

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

REGIONAL BENCH-COURT NO. 2

**CUSTOMS Appeal No. 10247 of 2024- DB**

(Arising out of Order in Appeal MUN-CUSTOM-000-APP-191-23-24 dated 09/01/2024 passed by Commissioner of Customs (Appeals), Ahmedabad)

**YARA FERTILIZERS INDIA PVT LTD** .....Appellant  
402, Suyog Fusion, Dhole Patil Road,  
Sangamwadi, Pune - 411 001.

*VERSUS*

**Commissioner of CUSTOMS - Mundra Customs** .....Respondent  
Office of the Pr. Commr. of Customs,  
Custom House, Mundra, Kutch,  
Mundra Port and Special Economic Zone,  
Mundra, Kutch, Gujarat

With

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**APPEARANCE:**

Shri Manish Jain, Advocate for the Appellant

Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

**CORAM:**

**HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA  
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH**

**Final Order No. 10234-10236/2026**

DATE OF HEARING: 25.11.2025  
DATE OF DECISION: 01.04.2026

**SATENDRA VIKRAM SINGH**

1. Following three appeals are involved in the present matter which have been filed by appellant M/s. Yara Fertilizer India Pvt. Ltd., Sangamwadi, Pune.

|                              |   |                             |                             |
|------------------------------|---|-----------------------------|-----------------------------|
| Appeal Particulars           | C/10247/2024                                  | C/10248/2024                | C/10249/2024                |
| Period of Import             | 22.04.2019 to<br>20.06.2019                   | 11.01.2019 to<br>18.03.2019 | 05.07.2019 to<br>08.08.2019 |
| Product description          | Yaraliva Nitrate (Calcium Nitrate with Boron) |                             |                             |
| SCN date                     | 27.08.2020                                    | 27.08.2020                  | 30.06.2021                  |
| Adjudication Order passed on | 27.11.2020                                    | 27.11.2020                  | 09.02.2022                  |
| Appeal Order dated           | 09.01.2024                                    | 09.01.2024                  | 09.01.2024                  |
| Duty demand                  | Rs.34,86,146/-                                | Rs.14,40,032/-              | Rs.8,45,818/-               |

1.1 The appellant imported "YARALIVA Nitrabor Calcium Nitrate with Boron (double salt of calcium nitrate with boron)" from its group company and classified the same under CTH 31026000 of the Customs Tariff Act, 1975. The appellant assessed said goods by claiming benefit of concessional rate of duty at Sr. No. 225(I)(b) of Notification No. 50/2017-Cus. dated 30.06.2017, which reads as under:-

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

1.2 As per revenue, benefit of above Notification is not available to the appellant as the product "YARALIVA Nitrabor Calcium Nitrate with Boron (double salt of calcium nitrate with boron)" imported by them is other than

Calcium Nitrate and the said Notification grants benefit of concessional rate of duty to only Calcium Nitrate. The department issued three show cause notices to the appellant (two of dated 27.08.2020 and third one dated 30.06.2021) proposing denial of benefit of above notification, re-assessment of the said goods and demanding total differential customs duty of Rs.57,71,996/- under Section 28(1) of the Customs Act, 1962 along with interest under Section 28AA and penalty under Section 117 of the said Act.

1.3 The above show cause notices were decided by the Adjudicating Authority as detailed in para 1 above wherein, he after considering the submissions made by the appellant, confirmed the charges made in the show cause notices. By denying the benefit of Notification No.50/2017-Cus dated 30.06.2017, he confirmed the differential duty, along with interest and also imposed penalty under Section 117 of the Customs Act, 1962 upon the appellant. Aggrieved with the said orders, the appellant filed appeals before the Commissioner (Appeals) who vide impugned orders all dated 09.01.2014, confirmed the duty on the appellant along with interest and set aside the penalty imposed on the appellant under Section 117 by taking a lenient view in the matter.

1.4 Aggrieved with these orders, party filed present appeals before the Tribunal.

2. In their appeals, the appellant took the following grounds:-

- It is a settled principle of law that demand of differential customs duty is invalid in absence of an appeal against out of charge order/ Bills of Entry. This position has been affirmed by Hon'ble Apex Court in the case of CCE Kanpur Vs. Flock (India) reported at 2000 (120) ELT 285 (SC), wherein, it was held that if an order appealable under the Act is not challenged, then the order is not liable to be questioned and the matter is not to be reopened in separate proceedings.

- In case of Priya Blue Industries Vs. CC (Preventive) - 2004 (172) ELT 145 (SC), it was held that where finality of the assessment order was confirmed, it cannot be reopened. This position is again affirmed by Hon'ble Apex Court in the case of ITC Vs. CCE, Kolkata reported at 2019 (368) ELT 216 (SC).
- Following decisions are also relied upon in support of above contention:-
  - a) Jairath International Vs. UOI 2019 (370) ELT 116 (P & H).
  - b) Vitesse Export Import Vs. CC (EP), Mumbai - 2008 (224) ELT 241 (Tri. -Mumbai)
  - c) Ashok Khetrapal Vs. CC, Jamnagar-2014 (304) ELT 408 (Tri. Ahmd.)
  - d) Collector of Customs, Cochin Vs. Arvind Export 2001 (130) ELT 54 (Tri. -LB)
  - e) Neelkanth Polymers Vs. CC, Kandla-2009 (90) RLT 188 (Tri. Ahmd.)
- "Yaraliva Nitrabor" imported by them is a water-soluble fertilizer containing calcium nitrate as a major ingredient. Therefore, it is eligible for exemption under Serial No. 225 (I) (b) of Notification No.50/2017-cus.
- The exemption under Sr. No. 225(I)(b) of Notification No.50/2017-Cus. is available to water soluble fertilizers mentioned in Customs Notification which are also included in schedule I, Part A of the Fertilizer Control Order. Calcium Nitrate fertilizer is specified as water soluble fertilizer in Customs Notification. This Sr. No. also grants exemption to other fertilizers which comply to the specific composition of potassium nitrate (13:0:45), but no such requirement is mentioned for Calcium Nitrate which means that exemption shall be extended to all fertilizers which contain calcium nitrate as major constituent and are water soluble, irrespective of other miniscule ingredients.

- The presence of miniscule quantity of boron does not alter the character of fertilizer being a calcium nitrate fertilizer. As per Rule 3(a) of the Interpretative Rules to Customs Tariff, going by the essential character, the goods in question are to be treated as calcium nitrate. Even the customs has treated these goods to be calcium nitrate, a mineral based fertilizer for classification under CTH 31.02,. Addition of 0.3% boron in calcium nitrate does not change the characteristic of the main fertilizer. They rely on the following decisions:-
  - a) Vikram Plasticizer Vs. CCE - 023-VIL-697-CESTAT-AHM-CU. In para 6, it was held that, "Even though miniscule percentage of different chemicals including additive mixed with HDPE, the goods remain as high density polyethylene and therefore, clearly covered under the exempted entry in Notification No. 12/2012-Cus dated 17.03.2012."
  - b) Deepak Fertilisers & Petrochemicals Vs. CC - 2002 (139) ELT 328 (Tri).
- Impugned Orders-in-Appeal have failed to give any finding on acceptance of classification of imported goods under CTH 31026000 and consequent effect of the same. By accepting classification of these goods under CTH 31026000, the customs has also accepted that Calcium Nitrate is the major constituent in the imported goods. As these are essentially calcium nitrate, benefit of above notification is available to them, since imported goods "YARALIVA Nitrabor" have water solubility of 99.5%. The term water soluble fertilizers as used in the said Notification, does not mean 100% water soluble complex fertilizers.
- In absence of any statutory definition, an item given in the tariff should be interpreted in the commercial sense or in common trade parlance. In support, they rely on the decision of Hon'ble Apex Court in the case of CCE, New Delhi Vs. Connaught Plaza Restaurant (P) Ltd. 2012 (286) ELT 321 (SC). As long as imported goods are commercially treated and traded as calcium nitrate, classification adopted should be as calcium

nitrate for the purposes of exemption notification. Hon'ble Supreme Court held that Schedule/Tariff entry of taxing statute should be interpreted in the commercial sense or in trade parlance and not as per its scientific or technical meaning only. They also place reliance on the following decisions:-

- a) Ramavatar Budhaiprasad Vs. Assistant Sales Tax Officer reported (1962) 1 SCR 279: "*'Betel leaves' were held to be not falling under the entry of 'Vegetables' by construing the entry in popular sense.*"
  - b) Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh reported AIR 1967 SC 1454: "*Charcoal was held to be included in 'Coal' in commercial sense even though technically Coal is a Mineral Product while Charcoal is manufactured by Human Agency.*"
  - c) South Bihar Sugar Mills Ltd Vs. Union of India reported in 1978 (2) ELT 336: "*What a Sugar manufacturer produces was held to be known as 'Kiln Gas' and not Carbon Di-Oxide even though one of its constituents was Carbon Di-Oxide.*"
- The impugned Orders-in-Appeal are therefore wrong in upholding the order of the lower authority of denying benefit of above Notification and confirming duty demand.
  - Interest under Section 28AA of the Customs Act, 1962 is not demandable when demand itself is not sustainable. They rely on the decision of Hon'ble Supreme Court in the case of Pratibha Processors Vs. UOI-1996 (88) ELT 12 (SC) where it is held that when duty is not payable due to exemption, there is no occasion or basis to levy any interest, either.
  - In view of the appellant prayed for setting aside the impugned order to the extent it is against the appellant and allow their appeal.

3. During hearing, learned Advocate highlighted the relevant portion of Fertilizer (Control) Order, 1985 to indicate that against entry 1(i) - for "**100% Water Soluble Complex Fertilizer**", - **Calcium Nitrate** has been specified at Sr. No.3 whereas, **Boronated Calcium Nitrate** has been specified at Sr. No.9 against entry No.1 (h) for "**Fortified Fertilizers**". He submitted that Calcium Nitrate being major constituent of Boronated Calcium Nitrate, benefit of Notification No.50/2017-Cus dated 30.06.2017 is allowable to them. He also argues that assessment order in a Bill of Entry being a quasi-judicial order, can only be set aside by the order of the competent appellate authority. The Commissioner (Appeals) has ignored this basic settled position which is not legally tenable. Learned Advocate also pleads that some additives in very minuscule percentage do not change the chemical character of the product as held by this Tribunal in the case of Vikram Plasticizer (cited supra). He also relies on the decision of CESTAT Mumbai in the case of Deepak Fertilisers & Petrochemicals (cited supra) to plead that addition of bentonite clay to sulphur does not affect the exemption Notification, covering "crude or unrefined sulphur". He also takes support of Tribunal's order in the case of DCM Shriram Vs. CCE reported at 2024 (3) TMI 648 wherein, dispute was whether imported Boronated Calcium Nitrate was water soluble fertiliser, or it was fortified fertilizer. The Tribunal in this case remanded the matter to the lower authority for considering the submissions made by the appellant owing to technical composition of goods and then decide the issue.

4. Opposing the prayer, learned AR submitted that Notification No.50/2017-Cus. dated 30.06.2017 grants exemption to water soluble fertilisers included in Schedule 1, part A of the Fertilisers (Control) Order. He submits that Boronated Calcium Nitrate which the appellant has imported, is a fortified fertiliser having solubility of 99.5%. This product is clearly different from Calcium Nitrate covered at Sr. No.225 (I) (b) of the above Notification. He argues that in a catena of decisions by various Hon'ble High Courts as well

as by Hon'ble Apex Court, it has been held that conditions of the exemption Notification are to be strictly interpreted. He relies on the decision of Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company reported at 2018 (361) E.L.T. 577 (S.C.) which has held as under-

*"Tax exemption under a Notification - Burden to prove for its entitlement is on assessee claiming exemption. If there is any ambiguity in exemption Notification, benefit of such ambiguity cannot be claimed by assessee and it must be interpreted in favour of Revenue."*

4.1 Referring to the decision of Hon'ble Supreme Court in the case of Jain Shudh Vanaspati Limited (cited supra), he pleads that show cause notice under Section 28 of the Customs Act, 1962 for demand of duty can be issued without revising under Section 130, order of clearance passed under Section 47 of Customs Act, 1962. In view of these submissions, he prays for upholding the impugned orders by setting aside the appeals of the party.

5. We have considered the rivals submission. The short issue to be decided in this case is whether the appellant is entitled to the benefit of Entry No.225(I)(b) of Notification No.50/2017-Cus dated 30.06.2017 for their product "YARALIVA Nitrabor Calcium Nitrate with Boron (double salt of calcium nitrate with boron)" imported under various Bills of Entries during the period from 22.04.2019 to 08.08.2019. The appellant contends that the product imported by them has Calcium Nitrate as a major constituent and the same has also been classified under CTH 31026000 which covers Calcium Nitrate. Since, Notification extends concessional duty benefit to Calcium Nitrate, hence, the appellate authority has wrongly disallowed them the benefit of above Notification. His another ground is that Revenue has not challenged *out of charge order* given by the concerned officer and therefore, re-assessment of Bills of Entry is not permissible. For this, he relies on various decisions of the Tribunals, Hon'ble High Courts and Hon'ble Supreme Court as cited above. The Revenue on the other hand has come up with proposition that exemption

Notification has to be strictly interpreted as the burden to prove eligibility to a concessional Notification lies on the tax payer and in support of that, they have relied on the decision of Hon'ble Apex Court in the case of Dilip Kumar & Company (cited supra).

5.1 As regards issue of show cause notice for demanding duty without challenging the Bill of Entry or the out of charge order, we find that Hon'ble Supreme Court in the case of Jain Shudh Vanaspati Limited (cited supra) has held that the Revenue can issue show cause notice under Section 28 of the Customs Act, 1962 for demand of duty without revising order of clearance passed under Section 130 of the Customs Act, 1962. Similarly, in the case of Jenefa India Vs. Commissioner of Customs, Tuticorin reported at 2019 (369) E.L.T. 1592 (Tri. - Chennai), it has been held that any non-levy or short-levy as stipulated under Section 28 ibid for issuance of show cause notice can only be by the assessing officer and not by the importer. Hon'ble Supreme Court decision in the case of Priya Blue Industries Ltd. (cited supra) also validated review of assessment by issuing show cause notice under Section 28 of the Customs Act, 1962. Relevant para-6 of the said decision is reproduced below:-

*"6. Notwithstanding the assertions of the learned consultant, we do not find any infirmity in the impugned order. Discernably, Section 28 of the Customs Act, 1962, provides for issue of a show-cause notice, inter alia, where duty has not been levied or short levied. Evidently, any non levy or short levy would only be by the assessing officer and not by the importer. Per contra, the other provisions related to duty not paid and short paid would apply to the importer. We also find merit in the assertions of the Learned Authorised Representative that even in the Apex Court judgment in the case of M/s. Priya Blue Industries Ltd. (supra) has validated the disturbance of an order of assessment by review under section 28 of the Customs Act, 1962. In our opinion, therefore, the ratio laid down by M/s. Priya Blue Industries Ltd., (supra) will not help the case of the appellant herein.-There cannot also be any dispute that the exemption provided in the Notification No. 67/2006-Cus., would never have been eligible' or applicable to goods imported from Pakistan. By seeking to setting aside the appropriate demand of duty in respect of four bills of entry, the appellant is only seeking to wrongly benefit indirectly what they are not entitled to directly. In the circumstances, no merit is found in the appeal, for which reasons, it is dismissed."*

5.2 We also rely on the decision of CESTAT Delhi in the case of Vivo Mobile India Pvt. Ltd. Vs. Principal Commissioner of Customs, New Delhi reported at

(2024) 20 Centax 393 (Tri.-Del) which also held that show cause notice issued without appeal against self-assessment is valid. It holds that assessment can be modified either through appeal to Commissioner (Appeals) or under Section 28 of Customs Act, 1962. Relevant para-42 of the said decision is reproduced below:-

*"42. Thus, the power under section 28 is the power to review the assessment by the proper officer himself and modify it. Such power is not inherently available to any judicial or quasijudicial authority as once the authority passes any order, he becomes functus officio. But where such power is conferred on an authority by law, he can exercise it. All the four judgments of the Supreme Court in Flock India, ITC Ltd, Sayed Ali and Canon India make it more than explicit the nature of the power under section 28 and that an assessment can be modified by resorting to section 28 or on an appeal."*

5.3 In view of the above, we are of a considered view that there is no illegality in issuing the show cause notice for denying the benefit of concessional rate of duty to the appellant. The case laws cited by the appellant are not directly on the said subject and therefore, reliance on the same is misplaced. As regards eligibility to concessional rate of duty under referred Notification, we find that the product, Boronated Calcium Nitrate is imported by the appellant is specified at Sr. No.9 of Entry No.1 (h) covering fortified fertilisers, whereas, "Calcium Nitrate" which is covered under the referred Notification is specified at Sr. No.3 of 100% water soluble complex fertiliser given at category 1(i) of the Fertiliser (Control) Order,1985. Thus, even, the Fertiliser Control Order also treats both the products differently as they have altogether different constituents. For example, in Calcium Nitrate, total Nitrogen (Ammonical and Nitrate form) per cent by wight, minimum is 15.5% whereas in case of Boronated Calcium Nitrate, it is 14.5%. Similarly, Nitrate Nitrogen as N per cent by weight, minimum is 14.5% in Calcium Nitrate whereas, it is 13.5% in case of Boronated Calcium Nitrate. Water soluble Calcium as per cent by weight, minimum is 18.5% in Calcium Nitrate against which it is 17% in Boronated Calcium Nitrate. Further, Calcium Nitrate is 100%

water soluble whereas, Boronated Calcium Nitrate is 99.5% water soluble as per the claim of the appellant himself.

5.4 Keeping these facts in mind, we are of the view that Boronated Calcium Nitrate imported by the appellant is a different product than Calcium Nitrate and therefore, the product is not eligible to concessional rate of duty under Entry No.225(I)(b) of Notification No.50/2017-Cus. We place reliance on the decision of Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company (cited supra) which has held that in case of tax exemption under a Notification, burden to prove for its entitlement is on assessee claiming exemption. If there is any ambiguity in exemption Notification, benefit of such ambiguity cannot be claimed by the assessee and it must be interpreted in favour of the revenue. The above settled legal proposition has been held in a catena of decisions. We also find that Hon'ble Supreme Court in the case of Krishi Upaj Mandi Samiti Vs. CCE, Alwar reported at 2022 (58) GSTL 129 (SC) has held the same again. Relevant paras are reproduced below:-

**"8.** *The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfil the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.*

**8.1** *It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.*

**8.2** *The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.*

**8.3** *As per the law laid down by this Court in a catena of decisions, in a taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining a defined meaning. Strict interpretation of the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it results in absurdity, which is so not found in the present case."*

5.5 In view of the above discussions, we hold that the appellant is not entitled to the benefit of concessional duty under Notification No.50/2017-Cus dated 30.06.2017. We also find that similar issue of eligibility to benefit of Sr. No.202(i)(b) of Notification No.12/2012-Cus dated 17.03.2012 [which corresponds to Notification No.50/2017-Cus dated 30.06.2017] was for consideration before CESTAT Bangalore in the case of very same appellant M/s. Yara Fertilizers India Pvt. Ltd. Vide Final Order No.20078-20079/2026 dated 27.01.2026, it has been held that Calcium Nitrate is a different product than Boronated Calcium Nitrate imported by the appellant and therefore, benefit of concessional rate of duty under Sr. No.202(I)(b) of Notification No.12/2012-Cus dated 17.03.2012 is not available to them. We have no reason to differ with the said findings. We accordingly uphold the impugned orders passed by the learned Commissioner (Appeals) and dismiss the appeals filed by the appellant.

6. All the three appeals are dismissed.

*(Pronounced in the open court on 01.04.2026)*

**(DR. AJAYA KRISHNA VISHVESHA)  
MEMBER ( JUDICIAL )**

**(SATENDRA VIKRAM SINGH)  
MEMBER ( TECHNICAL )**