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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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F.No. 371/81/DBK/13-RA / 2393

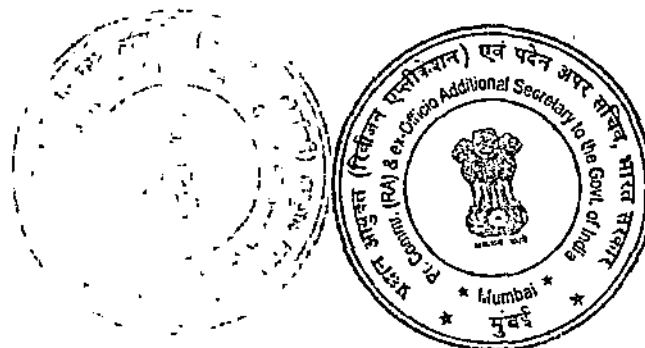
Date of Issue 14/12/2018

ORDER NO. ¹⁰⁵⁸ /2018-CUS (WZ) / ASRA / MUMBAI/ DATED 29.11.2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR
MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION
129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/S.Boron Carbide (India) Pvt Ltd.,

Respondent : Commissioner of Customs, Custom House, Kandla.

Subject : Revision Application filed, under Section 129DD of
the Customs Act, 1962 against the Order-in-
Appeal No.S-49-243/CUS/KDL/2012 dated
26.06.2013 passed by the Commissioner of
Customs (Appeals),Kandla-380009.

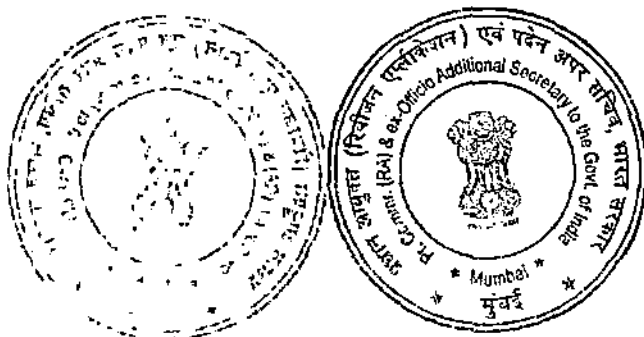


ORDER

The Revision Application is filed by M/S.Boron Carbide India Pvt Ltd., having office at 3rd Floor, Bhukhanvala Chambers, B-28, Veera Industrial Estate, Andheri (West), Mumbai-400053 against the Order in Appeal No. No.S-49-243/CUS/KDL/2012 dated 26.06.2013 passed by Commissioner of Customs, (Appeals),Kandla in respect of Order in OriginalNo.KDL/671/AC/MANISH/Gr.II(A)/2012-13 DATED 17.04.2012 passed by the Assistant Commissioner of Customs. Custom House, Kandla.

2. Brief facts of the case are that M/s. M/S. M/S.Boron Carbide India Pvt Ltd filed Bills of Entry for clearance of 24.50 MTs of Boric Acid with a declared value of Rs.6, 03, 586/ (Rupees Six Lakh Three Thousand Five Eighty Six).The "Boric Acid" being an insecticide mentioned in the Schedule to the Insecticide Act,1968 and requires registration by the importer for the import of Boric Acid from the Central Committee Insecticides Board and Registration under the provisions of the Insecticides Act,1968 as pre-condition for import. The CBEC Board Circular No.61/2004-Cus dated 28.10.2004,however,relaxes the requirement of registration if the imported Boric Acid is for non-insecticidal use on the basis of End Use Certificate issued by the concerned Administrative Ministry/Department of Government of India.

3. The applicants have furnished End-Use certificates issued by the BARC, Mumbai. The Department, however, issued a Show-Cause Notice for noncompliance with Board Circular No.61/2004-Cus dated 28.10.2004.Meanwhile, applicants filed Writ Petition before the Hon'ble High Court of Gujarat seeking quashing of SCN and although the Hon'ble High Court had granted interim relief by way of release of goods, but no stay was granted on the adjudication of the SCN. Therefore, the SCN was adjudicated vide Order-in-Original No. KDL/671/AC/MANISH/Gr.II (A)/2012-13 DATED 17.04.2012.



4. Aggrieved by the said Order, the applicants preferred an appeal with Commissioner (Appeal), Kandla and the Commissioner (Appeal) upheld the Order of the Original Authority as legal and proper.

5. The instant Revision Application is filed contesting the Commissioner (Appeals) Order with the following submissions:

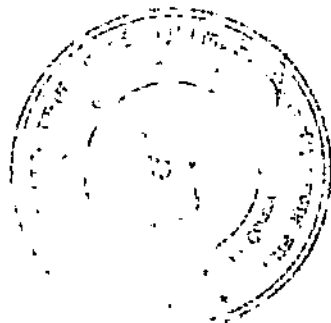
i) that the End use Certificate issued by the BARC shall be accepted as equivalent to the certificate issued by the administrative ministry under Board Circular 61/2004 and necessary direction for acceptance of the same by the Original authority.

ii) the penalty imposed on the applicants under Section 112 should be set aside.

6. The applicants vide letter dated 30.05.2014 was asked to furnish documents including statement of facts and grounds of Appeal to the Revision Application Personal and they have neither submitted the documents nor appeared before the Government.

7. The Government has taken up the application as to examine its maintainability. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the applicant's submissions in Revision Application.

8. The subject of the matter of the Revision Application is the name of the Administrative Ministry of the Government of India as specified in para 2(ii) of Board Circular No.61/2004, which is authorised to issue a certificate of end-use regarding non-insecticidal use of imported Boric Acid. The Government finds that the matter does not fall under the purview of Section 129 DD of the Customs Act, 1962 and therefore, the Revision Application is without jurisdiction and the applications are liable to be dismissed.



9. In view of the above discussion and findings, the Government rejects the Revision Application as not maintainable and the applicants are at liberty to approach the appropriate forum.

10. So ordered.

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. ¹⁰⁵⁸ /2018-CUS (WZ) /ASRA/MUMBAI DATED 29.11.2018

To,

M/S. M/S.Boron Carbide India Pvt Ltd,
3rd Floor, Bhukhanvala Chambers,
Veera Industrial Estate, Andheri (West),
Mumbai-400053.

Copy to:

1. The Commissioner of Customs, Custom House, Kandla.
2. The Commissioner of Customs (Appeals), Kandla.
3. Assistant Commissioner of customs, Custom House, Kandla.
4. Sr. P.S. to AS (RA), Mumbai
- ~~5.~~ Guard File.
6. Spare Copy.

