
29/4/15
Regional Engineer Gr. I

Scanned with

The test report declared that the sample has the composition of 'lead concentrate'. Thus report was in favour of appellant. The DRI, not satisfied with above report, sent the remnant samples returned from the Customs lab, JNCH, Navashiva, to CRCL-New Delhi with following letter



Directorate of Revenue Intelligence
Gandhidham Regional Unit
Plot No. 193, Sector - 4, Oslo,
Gandhidham (Kutch)
Tel: 02836-227891, 234948, 225298
Fax: 02836-239081, email id: driganru@nio.in

F. No: DRI/AZU/GRU/LEAD/INT-24/2014

Date: 04.11.2015

TEST MEMO NO. 77/2015-16

Sl. No.	Declared description :	"Lead Concentrate"
1	Sample collected from:	From factory premises of M/s. Gravita India Ltd., Jaipur as per Panchanama dated 18.11.2014 conducted at the factory premises.
2	Marks/ Description	Remnant sample returned from Customs Lab JNCH Nhava Sheva
3	Test for:	(a) Percentage of 'Lead' content. (b) In which compound forms lead is present. (c) Percentage of different lead bearing compounds. - Percentage of other contents viz Zinc, Silver, Copper, Cadmium, bismuth, arsenic, antimony, iron, Sulphur etc. - Whether it is lead concentrate obtained from naturally occurring Lead Ore or otherwise. - If it is obtained from Lead Ore then nature of Ore viz. - Anglesite (lead sulphate), - Cerussite (lead carbonate), - Galena (Lead sulphide) - Pyromorphite (Phosphate and Chloride of lead) - Whether it is 'Lead ash / lead residue / lead scrap' of spent lead acid batteries, (i.e. derived from re cycling of lead batteries). - If it is neither obtained from natural Lead Ore and nor from Spent Battery then specific identity / description of the goods may be ascertained.

(Dr. S. J. Singh)
Deputy Director,
DRI, Gandhidham

To,
The Director
Central Revenues Control Laboratory,
Hill Side Road, Pusa, I.A.R.I., New Delhi - 110 01

The report received from CRCL New Delhi was as follow:-

4

F.No.26/Cus/C-21/2015-16

30.12.2015

RETEST REPORT

Sample Regn No. CLR-26/30.11.2015
(Test Memo No.77/2015-16):

Sample is in the form of greyish-black fine powder with some small friable lumps of irregular shape and size. It is composed of Lead Oxide, Lead Sulphate together with very small amount of metallic lead in fine particle form as well as Zinc, Copper, Cadmium, Antimony, Arsenic, Iron, etc. in traces. Result of tests advised in Test Memo are as below.

S.No	Test advised in Test Memo	Test Result/reply of query
1.	(a) Percentage of Lead content	64.2 %
	(b) In which compound form lead is present	In the form of Lead Oxide and Lead Sulphate with small amount of metallic lead in fine particle form
	(c) Percentage of different lead bearing compounds	Lead Oxide - 26.8 % Lead Sulphate - 58.0 %
2.	Percentage of other contents viz. Zinc, Silver, Copper, Cadmium, Bismuth, Arsenic, Iron, Sulphur etc.	Zinc(1.16%); Silver(Not detected), Copper(0.12%), Cadmium(0.19%), Antimony(0.42%) Bismuth(Not detected), Arsenic(0.89 %), Iron(1.33 %). No free Sulphur is detected
3.	Whether it is lead concentrate obtained from naturally occurring Lead Ore or otherwise.	Sample has no characteristics of lead concentrate, it has characteristics of washed & dried Electrode Paste derived from used Lead Acid Battery.
4.	If it is obtained from Lead Ore then nature of Ore viz	Sample has no characteristics of any type of Lead Ore
	(i) Anglesite (Lead sulphate)	Literary evidence reveals that Anglesite form of PbSO ₄ also exists in paste of lead-acid batteries
	(ii) Cerussite (lead carbonate)	Not detected (sample not answered test for Carbonate)
	(iii) Galena (Lead sulphide)	Not detected (sample not answered test for Sulphide)
	(iv) Pyromorphite (Phosphate and Chloride of lead)	Not detected (sample not answered test for Phosphate)
5.	Whether it is Lead Ash/lead residue/lead scrap of spent lead acid batteries (i.e. derived from recycling of Lead batteries).	Sample has characteristics of washed & dried Electrode Paste derived from used Lead Acid Battery.
6.	If it is neither obtained from natural lead Ore and nor from Spent battery then specific identity/ description of the sample may be ascertained.	Sample has characteristics of washed & dried Electrode Paste derived from used Lead Acid Battery.

Scaled remnant is being returned separately.

(Dr.Y.K.S. Rathore)

Director (Revenue Laboratories)

डि. य.के.एस. राथोर/Dr. Y.K.S. RATHORE

निदेशक (सूकर प्रयोगशाला)

Director (Revenue Laboratories)

भारत सरकार/Government of India

वित्त मंत्रालय/Ministry of Finance

सूकर विभाग/Deptt. of Revenue

केन्द्रीय सूकर नियन्त्रण प्रयोगशाला

Central Revenues Control Laboratory

नई दिल्ली /New Delhi-110 017

A perusal of the above report indicates that the lead contained in the sample was in the form of compounds namely lead oxide 26.8% and lead Sulphate 58%. Apart from the led Oxide and lead Sulphate, the sample also contained a minuscule quantities of zinc, copper cadmium antimoney, arsenic, iron etc.

The test report declared that the samples is not lead concentrate and has the characteristic of 'washed and dried electrode paste derived from used lead acid batteries'. The test report did not find it to be lead scrap.

30. DRI thereafter, took remanent samples of earlier imports made by the appellant vide Bill of Entry No. 4964857 dated 19.10.2011 and sent the same for testing to CRCL New Delhi with the following letter dated 24.06.2016



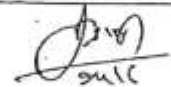
Directorate of Revenue Intelligence
Gandhidham Regional Unit
Plot No. 193, Sector - 4, Oslo,
Gandhidham (Kutch)
Tel: 02836-227891, 234948, 225298
Fax: 02836-239081, email id: driganru@nic.in

F. No: DRI/AZU/GRU/LEAD/INT-24/2014

Date: 24.06.2016

TEST MEMO NO. 41/DRI GRU

Sl. No.	Declared description :	"Lead Concentrate"
1	Sample collected from:	Sample of consignment imported by M/s. Gravita India Limited, Jaipur under Bill of Entry No. 4964857 dated 19.10.2011
2	Marks/ Description	Sample drawn by Customs, ICD, Jaipur during examination Customs ICD, Jaipur TM No. 55/2011
3	Test for:	(a) Percentage of 'Lead' content. (b) In which compound forms lead is present. (c) Percentage of different lead bearing compounds. - Percentage of other contents viz Zinc, Silver, Copper, Cadmium, bismuth, arsenic, antimony, iron, Sulphur etc. - Whether it is lead concentrate obtained from naturally occurring Lead Ore or otherwise. - If it is obtained from Lead Ore then nature of Ore viz. - Anglesite (lead sulphate), - Cerussite (lead carbonate), - Galena (Lead sulphide) - Pyromorphite (Phosphate and Chloride of lead) - Whether it is 'Lead ash / lead residue / lead scrap' of spent lead acid batteries (i.e. derived from re cycling of Lead batteries). - If it is neither obtained from natural Lead Ore and nor from Spent Battery then specific identity / description of the goods may be ascertained.


gull

(Dr. S. J. Singh)
Deputy Director,
DRI, Gandhidham

To,
The Director
Central Revenues Control Laboratory,
Hill Side Road, Pusa, I.A.R.I., New Delhi - 110005

The test report received from the CRCL New Delhi was as follows:

6

01-03-2016
Date: 29-08-2016

C. No. 35-CUS/CRCL/2016/CL-66-DRI/27-06-2016
B/E No. 4964857 Dated 19-10-2011

Report: The sample is in the form of blackish grey powder along with small amount of plastic pieces and metallic wires. It is composed of Lead Oxide, Lead Sulphate together with very small amount of metallic lead in fine particle form as well as Antimony, Tin, Arsenic, Iron etc. in traces. Results of tests advised in Test Memo are as below.

S. N.	Tests Advised in Test Memo	Test Results/reply of query
1.	(d) Percentage of Lead content	64.5 %
	(e) In which compound form lead is present	In the form of Lead Oxide and Lead Sulphate with small amount of metallic lead in fine particle form
	(f) Percentage of different lead bearing compounds	Lead Oxide= 28.5 % Lead Sulphate= 52.5 %
2.	Percentage of other contents viz. Zinc, Silver, Copper, Cadmium, Bismuth, Arsenic, Iron, Sulphur ect.	Zinc (Not detected), Silver (Not detected), Copper (Not detected), Cadmium (Not detected), Bismuth (Not detected), Antimony(0.599%), Arsenic (0.20%), Iron (.11 %), No free Sulphur is detected
3.	Whether it is Lead Concentrate obtained from naturally occurring Lead Ore or otherwise.	Sample has no characteristics of Lead Concentrate, It has characteristics of washed & dried Electrode paste derived from used Lead Acid Battery.
4.	If it is obtained from Lead Ore than nature of Ore viz.	Sample has no characteristics of any type of Lead Ore.
	(v) Anglesite (Lead Sulphate)	Literary evidence reveals that Anglesite form of PbSO4 exists in paste of lead-acid batteries also.
	(vi) Cerussite (Lead Carbonate)	Not detected
	(vii) Galena (Lead Sulphide)	Not detected
	(viii) Pyromorphite (Phosphate & Chloride of lead)	Not detected
5.	Whether it is lead ash/lead residue/lead scrap of spent lead acid batteries (i.e. derived from recycling of lead batteries)	Sample has characteristics of washed & dried electrode paste derived from used lead acid battery.
6.	If it is neither obtained from natural lead ore and nor from spent battery then specific identity/description of the sample may be ascertained.	Sample has characteristics of washed & dried electrode paste derived from used Lead Acid Battery.

Sealed remnant sample returned.

Pone
11/2/16

आर. बी. सक्सेना/R.B. SAXENA
ज्येष्ठ परीक्षक-वेत-II/Chemical Examiner Gr-II

The test report again indicated that the lead contained in the sample is in the form of lead compounds like lead oxide 28.5% and Lead Sulphate 52.5%. Apart from the said compound, the samples also contained the

minuscule quantities of other materials. Based on above information the CRCL came to the conclusion that the sample does not have the characteristics of 'lead concentrate'. It also came to the conclusion that it has the characteristics of "washed and dried electrodes paste derived from used lead acid battery". It did not report that the sample was lead scrap.

31. DRI also took remanent samples of another earlier imports made by the appellant vide Bill of Entry No. 4995856 dated 22.10.2011 and sent the same for testing to CRCL New, Delhi with the following letter dated 24.06.2016.

7

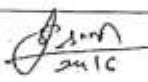


Directorate of Revenue Intelligence
Gandhidham Regional Unit
 Plot No. 193, Sector - 4, Oslo,
 Gandhidham (Kutch)
 Tel: 02836-227891, 234948, 225298
 Fax: 02836-239081, email id: driganru@nic.in

F. No: DRI/AZU/GRU/LEAD/INT-24/2014 Date: 24.06.2016

TEST MEMO NO. 42/DRI GRU CL-67 (CDRI)
27.06.16

Sl. No.	Declared description :	"Lead Concentrate"
1	Sample collected from:	Sample of consignment imported by M/s. Gravita India Limited, Jaipur under Bill of Entry No. 4995856 dated 22.10.2011
2	Marks/ Description	1. Sample drawn by Customs, ICD, Jaipur during examination 2. Customs ICD, Jaipur TM No. 53/2011
3	Test for:	1. (a) Percentage of 'Lead' content. (b) In which compound forms lead is present. (c) Percentage of different lead bearing compounds. 2. Percentage of other contents viz Zinc, Silver, Copper, Cadmium, bismuth, arsenic, antimony, Iron, Sulphur etc. 3. Whether it is lead concentrate obtained from naturally occurring Lead Ore or otherwise. 4. If it is obtained from Lead Ore then nature of Ore viz. (i) Anglesite (lead sulphate), (ii) Cerussite (lead carbonate), (iii) Galena (Lead sulphide) (iv) Pyromorphite (Phosphate and Chloride of lead) 5. Whether it is 'Lead ash / lead residue / lead scrap' of spent lead acid batteries (i.e. derived from re cycling of Lead batteries). 6. If it is neither obtained from natural Lead Ore and nor from Spent Battery then specific identity / description of the goods may be ascertained.


 (Dr. S. J. Singh)
 Deputy Director,
 DRI, Gandhidham

To,
 The Director
 Central Revenue Control Laboratory,
 Hill Side Road, Pusa, I.A.R.I., New Delhi - 110005

The test report received from the CRCL New Delhi was as follows:

Q.No. 35/CRCL/2016-17/CL-64 (DRI) dt 05.08.2016
 PLE 4995856 dt 22.10.2011
 T.M. No. 112/DRI GRU
 R/Port: The sample is in the form of Grey & Reddish-brown coloured friable lumps & pieces along with small metallic pieces with oxidized surfaces, small broken metallic pieces of wire netting & small broken plastic pieces. It is composed of lead oxide, lead-sulphate, small amount of metallic lead along with small broken plastic pieces as well as zinc, iron, Antimony etc. in traces. Result of Test advised in Test memo are as below:

S.No.	Test Advised in Test memo	Test Result / Reply of Query
1.	(a) Percentage of lead content	73.0%
	(b) In which compound form lead is present	In the form of lead oxide & lead sulphate with small amount of metallic lead.
	(c) Percentage of different lead bearing compounds	Lead oxide = 18.2% Lead sulphate = 60.3%
2.	Percentage of other contents viz. Zinc, silver, Copper, Cadmium, Bismuth, Arsenic & Sulphur etc.	Zinc = 0.10%, Silver (Not detected), Copper (Not detected), Cadmium (Not detected), Bismuth (Not detected), Arsenic (Not detected), Antimony = 0.4%, Iron = 0.19%, No free Sulphur detected.
3.	Whether it is lead concentrate obtained from naturally occurring lead ore or otherwise.	Sample has no characteristics of lead concentrate. It has the characteristics of washed & dried electrode paste derived from used lead-Acid Battery.
4.	Is it obtained from lead ore or from nature of ore viz.:	Sample has no characteristics of any type of lead ore.
	(i) Anglesite (lead sulphate)	Literary evidence reveals that Anglesite form of PbSO ₄ exists in paste of lead Acid Batteries also.
	(ii) Cerussite (lead carbonate)	Not detected.
	(iii) Galena (lead sulphide)	Not detected.
	(iv) Pyromorphite (phosphate lead)	Not detected.
5.	Whether it is lead alk/lead-residue/lead scrap of spent lead-Acid battery (derived from recycling of lead Batteries).	Sample has characteristics of washed & dried electrode paste derived from used lead-Acid Battery.
6.	Is it obtained from natural lead ore or from spent battery? Specific identity/description of the paste may be ascertained.	Sample has characteristics of washed & dried Electrode Paste derived from used lead Acid Battery.

Sealed Report Returned.

PONS
 51816
 M. A. GHOSH/R.B. SAKI
 14-11-2016/Chemical Examination

The test report again indicated that the lead contained in the sample is in the form of lead compound namely lead oxide 18.2% and Lead Sulphate 60.3%. Apart from the said compound, the sample also contained the

minuscule quantities of other materials. It did not report that the sample was lead scrap.

32. DRI also took samples of another earlier imports made by the appellant vide Bill of Entry No. 5019314 dated 25.10.2011 and sent the same for testing to CRCL New, Delhi with the following letter dated 24.06.2016.



Directorate of Revenue Intelligence
Gandhidham Regional Unit
Plot No. 193, Sector - 4, Oslo,
Gandhidham (Kutch)
Tel: 02836-227891, 234948, 225298
Fax: 02836-239081, email id: driganru@nic.in

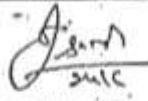
F. No: DRI/AZU/GRU/LEAD/INT-24/2014

Date: 24.06.2016

TEST MEMO NO. 43/DRI GRU

CL-68(DRI)
27.06/16

Sl. No.	Declared description :	"Lead Concentrate"
1	Sample collected from:	Sample of consignment imported by M/s. Gravita India Limited, Jaipur under Bill of Entry No. 5019314 dated 25.10.2011
2	Marks/ Description	1. Sample drawn by Customs, ICD, Jaipur during examination 2. Customs ICD, Jaipur TM No. 54/2011
3	Test for:	1. (a) Percentage of "Lead" content. (b) In which compound form lead is present. (c) Percentage of different lead bearing compounds. 2. Percentage of other contents viz Zinc, Silver, Copper, Cadmium, bismuth, arsenic, antimony, iron, Sulphur etc. 3. Whether it is lead concentrate obtained from naturally occurring Lead Ore or otherwise. 4. If it is obtained from Lead Ore then nature of Ore viz. (i) Anglesite (lead sulphate), (ii) Cerussite (lead carbonate), (iii) Galena (Lead sulphide) (iv) Pyromorphite (Phosphate and Chloride of lead) 5. Whether it is 'Lead ash / lead residue / lead scrap' of spent lead acid batteries [i.e. derived from re cycling of Lead batteries]. 6. If it is neither obtained from natural Lead Ore and nor from Spent Battery then specific identity / description of the goods may be ascertained.


(Dr. S. J. Singh) -
Deputy Director,
DRI, Gandhidham

To,
The Director
Central Revenues Control Laboratory,
Hill Side Road, Pusa, I.A.R.I., New Delhi - 110005

The test report received from the CRCL, New Delhi was as follows:

10

C.No.35/CRCL/2016-17/CL-68(DRI) dt.05.8.2016
 Dt. 5019314 dt.25.10.2011
 T.M. No. 43/DRI GRU

Reply - The sample is in the form of reddish-brown coloured friable lumps & powder along with small metallic wire pieces with oxidized surface & small broken plastic pieces. It is composed of lead oxide, lead sulphate, small amount of metallic lead along with small broken plastic pieces as well as iron, Antimony etc. in traces. Result of test advised in test memo are as below:-

S.No	Test Advised in Test memo	Test Result / Reply of Query
1.	(a) Percentage of lead content	76.1%
	(b) In which compound form lead is present	In the form of lead oxide & lead sulphate with small amount of metallic lead.
	(c) Percentage of different lead bearing compound	Lead oxide = 34.6% Lead sulphate = 52.1%
2.	Percentage of other contents viz. zinc, silver, copper, Cadmium, Bismuth, Arsenic, Antimony, iron, Sulphur etc.	Zn (Not detected), Silver (Not detected), copper (Not detected), Cadmium (Not detected), Bismuth (Not detected), Arsenic (Not detected), Antimony = 0.15%, iron = 0.08%. No free Sulphur is detected.
3.	Whether it is lead compound obtained from naturally occurring lead ore or otherwise.	Sample has no characteristics of lead concentrate. It has the characteristics of washed & dried Electrode paste derived from used lead-Acid Battery.
4.	It is obtained from lead ore then nature of ore viz.	Sample has no characteristics of any type of lead ore.
	(i) Anglesite (Lead Sulphate)	Microscopic evidence reveal that Anglesite form of PbSO ₄ exists in Part of Lead-Acid Battery also.
	(ii) Cerussite (Lead Carbonate)	Not detected
	(iii) Galena (Lead Sulphide)	Not detected
	(iv) Pyromorphite (Lead phosphate & Chloride)	Not detected
5.	Whether it is lead Ash/Lead Residue/Lead Scrap/Spent Lead-Acid Battery (i.e. derived from recycling of lead Battery).	Sample has characteristics of washed & dried electrode paste derived from used lead-Acid Battery.
6.	It is either obtained from natural lead ore & not from spent battery then specific identity of description of the sample may be ascertained.	Sample has characteristics of washed & dried Electrode paste derived from used lead-Acid Battery.

Sealed Remnant Returned.

POSS 5/8/16
 M. C. TRIPATHI/M.O. S.A.E.
 100, Wazirpur, New Delhi-110028

The test report again indicated that the lead contained in the sample is in the form of lead compounds like lead oxide 34.6% and Lead Sulphate 52.1%. Apart from the said compound, the sample also contained the minuscule quantities of other materials. It did not report the sample to be lead scrap.

33. DRI, took remanent samples of another earlier imports made by the appellant vide Bill of Entry No. 5854056 dated 28.10.2011 and sent the same for testing to CRCL New, Delhi with the following letter dated 24.06.2016.



Directorate of Revenue Intelligence
Gandhidham Regional Unit
Plot No. 193, Sector - 4, Oslo,
Gandhidham (Kutch)
Tel: 02836-227891, 234948, 225298
Fax: 02836-239081, email id: driganru@nic.in

F. No: DRI/AZU/GRU/LEAD/INT-24/2014

Date: 24.06.2016

TEST MEMO NO. 44/DRI GRU

Sl. No.	Declared description :	"Lead Concentrate"
1	Sample collected from:	Sample of consignment imported by M/s. Gravita India Limited, Jaipur under Bill of Entry No. 5854056 dated 28.01.2012
2	Marks/ Description	1. Sample drawn by Customs, ICD, Jaipur during examination 2. Customs ICD, Jaipur TM No. 07/2012
3	Test for:	1. (a) Percentage of 'Lead' content. (b) In which compound forms lead is present. (c) Percentage of different lead bearing compounds. 2. Percentage of other contents viz Zinc, Silver, Copper, Cadmium, bismuth, arsenic, antimony, iron, Sulphur etc. 3. Whether it is lead concentrate obtained from naturally occurring Lead Ore or otherwise. 4. If it is obtained from Lead Ore then nature of Ore viz. (i) Anglesite (lead sulphate). (ii) Cerussite (lead carbonate). (iii) Galena (Lead sulphide) (iv) Pyromorphite (Phosphate and Chloride of lead) 5. Whether it is 'Lead ash / lead residue / lead scrap' of spent lead acid batteries (i.e. derived from re cycling of Lead batteries). 6. If it is neither obtained from natural Lead Ore and nor from Spent Battery then specific identity / description of the goods may be ascertained.

(Dr. S. J. Singh)
Deputy Director,
DRI, Gandhidham

To,
The Director
Central Revenues Control Laboratory,
Hill Side Road, Pusa, I.A.R.I., New Delhi - 110005

The test report received from the CRCL New Delhi was as follows:

12

C. No. 35-CUS/CRCL/2016/CL-65-DRI/27-06-2016 Date: 29-08-2016
B/E No. 5854056 Dated 28-01-2012

Report: The sample is in the form of blackish grey powder. It is composed of Lead Oxide, Lead Sulphate together with very small amount of metallic lead in fine particle form as well as Antimony, Tin, Arsenic etc. in traces. Results of tests advised in Test Memo are as below.

S. N.	Tests Advised in Test Memo	Test Results/reply of query
1.	(a) Percentage of Lead content	66.98 %
	(b) In which compound form lead is present	In the form of Lead Oxide and Lead Sulphate with small amount of metallic lead in fine particle form
	(c) Percentage of different lead bearing compounds	Lead Oxide= 31.33 % Lead Sulphate= 52.37 %
2.	Percentage of other contents viz. Zinc, Silver, Copper, Cadmium, Bismuth, Arsenic, Iron, Sulphur ect.	Zinc (Not detected), Silver (Not detected), Copper (Not detected), Cadmium (Not detected), Bismuth (Not detected), Antimony(0.43%), Arsenic (0.11%), Iron (Not detected), No free Sulphur is detected
3.	Whether it is Lead Concentrate obtained from naturally occurring Lead Ore or otherwise.	Sample has no characteristics of Lead Concentrate, It has characteristics of washed, & dried Electrode paste derived from used Lead Acid Battery.
4.	If it is obtained from Lead Ore than nature of Ore viz.	Sample has no characteristics of any type of Lead Ore.
	(i) Anglesite (Lead Sulphate)	Literary evidence reveals that Anglesite form of $PbSO_4$ exists in paste of lead-acid batteries also.
	(ii) Cerussite (Lead Carbonate)	Not detected
	(iii) Galena (Lead Sulphide)	Not detected
	(iv) Pyromorphite (Phosphate & Chloride of lead)	Not detected
5.	Whether it is lead ash/lead residue/lead scrap of spent lead acid batteries (i.e. derived from recycling of lead batteries)	Sample has characteristics of washed & dried electrode paste derived from used lead acid battery.
6.	If it is neither obtained from natural lead ore and nor from spent battery then specific identity/description of the sample may be ascertained.	Sample has characteristics of washed & dried electrode paste derived from used Lead Acid Battery.

Sealed remnant sample returned.

R. B. Saxena
29/8/16
(R. B. Saxena)
Chemical Examiner Gr.-II

The test report again indicated that the lead contained in the sample is in the form of lead compounds like lead oxide 31.33% and Lead Sulphate

52.37%. Apart from the said compound, the sample also contained the minuscule quantities of other materials.

34. DRI also, took remanent samples of earlier imports made by the appellant vide Bill of Entry No. 6407874 dated 30.03.2012 and sent the same for testing to CRCL New, Delhi with the following letter dated 24.06.2016.



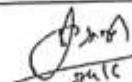
Directorate of Revenue Intelligence
Gandhidham Regional Unit
Plot No. 193, Sector - 4, Oslo,
Gandhidham (Kutch)
Tel: 02836-227891, 234948, 225298
Fax: 02836-239081, email id: driganru@nic.in

F. No: DRI/AZU/GRU/LEAD/INT-24/2014

Date: 24.06.2016

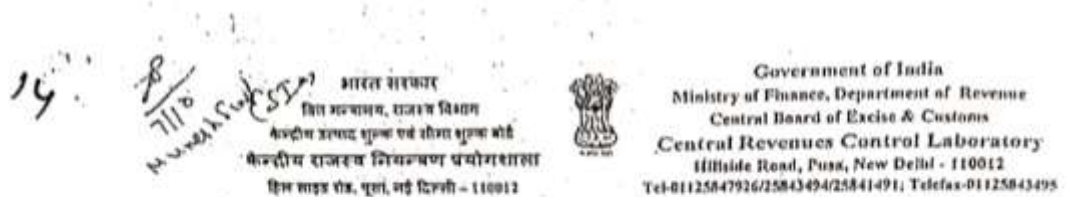
TEST MEMO NO. 46/DRI GRU

Sl. No.	Declared description :	"Lead Concentrate"
1	Sample collected from:	Sample of consignment imported by M/s. Gravita India Limited, Jaipur under Bill of Entry No. 6407874 dated 30.03.2012
2	Marks/ Description	1. Sample drawn by Customs, ICD, Jaipur during examination 2. Customs ICD, Jaipur TM No. 26/2012
3	Test for:	1. (a) Percentage of 'Lead' content. (b) In which compound form lead is present. (c) Percentage of different lead bearing compounds. 2. Percentage of other contents viz Zinc, Silver, Copper, Cadmium, bismuth, arsenic, antimony, iron, Sulphur etc. 3. Whether it is lead concentrate obtained from naturally occurring Lead Ore or otherwise. 4. If it is obtained from Lead Ore then nature of Ore viz. (i) Anglesite (lead sulphate), (ii) Cerussite (lead carbonate), (iii) Galena (Lead sulphide) (iv) Pyromorphite (Phosphate and Chloride of lead) 5. Whether it is 'Lead ash / lead residue / lead scrap' of spent lead acid batteries (i.e. derived from re cycling of Lead batteries). 6. If it is neither obtained from natural Lead Ore and nor from Spent Battery then specific identity / description of the goods may be ascertained.


(Dr. S. J. Singh)
Deputy Director,
DRI, Gandhidham

To,
The Director
Central Revenues Control Laboratory,
Hill Side Road, Pusa, I.A.R.I., New Delhi - 110005

The test report received from the CRCL New Delhi was as follows:



सी०सं०/C.No. 26-Cus/C-9/2016-17

दिनांक/Dated, the 30th September, 2016

To,

Sh. S. J. Singh
Deputy Director, DRI, GRU,
Gandhidham Regional Unit
Plot No. 193, Sector-4, Oslo
Gandhidham (Kutch) - 370201

Sir,

Subj: Investigation into import of goods of description "Lead Concentrate".
Testing of samples - reg.

Please refer to your office letter F. No. DRI/AZU/GRU/Lead/Int-24/2014 dated 24.06.16 forwarding therewith a remnant sample vide T.M. No. 46/DRI/GRU said to be "Lead Concentrate" for retesting.

The above said sample has been registered here under Lab. No. CLR-2 dated 29.07.16 and retest report is as under:

Report:-

The sample is in the form of blackish grey powder with some small friable lumps of irregular shape and size. It is composed of lead oxide, lead sulphate with small amount of metallic lead in fine particle form as well as antimony, tin, iron, etc., in traces. Results of tests advised in test memo are as below:-

Sr. No.	Test advised in Test Memo	Test Result/Reply of Query
1.	(a) Percentage of lead content	64.32%
	(b) In which compound form lead is present	In the form of lead oxide and lead sulphate with small amount of metallic lead in fine particle form.
	(c) Percentage of different lead bearing compounds.	Lead oxide - 27.2% Lead sulphate - 53.4%
2.	Percentage of other contents viz. zinc, silver, copper, cadmium, bismuth, arsenic, antimony, iron, sulphur, etc.	Zinc (not detected), silver (not detected), copper (not detected), cadmium (not detected), bismuth (not detected), arsenic (not detected), antimony (0.52%), iron (0.15%), no free sulphur is detected.
3.	Whether it is lead concentrate obtained from naturally occurring lead ore or otherwise.	Sample has no characteristics of lead concentrate. It has characteristics of washed & dried electrode paste derived from used lead acid battery.
4.	If it is obtained from lead ore then nature of ore viz.	Sample has no characteristics of any type of lead ore.
	(i) Anglesite (lead sulphate)	Literary evidence reveals that Anglesite

		form of PbSO ₄ exists in paste of lead acid batteries also.
	(ii) Cerussite (lead carbonate)	Not Detected
	(iii) Galena (lead sulphide)	Not Detected
	(iv) Pyromorphite (phosphate & chloride of lead)	Not Detected
5.	Whether it is lead ash/lead residue/lead scrap of spent lead acid batteries (i.e. derived from recycling of lead batteries)	Sample has characteristics of washed & dried electrode paste derived from used lead acid battery.
6.	If it is neither obtained from natural lead ore and nor from spent battery then specific identity/description of the sample may be ascertained.	Sample has characteristics of washed and dried electrode paste derived from used lead acid battery.

Scaled remnant is being returned separately.

Yours faithfully,

(Dr. T. A. SREENIVASA RAO)
Joint Director

The test report again indicated that the lead contained in the sample is in the form of lead compounds like lead oxide 27.2% and Lead Sulphate 53.4%. Apart from the said compound, the sample also contained the minuscule quantities of other materials.

35. From the perusal all of above report, it is apparent that in all the lead in the sample has not been found in metallic form except for some traces. The lead contained in samples in all the cases is primarily in the shape of lead oxide or lead sulphate lead oxide ranging from 18.2% to 31.33% and lead sulphate ranging from 52.1% to 60.5%.

36. The revenue is seeking to classify the goods under the heading 78020090 as lead waste and scrap. From the above description appearing in the test report, it is apparent that the samples is primarily composed of Lead Oxide and Lead Sulphate with lead in metallic form being in very small miniscule quantity if any. Lead oxide are classifiable under chapter heading 2824. Sulphites are classified under heading 2833. Only lead in primary metallic form would fall under Chapter 78. The said customs tariff entries pertaining to lead oxide and sulphate are reproduced below:

Chapter 28				
Tariff Item	Description of goods	Unit		
(1)	(2)	(3)	(4)	(5)
	I. – CHEMICAL ELEMENTS			
2824	Lead oxides; red lead and orange lead			
2824 10	- Lead monoxide (litharge, massicot):			
2824 10 10	--- Litharge	Kg.	10%	-
2824 10 20	--- Massicot	Kg.	10%	-
2824 90 00	- Other	Kg.	10%	-
2833	Sulphates; Alums; peroxosulphates (persulphates)			
	- Sodium sulphates	Kg.	12.5%	-
2833 11 00	-- Disodium sulphate			
2833 19	-- Other :			
2833 19 10	--- Sodium hydrogen sulphate (acid sulphate)	Kg.	12.5%	-
2833 19 20	--- Sodium pyrosulphate	Kg.	12.5%	-

2833 19 90	--- Other - Other sulphates :	Kg.	12.5%	-
2833 21 00	-- Of magnesim	Kg.	12.5%	-
2833 22	-- Of aluminium			
2833 22 10	--- Aluminium sulphate (iron free)	Kg.	12.5%	-
2833 22 90	--- Other	Kg.	12.5%	-
2833 24 00	-- Of nickel	Kg.	12.5%	-
2833 25 00	-- Of copper	Kg.	12.5%	-
2833 27 00	-- Of barium	Kg.	12.5%	-
2833 29	-- other			
2833 29 10	--- Ferrous sulphate	Kg.	12.5%	-
[2833 29 20	--- x x x x]			
2833 29 30	--- Quinidine sulphate	Kg.	12.5%	-
2833 29 40	--- Manganese sulphate	Kg.	12.5%	-
2833 29 50	--- Strontium sulphate	Kg.	12.5%	-
2833 29 90	--- Other	Kg.	12.5%	-
2833 30	- Alums			
2833 30 10	--- Ammonium alum	Kg.	12.5%	-
2833 30 20	--- Ferric ammonim alum	Kg.	12.5%	-
2833 30 30	--- Potash alum	Kg.	12.5%	-
2833 30 90	--- Other	Kg.	12.5%	-
2833 40 00	- Peroxosulphates (persulphates)	Kg.	12.5%	-

37. The explanatory notes in harmonized system of nomenclature in sub chapter-V prescribed as follows:

28-V

Sub-Chapter V

SALTS AND PEROXYSALTS, OF INORGANIC ACIDS AND METALS

GENERAL

Metal salts are obtained by replacing the hydrogen element in an acid by a metal or by the ammonium ion (NH₄⁺). In the liquid state or in solution, they are electrolytes giving a metal (or a metal ion) at the cathode.

In **neutral** salts all the hydrogen atoms are replaced by the metal, but **acid** salts still contain part of the hydrogen replaceable by metal; **basic** salts contain a greater quantity of basic oxide than is necessary to neutralise the acid (e.g., basic sulphate of cadmium (CdSO₄.CdO)).

Sub-Chapter V covers metal salts of the acids classified in sub-Chapter II (acids derived from non-metals) or in sub-Chapter IV (acid-function metal hydroxides).

From the above it is apparent that salts of metals would falls under chapter 28. The heading 28.33 in HSN reads as follow:-

28.33**28.33 - Sulphates; alums; peroxosulphates (persulphates).**

- Sodium sulphates :

2833.11 -- Disodium sulphate

2833.19 -- Other

- Other sulphates :

2833.21 -- Of magnesium

2833.22 -- Of aluminium

2833.24 -- Of nickel

2833.25 -- Of copper

2833.27 -- Of barium

2833.29 -- Other

2833.30 - Alums

2833.40 - Peroxosulphates (persulphates)

(A) SULPHATES

Subject to the **exclusions** mentioned in the introduction to this sub-Chapter, this heading covers the metal salts of sulphuric acid (H_2SO_4) (heading 28.07), but **excludes** mercury sulphates which fall in **heading 28.52**, ammonium sulphate which, even pure, falls in **heading 31.02** or **31.05** and potassium sulphate, which, whether or not pure, falls in **heading 31.04** or **31.05**.

The explanatory note further described the inclusions as follows.

(13) Lead sulphates.

- (a) **Artificial lead sulphate** ($PbSO_4$). Obtained from lead nitrate or acetate by precipitation with sulphuric acid; white powder or crystals, insoluble in water. Used in the manufacture of lead salts.
- (b) **Basic lead sulphate**. Prepared as greyish powder by heating together litharge, sodium chloride and sulphuric acid. May also be obtained by a metallurgical process, in which case it takes the form of a white powder. Used in the preparation of pigments, mastics and mixtures for the rubber industry.

Natural lead sulphate (anglesite) is **excluded** (heading 26.07).

It is also seen that the lead oxide is specifically covered under heading 2824.

The inclusions are described in following terms.

28.24

28.24 - Lead oxides; red lead and orange lead.

2824.10 - Lead monoxide (litharge, massicot)

2824.90 - Other

- (1) **Lead oxide** (Lead monoxide, litharge, massicot) (PbO). Lead or cerussite (lead hydrocarbonate) oxidised by heating in air produces first unmelted lead oxide or massicot, in the form of a pale yellow powder, and then, when the temperature passes the blood-red heat point, the fused oxide, in orange-yellow or reddish powder or scales. The term "litharge" covers both these products, but is applied more particularly to the latter. They are also obtained as by-products of the extraction of silver from argentiferous lead. Lead oxide is used in the glass industry (manufacture of lead and crystal glass), in the enamel industry, and in the manufacture of matches, colours, driers, etc.
- (2) **Trilead tetraoxide** (Lead saline oxide, red lead, minium) (approximate formula Pb_3O_4). Obtained from unmelted lead monoxide (massicot). A toxic, orange-red powder (specific gravity 8 to 9). The term **orange lead** is applied either to a very pure saline oxide, more highly coloured and less dense than the common variety, or to lead oxides still containing lead carbonate from the cerussite used in their preparation. **Red lead** is used for extending other colours (Saturn red), for preparing anti-rust paints or mastics and for colouring sealing-wax. It is also used as a pottery glaze. It is employed in the manufacture of crystal glass and optical glass even more widely than the monoxide, because it gives a fusible glass of remarkable brilliance arising from a high refractive index.
- (3) **Lead dioxide** (puce oxide, plumbic anhydride) (PbO_2). Prepared by treating the lead saline oxide with nitric acid or by electrolysing lead nitrate. A brown powder, insoluble in water, capable of igniting organic matter on contact. It is an oxidising agent used in pyrotechnics; also for manufacturing matches or accumulator plates, and as a mordant in the textile industry.

This amphoteric oxide gives the plumbates of heading 28.41.

A perusal of the said entries would reveal that lead oxide specifically covered by name under heading 2824. Sulphates of metals like Aluminum, Nickel, Copper and Iron are specifically covered by name in various sub entries of heading 2833. The test report indicates that there is practically no lead in metallic form in samples. The samples primarily consist of lead sulphate and lead oxide and therefore if the said goods are not "lead concentrate" as claimed by revenue then at best the same can be classifiable under chapter 28 under headings 2824 or 2832. The case of Revenue that the said goods are classifiable under heading 78020090, has absolutely no merit.

In view of above, since the classification suggested by Revenue is not applicable to the said goods, the impugned order classifying the goods under

Chapter 78 which applies to lead in metallic/primary form cannot be sustained. Since, we find that even on the basis of reports available, the case of the revenue cannot be sustained, we are not pronouncing on various grounds taken by the appellant about sample drawing process. The conflicting reports and to whom benefit of doubt will go, as also whether only appellant can seek retest or even department can of its own do so, just on the premise that particular lab was not competent, when department has a report contrary to its hypothesis.

38. The impugned order classifying the goods under Chapter 78 is therefore, set aside and appeals are allowed.

(Pronounced in the open on 09.04.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi