Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Custom Appeal No. 10535 of 2024-DB

(Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-18-2024-25 Dated 31/05/2024 passed by Principal Commissioner of Customs-Ahmedabad)

VISHWA GLASS AND CERAMICS P LTD **........Appellant**

Wing A-1502,03,04,15th Floor,
The Capital Opp Hetarth Party Plot,
Science City Road, Sola,
Ahmedabad-380060

VERSUS

Commissioner of CUSTOMS –
Customs Ahmedabad **........Respondent**

1st Floor, Custom House,
Opposite Old High Court,
Navrangpura, Ahmedabad-380009
Gujarat

<u>WITH</u>

(i) Custom Appeal No.10536 of 2024-DB (Pradipkumar P Patel)
(ii) Custom Appeal No.10568 of 2024-DB (Sun Borax Industries)
(iii) Custom Appeal No.10569 of 2024-DB (Ketan Manhar Shah)
(iv) Custom Appeal No.10570 of 2024-DB (Shrusti Ceramics P Ltd)
(v) Custom Appeal No.10571 of 2024-DB (Dhulabhai M Patel)
(vi) Custom Appeal No.10572 of 2024-DB (Quantas Glass and Ceramics P Ltd)
(vii) Custom Appeal No.10573 of 2024-DB (Pradipkumar P Patel)
(viii) Custom Appeal No.10574 of 2024-DB (Superking Glass and Ceramics Pvt Ltd)
(ix) Custom Appeal No.10575 of 2024-DB (Upesh H Thakkar)
(x) Custom Appeal No.10577 of 2024-DB (Astron International P Ltd)
(xi) Custom Appeal No.10578 of 2024-DB (Upesh Thakkar)
(xii) Custom Appeal No.10579 of 2024-DB (Welsuit Glass and Ceramics P Ltd)
(xiii) Custom Appeal No.10580 of 2024-DB (Gaurav Thakkar)
(xiv) Custom Appeal No.10585 of 2024-DB (Nahar Colours and Coating P Ltd)
(xv) Custom Appeal No.10586 of 2024-DB (Rajkumar Surana)
(xvi) Custom Appeal No.10602 of 2024-DB (Raj Borax Pvt Ltd)
(xvii) Custom Appeal No.10603 of 2024-DB (Girish Mehta)
(xviii) Custom Appeal No.10604 of 2024-DB (Steadfast Impexp)
(xix) Custom Appeal No.10614 of 2024-DB (Organic Industries Pvt Ltd)
(xx) Custom Appeal No.10615 of 2024-DB (Narendra J Jakkani)

[(Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-23-2024-25 Dated 27/06/2024 passed by Principal Commissioner of Customs-Ahmedabad) , (Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-29-2024-25 Dated 09/07/2024 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I), (Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-29-2024-25 Dated 09/07/2024 passed by Principal Commissioner of Customs-Ahmedabad), (Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-26-2024-25 Dated 03/07/2024 passed by Principal Commissioner of Customs-Ahmedabad), (Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-28-2024-25 Dated 05/07/2024 passed by Principal Commissioner of Customs-Ahmedabad), (Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-25-2024-25 Dated 03/07/2024 passed by Principal Commissioner of Customs-Ahmedabad), (Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-25-2024-25 Dated 03/07/2024 passed by Principal Commissioner of Customs-Ahmedabad), (Arising out of Order in Original AHM-CUSTM-000-PR-

COMMR-24-2024-25 Dated 02/07/2024 passed by Principal Commissioner of Customs-Ahmedabad), (Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-31-2024-25 Dated 09/07/2024 passed by Principal Commissioner of Customs-Ahmedabad), (Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-32-2024-25 Dated 11/07/2024 passed by Principal Commissioner of Customs-Ahmedabad), (Arising out of Order in Original AHM-CUSTM-000-PR-COMMR-30-2024-25 Dated 09/07/2024 passed by Principal Commissioner of Customs-Ahmedabad)

APPEARANCE:
Shri J.C.Patel with Shri Rahul Gajera, Advocates appeared for the Appellant
Shri Sanjay Kumar, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 12625-12645/2024

DATE OF HEARING: 22.10.2024
DATE OF DECISION: 08.11.2024

RAMESH NAIR

These appeals are filed against respective orders. Being involved common issue, all the appeals are taken up together for disposal. Since the facts and issue involved in all matters are similar, for the sake of convenience, the facts relating to Vishwa Glass and Ceramics Pvt. Ltd. are referred.

1.1 The brief fact of the case is that during August 2015 to November 2020, the importer imported various consignments of "Ground Colemanite (B_2O_3 40%) Natural Boron Ore" and claimed classification under CTH 25280090. Tariff heading 2528 covers Natural Borates and Concentrates thereof whether or not calcined. The importer also claimed exemption from basic Customs duty under Sr. No. 113 of Customs Notification No. 12/2012-Cus dtd. 17.03.2012 for the period 01.04.2015 to 30.06.2017 and under Sr. No. 130 of Customs Notification No. 50/2017 dtd. 30.06.2017 for the period after 01.07.2017, each of which covers "Boron Ores" of heading 2528. A number Bills of Entry in respect of the said imports were assessed by officer of customs. It would be evident from the Examination Order in respect of such Bills of Entry that one of the mandatory Compliance Requirements Examination Instructions was to verify that the goods are Boron ores for the purpose of exemption under Sr. 113 of Customs Notification No. 12/2012-Cus dated 17.03.2012 and under Sr. 130 of Customs Notification No. 50/2017 dated 30.06.2017. In January 2020, three consignments of the said goods imported by the said importer were put on hold. The same were seized and subsequently released provisionally after drawing representative samples from one of the said three consignments. Representative sample was sent for testing to CRCL, Vadodara, who by Test Report dated 7-2-2020 stated that the sample is in the form of off-white fine powder. It further stated that it is mainly composed of oxides of Boron & Calcium along with siliceous matter, B2O3 = 40.5% by wt. Cao = 25.14 o/o by wt. The said Report stated that the said goods are "Mineral of Boron (Colemanite)- crushed and grinded". Sample of the said goods was thereafter sent for re-test to CRCL, New Delhi who by letter F. No 25-Cus/C-45/2019-20 dated 05.06.2020 submitted Re-Test report in respect of the said sample which states that "The sample is in the form of white powder. It is mainly composed of borates of calcium, along with siliceous matter and other associated impurities like silica, iron, etc.On the basis of the test carried out here and available technical literature, the sample is "Mineral Colemanite- a Natural Calcium Borate (Commonly known as Boron Ore)".

1.2 In response to further queries from the Joint Commissioner of Customs, SIIB, the Joint Director, CRCL, New Delhi, by letter F. No 25-Cus/C-40-47/2019-20 dated 24.06.2020 stated that sample is Colemanite, a Natural Calcium Borate (Commonly known as Boron Ore). It was further stated that the sample is in powder form (Crushed/Grinded) and is not calcined. It was stated that the sample is in the form of Colemanite Mineral. In response to further queries from the Joint Commissioner of Customs, SIIB, the Joint Director, CRCL, New Delhi, by letter F.No. 25-Cus/C-40-4712019-20 dated 08.07.2020 reiterated that the sample is a natural calcium borate (commonly known as Boron Ore) and further stated that the sample under reference has not undergone any process of calcination.

1.3 After recording of Statement dated 2-11-2020 of the said importer's Director, Pradip Kumar Patel, a detail Show Cause Notice dated 28-12-2020 was issued seeking to deny the said exemption and demanding duty by invoking the larger period of limitation under Section 28 (4) of the Customs Act 1962 and proposing confiscation of the goods under Section 111(m) of the said Act and imposition of penalty on the importer and its Director. In adjudication, the Commissioner of Customs, passed Order-in-Original dated 1-11-2021 whereby he denied the benefit of the said exemption and confirmed the demand of differential duty with interest. Further he held the goods to be liable to confiscation under Section 111(m) of the Customs Act, 1962 and imposed redemption fine. He imposed penalty equal to duty under Section 114A of the said Act and also a penalty under Section 117 of the said Act. Being aggrieved, appellant filed appeal before the Tribunal and vide final order dtd. 24.01.2023 Tribunal remanded the matter for re-consideration in light of the Test Reports of CRCL and the judgments relied upon by the importers. Subsequent to the remand, the Ld. Commissioner in *denovo* adjudication vide impugned order dtd. 31.05.2024 again denied the benefit of said exemption and confirmed the demand of differential duty with interest. Further he held the goods to be liable to confiscation under Section 111(m) of the Customs Act, 1962 and imposed redemption fine. He has imposed penalty equal to duty under Section 114A of the said Act. Further, he has imposed penalty on the Appellant under Section 114AA of the said Act.Hence the appellant is once again before the Tribunal.

2. Shri J C Patel learned counsel with Shri Rahul Gajera Learned Advocates appearing on behalf of Appellants submits that the impugned Order-in-Original is contrary to and goes beyond the findings and directions given by this Hon'ble Tribunal by its Order No. A/10118-10134/2023 dated 25-1-2023, by which the matter was remanded to the original adjudicating authority. On this ground itself the impugned Order-in-Original is liable to be set aside. He placed reliance on the following judgments.

(i) Honeycomb International v CC-2014 (311) ELT 823

(ii) Dimensions India v CC – 2003 (158) ELT 325

(iii) Scientific Instruments Co. Ltd v CC – 1980 (6) ELT 89.

2.1 Without prejudice, he further submits that Test Report of CRCL, New Delhi, relied upon in the Show Cause Notice itself clearly establishes that the imported goods are "Boron Ore" and therefore covered under Sr. No.113 of Notification No.12/2012-Cus and Sr.No.130 of Notification No. 50/2017-Cus. In response to letters addressed by SIIB, the CRCL, New Delhi had reiterated that the sample is "Mineral Colemanite- a Natural Calcium Borate (commonly known as Boron Ore)" and that the same is not calcined. Since CRCL, New Delhi, which is an expert body, has reported on the basis of test that the imported goods are "Boron Ore", it is not open to the department to disregard the said Test Report of an expert and to contend to the contrary that the imported goods are not “Boron Ore”. He placed reliance on the following judgments in support their contention.

(i) H.P.L. Chemicals Ltd v CCE-2006 (197) ELT 324

(ii) Orient Ceramics &Inds Ltd v CC – 2008 (226) ELT 483 (SC).

2.2 He also submits that it is settled law that goods described in an exemption Notification have to be interpreted as commonly understood by persons dealing with the same. CRCL, New Delhi, which is an expert testing authority, has on test reported that the goods are Boron Ore as commonly known. Therefore, the goods cannot be denied the benefit of exemption given by the Notification to “Boron Ore”.

2.3 He further submits that question whether goods are classifiable under CTSH 25280090 or CTSH 25280030 is irrelevant for the purpose of exemption Notification. There is no dispute regarding the fact that the goods are classifiable under Heading 2528. Since the Sr. Nos. 113 and 130 of Notifications Nos.12/2012 and 50/2017 respectively, refer only to Heading 2528, it follows that for the purpose of claiming the exemption under the said Sr. Nos. 113 and 130, it is entirely irrelevant whether the goods fall under Sub-Heading 25280090 or Sub-heading 25280030. Therefore, the contention in the Show Cause Notice and the finding of the Commissioner that the said goods are correctly classifiable under Sub-heading 25280030 is irrelevant and has absolutely no bearing on the eligibility to exemption.

2.4 He also submits that the Show Cause Notice and Order-in-Original have proceeded on the erroneous premise that the exemption under Sr. No.113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus is confined and restricted only to “Natural Ore” i.e. naturally occurring raw and native mineral as obtained from the mine and containing various foreign material, impurities and other substances. According to the Show Cause Notice and the Order-in-Original, if after extracting such Natural ore from the mine, it is subjected to physical processes of removing the foreign material, impurities and other substances, it ceases to be “Natural Ore” and becomes “Concentrated Ore” and is not covered by the said Sr. No. 113 of Notification No.12/2012-Cus and Sr. No.130 of Notification No.50/2017-Cus. The said basis for denying the exemption is totally untenable in law. A bare perusal of the said Sr. Nos.113 and 130 of Notifications Nos. 12/2012-Cus and 50/2017-Cus respectively, would show that they cover "Boron Ores" without any qualification or restriction. Once the CRCL, New Delhi has on test reported that the goods are "Boron Ore" as commonly known, the benefit of the said exemption cannot be denied on the ground that the said Boron Ore is not in its natural state as mined, but has been subjected to the physical process of removing the foreign material, impurities and other substances.

2.5 He also submits that there is no restriction or condition in the said Notifications that the Boron Ore should be in the state or condition in which it is mined i.e. with foreign particles, impurities and other substances. There is no stipulation in the said Notifications that if the Boron ore is imported after removing the foreign particles, impurities and other substances, it would not be entitled to the exemption. By holding that the expression "Boron Ores" appearing in the said Sr.Nos.113 and 130, must be confined and restricted to Natural Boron Ores i.e. Ore in the state and condition in which it is mined without removing the impurities/ foreign particles, the Ld. Commissioner has committed the error of reading into the Notification additional words and conditions which are absent in the Notification. He placed reliance on the following judgments.

(i) Inter Continental (India) v UOI – 2003 (154) ELT 37 (Guj)

(ii) Affirmed in UOI v Inter Continental (India) – 2008 (226) ELT 16 (SC)

(iii) Kantilal Manilal& Co v CC – 2004 (173) ELT 35.

2.6 He also submits that while the Notifications prior to 1st March 2005, viz. Notification No.23/98-Cus (Sr. No.20), Notification No.20/99-Cus (Sr. No.22), Notification No.16/200-Cus (Sr. No.50), Notification No.17/2001-Cus (Sr. No.54) and Notification No.21/2000-Cus (Sr. No.57), all used the expression "Natural Boron Ore", with effect from 1st March 2005, by amending Notification No.11/2005-CUS, the expression "Natural Boron Ore" was replaced by the expression "Boron Ores". The word 'Natural' which qualified Boron Ore in the notifications in force prior to 1st March 2005 was consciously dropped by the amending Notification 11/2005-Cus and subsequent Notifications Nos. 12/2012-Cus and 50/2017-Cus and the singular "Ore" was made into plural "Ores". With effect from 1st March 2005, the exemption is available to all types of Boron Ores and is not restricted or confined to only Natural Boron Ore i.e ore in the condition in which it is mined. The contention in Para 16.3 of the Show Cause notice that the exemption is available only to Natural Boron Ore, is clearly erroneous in view of the dropping of the word 'Natural' from the Notifications with effect from 1st March 2005. The contention that the goods should not be Concentrated Ore and should be in the natural state in which they are mined, without removal of foreign particles and such contention is not tenable in view of the specific and conscious dropping of the word 'Natural' from the Notifications with effect from 1st March 2005.

2.7 He further submits that the Ld. Commissioner seriously erred in holding that the decision in Minerals & Metals Trading Corporation of India v UOI & ors-1983 (13) ELT 1542 (SC) is not applicable in the present case since in the said case the Ore was not subjected to roasting or treatment with chemicals, whereas in the present case the ore is concentrated in Concentrator plant. The said reason advanced by the Commissioner for not following the said decision is totally perverse. In the present case also, it is undisputed that the Ore has not been subjected to roasting or treatment with chemicals. The CRCL, New Delhi has categorically by letter dated 8-7-2020 confirmed that the ore is not calcined and is natural. The Show Cause Notice also accepts that the ore is concentrated by physical processes of removing the foreign material, impurities and other substances. The Hon'ble Supreme Court has clearly held that Ore does not cease to be Ore merely because it is concentrated by removal of impurities and foreign particles. The said decision is therefore squarely applicable to the present case. The changes in the Tariff referred to by the Commissioner make no difference to the applicability of the said decision on the point that concentrated ore is also ore and does not cease to be ore. Therefore, merely because the CTH 252800 speaks of Natural Borates and concentrates thereof, it cannot mean that Concentrated Ore is not Ore. Moreover, the issue here is of the entry in the Notification which simply refers to Boron Ores and the same is not confined to Natural Boron Ores and the same makes no differentiation between Natural Boron ores and Concentrated Boron Ores. He placed reliance on the following judgments.

(i) CC v Hindustan Gas & Industries Ltd - 2006 (202) ELT 693.

(ii) CC v Electro Ferro Alloys P. Ltd- 2007 (217) ELT 302

(iii) ShirBhavani Minerals v CCE-2019 (366) ELT 1041

2.8 He also submits that the Show Cause Notice has in Paras 10.1.6 and 10.2 placed reliance on website of EtiMaden to contend that as per the said website, the B2O3 content of Colemanite ore mined from open quarry is between 27% - 32% and the Colemanite ore is made usable and valuable by EtiMaden by using various mining methods which enriched by physical processes and converted into concentrated boron products. It is contended that by processes of enrichment grinding in hi-tech concentrator facilites the mined Colemanite ore having B2O3 ranging between 27%-32% is enhanced to 40%. However, by Certificate dated 15th February 2021, EtiMaden have clarified that the B2O3 content of their natural borates are not updated frequently on their website since it changes with the nature of the ore vein operated. They have further clarified that the boron lumps have B2O3 content ranging from 38-42% and these are simply powdered and no chemical treatment is done. They have further clarified that the Boric Oxide content differs in every ore vein and that they give specification and certificate of analysis in respect of each shipment. Therefore the contention raised in the show cause notice based on website of EtiMaden which was not updated are untenable.

2.9 He also argued that, in any event, the Show Cause Notice is partly barred by time, having been served after the expiry of the limitation period of two years specified in Section 28(1) of the Customs Act 1962. To the extent the Show Cause Notice extends beyond the normal period of limitation of two years provided in Section 28 (1) of the Customs Act 1962, the same is therefore barred to that extent. The larger period of limitation of five years specified under Section 28(4) of the Customs Act 1962 is inapplicable in the present case since there is no collusion or wilful mis-statement or suppression of facts on part of the importer. The larger period of limitation under Section 28(4) of the Customs Act 1962 had been invoked in the Show Cause Notice on the totally untenable ground that the importer had willfully mis-stated the classification of the imported goods for claiming the benefit of the said Notifications and that in the Bills of Entry the Appellant willfully mis-stated the goods to be Ground Colemanite B2O3 40% Natural Boron Ore instead of Concentrate of Ore. It is settled law that claiming of a particular classification or Notification is a matter of belief on the part of the importer and, the claiming of a particular classification or exemption Notification does not amount to mis-declaration or willful mis-statement or suppression of facts.

2.10 He also submits that the importer had correctly described the goods in the Bills of Entry as Ground Colemanite B2O3 40% Natural Boron Ore which they indeed are as evident from the Test Report of the CRCL, Dehli which the Department is relying upon in the said Notice. The claiming of a particular classification or Notification with which the department subsequently disagrees does not amount to mis-declaration or willful mis-statement or suppression of facts. In this context he placed reliance on the following judgments.

(xxi) Northern Plastic Ltd v Collector – 1998 (101) ELT 549 (SC)
(xxii) CC v Gaurav Enterprises – 2006 (193) ELT 532 (BOM)
(iii) Natwarlal& Co v CC-2012-TIOL-2171-CESTAT-MUM
S. Rajiv & Co. v CC – 2014 (302) ELT 412.
(iv) Lewek Altair Shipping Pvt. Ltd. v CC -2019(366) ELT 318 (Tri- Hyd) Upheld in 2019 (367) ELT A328 (SC)

2.11 He also submits that the contention in the Show Cause notice that the alleged wrongful claiming of classification and exemption Notification amounts to willful mis-statement is totally misconceived and untenable in law. Section 28(4) of the Customs Act 1962 is attracted only in case of willful mis-statement or suppression of facts and as submitted above, issue of eligibility to exemption notification or classification of goods under one heading or another is an issue of law and not a statement of fact.There is absolutely no mis-statement or suppression of any fact, much less any willful mis-statement or suppression of any fact. A number of Bills of Entry were assessed by the proper officer of customs and were not system assessed. As evident from the Examination Order in respect of such Bills of Entry, one of the Mandatory Compliance Requirements Examination Instructions was to “VERIFY THAT THE GOODS ARE BORON ORES” for the purpose of exemption under Sr. 113 of Customs Notification No. 12/2012-Cus dated 17.03.2012 and under Sr. 130 of Customs Notification No. 50/2017 dated 30.06.2017. It is therefore clear that the issue whether the goods are Boron Ores or not was specifically examined in the case of number of Bills of Entry and the exemption benefit was extended by the proper officer of customs after such verification/ examination. Accordingly, it cannot be said that there was any willful mis-statement or suppression of facts on our part. When the proper officer of customs has in a number of Bills of entry extended the exemption after verification and satisfaction that the goods were Boron Ores, the larger period of limitation cannot apply merely because the department subsequently entertains a different view on the scope of the Notification.

3. Shri Sanjay Kumar, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that this is second round of litigation of the same matter. In the remand order dtd. 12.12.2012, the tribunal remanded the matter with following observation:-

> *"We find that the exemption under the aforesaid notification is provided to goods viz. 'Boron Ore'. From the perusal of the finding of the adjudicating authority, the test report of the product shows that the goods is 'Boron Ore' however, the same obtained after removal of impurities. The adjudicating authority has relied upon Wikipedia and Website for the meaning of 'Ore'. In our considered view, when the test reports are available on record, there is no need to go to the website and Wikipedia. Whether the goods will remain as Ore after removal of impurities has been considered in various judgments cited by the appellants. However, the adjudicating authority has not properly considered various defence submission made by the appellants and the judgments relied upon by the appellants.*
> ***5.*** *Accordingly, we are of the view that matter needs to be reconsidered in the light of the test reports and judgments relied upon by the appellant. All the issues are kept open. Impugned orders are set aside. Appeals are allowed by way of remand to the adjudicating authority."*

On examination of the impugned order we find that when the matter is remanded with a specific direction by the higher authority while observing that a particular material on record cannot be the sole basis to determine the duty liability, it is the boundant duty of the lower authority to take into consideration of all the relevant materials on record and then to arrive at proper conclusion. However, in the impugned order, it is seen that the Commissioner totally forgot that he had to carry out the directions as per the Tribunal's order, he virtually tried to sit in appeal over the order of the Tribunal. In para 30.1.10, 30.1.12, 30.01.14, 30.01.16 of the impugned order he again relied upon the Wikipedia and websites for the definition of ore. We fully agree with the arguments of Ld. counsel that since the matter was remanded by the tribunal, the Ld. Commissioner is required to follow the finding and directions in the order of the higher authority and Adjudicating authority cannot go contrary to the finding and directions of the appellate authority, particularly when this Tribunal's order has been accepted by the department as no appeal has been filed against the said tribunal's order.

4.1 On merit of the matter we find that the report of CRCL, New Delhi relied upon in present matter itself clearly established that the imported goods are "Boron Ore". In this regard it is relevant to see the Report of CRCL, New Delhi the copy of which is scanned and reproduced below: -

RUD-10

भारत सरकार
वित्त मन्त्रालय, राजस्व विभाग
केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड
केन्द्रीय राजस्व नियन्त्रण प्रयोगशाला
हिल साइड रोड, पूसा, नई दिल्ली - 110012

Government of India
Ministry of Finance, Department of Revenue.
Central Board of Indirect Taxes & customs
Central Revenues Control Laboratory
Hillside Road, Pusa, New Delhi - 110012
Tel.:011-21520123/25843494 Fax: 011-25843495
Email: dir.crcl-cbec@nic.in
Website:http://crcl.gov.in

F.No. 25-Cus/C- 40-47 /2019-20

Dated: 24.06.2020

To,

The Joint Commissioner of Customs (SIIB)
Office of The Deputy Commissioner of Customs (SIIB)
Custom House, Bhimrad, Althan Road, Althan, Surat
PIN - 395009

Subject: Request for retesting of samples of Boron ore, reg.-

Please refer to your letter F.no. VIII/14-01/SIIB/ Boron Ore/Raj Borax/19-20 dt. 16.06.2020 on the above cited subject, seeking clarification on the test reports issued vide F.no. 25-Cus./C-40 to C-47/2019-20 dt. 04.06.2020 and 05.06.2020. In this regard it is stated that the test report issued by this laboratory is self explanatory. However, point wise reply of queries is as under:

(I,II&VI) Each of the 8 samples are colemanite, a Natural Calcium Borate (Commonly known as Boron Ore).

(III) Each of the 7 sample are in powder form (Crushed/Grinded) except Lab no. CLR-158 (Kestelek Colemanite (-3mm)), which is in the form of powder along with small lumps.

(IV) The samples are not Calcined.

(V) The samples are in the form of Colemanite Mineral.

TA 24.6.20

(Dr.T.A.Sreenivasa Rao)
Joint Director (NFSG)

4.2 We find that the Sr. No. 113 of Notification No. 12/2012-Cus. and Sr. No. 130 of Notification No. 50/2017-Cus., both granted exemption from basic customs duty to "Boron Ores" falling under Customs Tariff heading 2528. The relevant entries of above notifications are reproduced as under :-

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
113.	2528	Boron ores	2.5%	-	-

S. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
130.	2528	Boron ores	Nil	-	-

In view of the above exemption entry Sr. No. of Notification, we find that only two questions which have to be answered are that whether the imported goods falls under Customs Tariff 2528 and whether the imported goods is a "Boron Ore".

4.3 As regard the first question, we find that there is no dispute that the goods fall under Tariff heading 2528 and as regard the second question, the test report of CRCL, New Delhi clearly established that the goods are "Boron Ore". The Test report dtd. 05.06.2020 of CRCL, New Delhi, categorically states that on the basis of the test carried out by the CRCL and the available technical literature the sample is "Mineral Colemanite-a Natural Calcium Borate (Commonly known as Boron Ore). We also find that in the present matter Ld. Commissioner erred in not appreciating that CRCL, New Delhi has by letters dtd. 24.06.2020 and 08.07.2020 addressed to Joint Commissioner, SIIB, in response to the letters of SIIB, reiterated that the sample is ""Mineral Colemanite-a Natural Calcium Borate (Commonly known as Boron Ore)" and same is not calcined. CRCL is the Government Laboratory specifically authorised to test sample for Excise and Customs purposes and their reports are to be respected. Further opinion of the CRCL will prevail over any other authority in matters relating to classification of the products resulting from chemical process as held by the Tribunal in the case of *Rane Brake Linings* v. *C.C.E., Chennnai* reported in 2007 (215) E.L.T. 144.

4.4 In the instant case, the Department had drawn the samples and the testreport of the samples is clearly in favour of the appellants. Since the goods imported by the appellant fall under CTH 2528 and since as per the Test Report of the CRCL, New Delhi the imported goods are "Boron Ore", both the requirement of the said Sr. No. 113 and 130 of Notification No. 12/2012-Cus, and 50/2017 –Cus. respectively are satisfied. Therefore, in our view the goods imported by the appellants are indeed 'Boron Ores', hence eligible to the duty exemption.

4.5 We also find that the Ld. Commissioner in the present matter denied the benefit of above exemption notification on the erroneous ground that exemption under Sr. No. 113 of Notification No. 12/2012-Cus. and Sr. No. 130 of Notification No. 50/2017 –Cus is confined and restricted only to "Natural Ore" i.e naturally occurring raw and native mineral as obtained from the mine and containing various foreign material, impurities and other substance. The Ld. Adjudicating authority held that since the goods imported by the appellant have been subjected to physical process of removing the foreign material, impurities and other substances to physical processes of removing the foreign material, impurities and other substances, the same are concentrated ore and therefore not covered by the said Sr. Nos. 113 and 130. However we find that on bare perusal of the said Sr. No. 113 and 130 of Notification No. 12/2012-Cus and 50/2017-Cus respectively, would show that they cover "Boron Ores" without any qualification or restriction. Once the CRCL, New Delhi has on test reported that the goods are "Boron ore" as commonly known, the benefit of the said Notification cannot be denied on the ground that the said Boron Ore is not in its natural state a mined, but has been subjected to the physical process of removing the foreign material, impurities and other substances. We also find that there is no stipulation in the said Notifications that if the Boron Ore is imported after removing the foreign particles, impurities and other substances, it would not be entitled to the exemption. The presumption of the department that the exemption to "Boron Ores" under Sr. No. 113 of Notification No. 12/2012-Cus and Sr. No. 130 of Notification No. 50/2017-Cus. is available only if the Boron ores is imported with the foreign particles impurities and other substances contained in it when extracted from the mine and that the exemption is not available if the Boron ore is imported after removing the foreign particles, impurities and other substances by physical processes, is totally baseless and untenable in law. The revenue clearly erred in reading into the Notification additional words and conditions which are absent in the Notification.

4.6 We also find that with effect from 01st March 2005, the entry "Natural Boron Ore" in the earlier exemption Notification has been replaced by the entry "Boron Ores". While the Notification No. prior to 1st March 2005, viz Notification No. 23/98-Cus (Sr. No. 20), Notification No. 20/99-Cus (Sr. No. 22), Notification No. 16/2000-Cus (Sr. No. 50), Notification No. 17/2001-Cus(Sr.No. 54) and Notification No. 21/2000-Cus. (Sr.No. 57), all used the expression "Natural Boron ore", with effect from 1st March 2005, by amending Notification No. 11/2005-Cus, the expression "Natural Boron Ore" was replaced by the expression "Boron Ores". Clearly, with effect from 1st March 2005, the exemption is available to all types of Boron Ores and is not restricted or confined to only Natural Boron Ore. Therefore we are of the considered view that the goods imported by the appellant is 'Boron Ores' and clearly eligible for exemption under notifications as claimed by the appellant in the Bills of Entry.

4.7 Coming to the issue of limitation, we find that larger period of limitation under Section 28(4) of the Customs Act 1962 had been invoked in the present matter on the ground that the appellant had willfully –mis-stated the classification of the imported goods for claiming the benefit of aforesaid notification and that in the Bill of Entry the appellant willfully mis-stated the goods to be ground of Colemanite B2O3 40% Natural Boron Ore instead of Concentrate of Ore. However, it is settled law that claiming of a particular classification or notification is matter of belief on the part of the importer and the claiming of a particular classification or exemption notification does not amount to mis-declaration or willful mis-statement or suppression of fact. Issue of eligibility to exemption notification or classification of goods under one heading or another is an issue of law and not a statement of fact. We also find that number of bills of entry were assessed by the proper officer of customs after examination of the goods. The issue whether the goods are Boron ores or not was specifically examined by the officers in the case of number of Bills of Entry and the exemption benefit was extended by the officers after such verification/examination. Accordingly, in our view it cannot be said that there was any willful mis-statement or suppression of fact on appellant's part. The larger period of limitation cannot be applied merely because the department subsequently entrains a different view on the scope of the Notification. Keeping in view the overall facts and circumstances of the case, we do not consider that the ingredients of Section28 are satisfied so as to invoke the extended period of limitation in the present case. Hence the demand for the extended period is not sustainable on limitation also apart from merit.

4.8 Thus, after detailed examination of facts and records we find that the demand of duty and penal action cannot sustain in the facts of the instant case and all the other confirmation such as confiscation of the goods, fines in lieu thereof, penalties on all the appellants being consequential to demand of duty, are also not sustainable.

5. In the result, all the appeals are allowed, with consequential relief, if any, as per law.

(Pronounced in the open court on 08.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi