

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 21028 of 2015**

(Arising out of Order-in-Original No. COC-CUSTOM-000-COM-41-14-15 dated 28.01.2015 passed by the Commissioner of Customs, Cochin.)

**M/s. Maliakkal Industrial  
Enterprises**

D. No.XXI / 1773, Palluruthy,  
Kochi - 682 006.

Appellant(s)

*VERSUS*

**The Commissioner of Customs**

Customs House,  
Kochi - 682 009.

Respondent(s)

**WITH**

**Customs Appeal No. 21153 of 2015**

(Arising out of Order-in-Original No. COC-CUSTOM-000-COM-41-14-15 dated 28.01.2015 passed by the Commissioner of Customs, Cochin.)

**The Commissioner of Customs**

Customs House,  
Kochi - 682 009.

Appellant(s)

*VERSUS*

**M/s. Maliakkal Industrial  
Enterprises**

D. No.XXI / 1773, Palluruthy,  
Kochi - 682 006.

Respondent(s)

**APPEARANCE:**

Shri Kuryan Thomas, Advocate for the Assessee.

Shri Maneesh Akhoury, Asst. Commissioner (AR) for the Revenue

**CORAM:**

**HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 21935 - 21936 / 2025**

DATE OF HEARING: 12.08.2025

DATE OF DECISION: 05.12.2025

**PER: R. BHAGYA DEVI**

These two appeals Appeal No.C/21028/2015 filed by the appellant M/s. Malliakkal Industrial Enterprises and C/21153/2015 filed by the Revenue are against common Order-in-Original dated 28.01.2015 passed by the Commissioner of Customs, Cochin.

2. The appellant M/s. Malliakkal Industrial Enterprises imported 29 consignments of boric acid/boric acid anhydrate during 19.10.2005 to 26.06.2013. Notification No.2 (RE 06)/2004-2009 dated 07.04.2006 (Sl.No.7) stipulated that import of boric acid for non-insecticidal purposes shall be permitted only on the basis of Import Permit issued by Central Insecticide Board and Registration Committee under the Ministry of Agriculture. At the time of import, the appellant did not furnish the requisite Import Permit, hence, were not allowed to clear the goods. The appellant approached the Hon'ble High Court of Kerala and the Hon'ble High Court vide order dated 15.02.2012 in Writ Petition No.1577 of 2006 (K) held that as per Section 38(b) of the Insecticide Act 1968, if goods falling under the purview of the above Act were imported for non-insecticidal use, provisions of the Act would not apply and hence the condition in the import policy requiring importers to get registered under the Insecticide Act, 1968 for applying for licence to import boric acid was arbitrary and unsustainable. This

order was challenged by the Revenue and the Division Bench of the Hon'ble High Court of Kerala vide Order dated 03.06.2014 in Writ Appeal No.648/2012 set aside the order of the Single Bench. During the interregnum period, based on the directions of the Hon'ble High Court, the imports of boric acid were permitted after execution of bond in terms of Section 18 of the Customs Act, 1962. The Revenue issued show-cause notice dated 01.10.2014 under Section 124 read with Section 143 of the Customs Act, 1962 alleging that the goods were liable for confiscation under Section 111(d) of the Customs Act, 1962 read with Section 3(3) of the FT(D&R) Act, 1992 and were liable for penalty under Section 112(a) of the Customs Act, 1962. This show-cause notice was adjudicated and the Commissioner in the impugned order held that the goods were liable for confiscation and accordingly, imposed a penalty of Rs.4,00,000/- on the appellant under Section 112(a) of the Customs Act, 1962. Aggrieved by this order, the appellant is in appeal before this Tribunal. Revenue has also filed an Appeal No.ST/21153/2015 against the same impugned order dated 27.01.2015 on the ground that the adjudicating authority erred in setting aside the redemption fine and imposed less penalty, which is required to be redetermined.

3. The Learned Counsel on behalf of the appellant submitted that the direction of the Revenue to obtain permit from the Central Insecticide Board and Registration Committee was challenged by the appellant before the Hon'ble High Court of Kerala and based on the Hon'ble High Court directions, the Revenue permitted clearance of boric acid consignments on payment of duty and the same was released on execution of a

bond by the appellant. The Writ Petition which was in favour the appellant was challenged by the Revenue and the Division Bench of Hon'ble High Court of Kerala held against the appellant by setting aside the order of the Single Bench. Pursuant to that, the show-cause notice was issued under Section 124 and 143 of the Customs Act, 1962 proposing confiscation and penalty. It is submitted that the goods were provisionally cleared based on the orders of the Hon'ble High Court, hence, the provisions of Section 111(d) for confiscation and Section 112(a) for imposition of penalty cannot be invoked. It is also submitted that the end-use condition of the bond that the imports to be used for industrial purpose only was satisfied and therefore, confiscation or penalty does not arise. Further, the appellant submits that the provisions of Section 124 and 143 could not have been invoked as the bond executed by them was a Provisional Duty (PD) Bond under Section 18 of the Customs Act, 1962.

4. The learned Authorized Representative for the Revenue submitted that it is a fact that import permit was required from Central Insecticides Board and Registration Committee at the time of clearance of the impugned products as is held by the Division Bench of the Hon'ble High Court of Kerala. The appellant had failed to produce the same at the time of import. Though the goods were released provisionally based on the directions of the Hon'ble High Court of Kerala, the fact still remains that the substantial condition of import was not satisfied by the appellant, hence, as per the bond, the goods were liable for confiscation and penalty was rightly imposed.

5. Heard both sides. The undisputed facts are that the appellant vide 29 Bills of Entry imported boric acid for non-insecticidal purposes and as per the Notification, they were allowed to import only on production of a registration certification from the concerned authorities. Rejecting this direction of the Revenue, the appellant filed Writ Petition and pending the decision on the issue the impugned goods were cleared provisionally as per the directions of the Hon'ble High Court of Kerala. The order dated 07.02.2007 of the Hon'ble High Court is reproduced below:

23 Annexure - A21

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

The Honourable Mr. Justice Thottathil B. Radhakrishnan

Wednesday the 7th day of February 2007/18th Magha 1928

W. P. (C) No. 4168/2007 U. P. No. 1280

Petitioner:-  
Maliakkal Industrial Enterprises, Palluruthy,  
Kochi-682 006, rep. by its Sole Proprietor,  
Joseph Maliakkal.

Vs.

Respondents:-

1. The Union of India, rep. by the Secretary,  
Ministry of Finance, Department of Revenue,  
North Block, New Delhi-110 001.
2. The Director General of Foreign Trade,  
Department of Commerce, Ministry of Commerce and Industry,  
Government of India, New Delhi.
3. The Central Board of Excise and Customs, Ministry  
of Finance (Department of Revenue), New Delhi-110 001.
4. The Central Insecticides Board, and Registration Committee,  
Directorate of Plant Protection, Quarantine and  
Storage, NH-IV, Faridabad - 121 001, Haryana,  
rep. by its Secretary.
5. The Commissioner of Customs, Custom House,  
Cochin-682 009.
6. The Deputy Commissioner of Customs, (Imports),  
Custom House, Cochin-682 009.

Writ petition praying inter alia that in the circumstances stated in the affidavit filed along with the W.P.(C) the High Court be pleased to grant a stay of operation of Ext.P5 Notification to the extent it mandates that imports of Boric Acid by traders can be effected only after they get an import permit issued by the Central Insecticides Board & Registration Committee, and further direct the 5th and 6th respondents to permit provisional clearance of the consignments covered by Bill of Entry No.193389 dated 31.01.2007 on payment of the entire duty payable on the same pending disposal of this writ petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of W.P.(C) and upon hearing the arguments of Mr. A.M. Shaffique, Advocate for the petitioner the Court passed the following:-

**ORDER**

Assistant Solicitor General takes notice for respondents. Goods covered by Ext.P6 shall be released to the petitioner provisionally on payment of the entire duty due on the said goods.

Tag along with Exts.P2 & P4 Writ Petitions.

07.02.2007 Sd/-Thottathil B.Radhakrishnan, Judge.

/True copy/

Assistant Registrar

Ext.P2 : True copy of the order dt.7.4.05 in WF(C)No.11388/C5 E passed by this Hon'ble Court

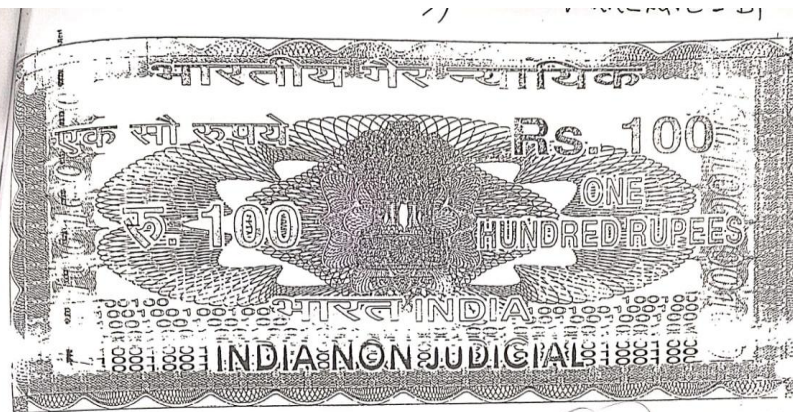
Ext.P4 : True copy of the interim order passed by this Hon'ble Court in IA.13600/06 in W.P.(C)No.1577/06 dt.29.9.06.

Ext.P6 : True copy of the Bill of Entry dt.31.1.2007 NO.193389.

Ext P5. True copy of the notification no. 2 (CRB-2006)

mnz. 2007 - 2009. dt. 07.07.2006

Accordingly, the Revenue cleared the goods on the basis of a PD bond reproduced below:



കേരളം കേരल KERALA

U 236029

**P.D BOND**

KNOW ALL BY THESE PRESENTS THAT, I, Joseph Maliakkal, aged 70 years, S/o Maliakkal Kunjuwarred and Authorised Signatory of M/s. Maliakkal Industrial Enterprises, XXI/1773, Palluruthy, Kochi- 682 006 hereinafter referred to as the "Importer" which expression shall unless or excluded by or repugnant to the context include their successors hereby firmly bind ourselves unto the President of India (hereinafter referred to as the Government) to pay demand and without demur Rs 32,39,531.00 (Rupees Thirty Two Lakhs Thirty Nine Thousand Five Hundred and Thirty One only) the difference between the duty finally assessed under Sub Section 2 of section 18 of the Customs Act, 1962 read with the Customs Provisional duty assessment Regulations 1963, by the Commissioner of Customs, Cochin, hereinafter called the Commissioner, which expression shall include the person for the time being performing the duties of the commissioner of Customs, Cochin and the duty of provisionally assessed by the Commissioner in respect of the said goods under Sub-Section 1 of section 18 of the Customs Act, 1962 as per Order in IA 4382 /2007 in W. (C) No. 4168 / 2007 of The High Court of Kerala.

Scaled with our seal with this the 27<sup>th</sup> June 2013.

Contd...2

For MALIAKKAL INDUSTRIAL ENTERPRISES

JOSEPH MALIAKKAL  
Sole Proprietor

AMONCE JACOB  
ADVOCATE & NOTARY  
CC. 38/6207 G,  
ALAPPAI CROSS ROAD, KOCHI-15  
Mob: 94472 14640

Maliakkal Industrial

... 2...

The Commissioner of Customs (hereinafter called the proper Officer) has agreed to make provisional assessment of the goods described in schedule below imported by the importer as per Order in LA 500 / 2013 in W.A No. 617 / 2012 of The High Court of Kerala and Proper Officer has agreed to allow clearance of the goods subject to the Importer agreeing to furnish such bond as in herein contained.

NOW THE CONDITIONS OF THE ABOVE BOND ARE SUCH THAT:

1. If the Importer pays to the President the difference between the duty finally assessed and duty provisionally assessed in respect of the goods mentioned in the schedule. Or
2. If the Importer pays to the President any penalty for importation of the goods or part thereof without a valid Registration Certificate from the Central Insecticides Board.

THEN THE ABOVE WRITTEN BOND SHALL BE VOID AND OF NO EFFECT OTHERWISE THE SAME SHALL REMAIN IN FULL FORCE AND VIRTUE.

1. This bond is given under the orders of the Central Government for performance of an Act in which the public are interested.
2. The President through the Commissioner of Customs, Cochin or other officer may recover the amount due in the manner laid down in Sub-Section 142 of the Customs Act, 1962, without prejudice to any other mode of recovery.
3. No further consignments of Boric Acid will be received / imported by us till finalization of the issue .
4. We will produce documentary evidence certified by Assistant / Deputy Commissioner of jurisdictional Central Excise or by an Independent Chartered Accountant to the satisfaction of the Deputy Commissioner of Customs (Appraising Imports) to show that the goods covered under this Bill of Entry are used only for industrial purposes as ordered by the Hon'ble High Court of Kerala.

Contd....3

6. Again, on 23<sup>rd</sup> July 2013 the Hon'ble High Court issued another order for provisional release on the condition that the goods are used only for industrial purposes. The order is reproduced below:

30

Annexure - A6

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE THE CHIEF JUSTICE DR. MANJULA CHELLUR

&

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

Tuesday, the 23<sup>rd</sup> day of July 2013, 1<sup>st</sup> Sravana, 1935

IA. 500/2013 IN WA No. 617/2012

Against Judgement dated 15/02/2012 in WPC.4168/2007 of this Court

PETITIONER/1ST RESPONDENT IN WRIT APPEAL:

MALIAKKAL INDUSTRIAL ENTERPRISES  
PALLURUTHY, KOCHI-682006  
REPRESENTED BY ITS SOLE PROPRIETOR  
JOSEPH MALIAKKAL.

RESPONDENTS/APPELLANTS & RESPONDENTS 2 & 3 IN WRIT APPEAL:

1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI-110001.
2. THE DIRECTOR GENERAL OF FOREIGN TRADE, DEPARTMENT OF COMMERCE, MINISTRY OF COMMERCE AND INDUSTRY, GOVERNMENT OF INDIA, NEW DELHI-110011.
3. THE CENTRAL BOARD OF EXCISE AND CUSTOMS, MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NEW DELHI-110011.
4. THE COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, COCHIN-682009.
5. THE DEPUTY COMMISSIONER OF CUSTOMS (IMPORTS), CUSTOMS HOUSE, COCHIN-682009.
6. THE CENTRAL INSECTICIDES BOARD AND REGISTRATION COMMITTEE, DIRECTORATE OF PLANT PROTECTION, QUARANTINE AND STORAGE, N H-IV, FARIDABAD, HARYANA, REPRESENTED BY ITS SECRETARY.
7. BORAX MANUFACTURERS ASSOCIATION OF INDIA, 113/5A, MITTAL INDUSTRIAL ESTATE, M.V. ROAD, ANDHERI (EAST), MUMBAI-400055, REPRESENTED BY ITS SECRETARY AND CONSTITUTED ATTORNEY, MR. SAJAL JAIN.

Petition praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to direct the 5th respondent to permit the petitioner to clear the consignment, presented for clearance as per bill of entry No.2540105 dated 26.06.2013, without insisting production of Import Permit issued by the Central Insecticide Board and Registration Committee under the Ministry of Agriculture.

This petition coming on for orders and upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of SRI. E.K.NANDAKUMAR (SR.) and SRI. P.GOPINATH MENON for the petitioner, SRI JOHN VARGHESE, SC, CENTRAL BOARD OF EXCISE, for R1 to R5, SRI.P.J.PHILIP, C.G.C, for R6 and SRI.SANTHOSH MATHEW for R7, the court passed the following:

**MANJULA CHELLUR, C.J. & K. VINOD CHANDRAN, J.**

**I.A.No.500 of 2013 in W.A.No.617 of 2012**

**Dated this the 23<sup>rd</sup> day of July, 2013**

**Order**

**Manjula Chellur, C.J.**

Heard on direction petition, I.A.No.500 of 2013. The very fact that as the appellate authorities allowed two consignments subsequent to the grant of stay of the judgment of the learned Single Judge, we are of the opinion, the consignment which is already received by the first respondent, the petitioner in the I.A., shall be allowed to take the consignment. However, it is made clear that further consignments need not be cleared as there is already stay granted and hereafter, no further consignments are received by the first respondent. It is also made clear that the consignment received by the first respondent shall be used only for industrial purposes.

The matter can be disposed of on merits, if all the parties are ready. List it after two weeks.

Sd/-

**MANJULA CHELLUR  
CHIEF JUSTICE**

Sd/-

**K.VINOD CHANDRAN  
JUDGE**

srd

*True copy*

*Manjula Chellur V.V.*  
*Assistant Registrar*

7. There are 29 Bills of Entry involved in this appeal as listed below which are for the period from 19.10.2005 to 26.06.2013.

Admittedly, Sl. No. 28 & 29 were imported prior to Notification No. 6/2004-2009 dated 07.04.2006 and are not part of the dispute. For the remaining Bills of Entry, the imports are between 30.05.2006 to 26.06.2013.

S.NO.	Bond Number	Bill of Entry NO.	Date	Assessable Valule
1	2000508927	2540105	26.06.13	32,39,531
2	2000400385	8828808	21.12.12	33,51,180
3	2000400387	8828792	21.12.12	23,45,826
4	2000339413	7771235	27.08.12	23,73,399
5	2000261914	6279287	16.03.12	9,97,880
6	2000269222	6566152	17.04.12	21,84,630
7	2000207445	5343042	30.11.11	21,23,121
8	2000150756	4523393	02.09.11	18,80,620
9	2000126780	4137453	21.07.11	16,08,425
10	2000123593	4045568	12.07.11	8,04,213
11	2000052773	2879878	03.03.11	14,77,024
12	2000052777	2879930	03.03.11	21,80,918
13	2000020748	3519	05.10.10	20,44,886
14	200223086	273806	14.07.10	14,14,049
15	200222369	265934	24.03.10	20,35,433
16	200221317	254906	29.09.09	10,02,018
17	200221229	254083	16.09.09	20,53,520
18	200220871	250001	17.07.09	9,85,972
19	200219214	235474	06.11.08	13,55,065

20	200218992	232620	24.09.08	10,56,612
21	200218440	226803	04.07.08	12,57,475
22	200216844	213615	17.12.07	8,13,020
23	200216738	212910	05.12.07	12,19,530
24	200215533	203072	11.07.07	20,93,755
25	200214414	193389	31.01.07	4,51,470
26	200213426	186462	25.09.06	14,46,401
27	200212745	179161	30.05.06	14,01,587
28	200211563	171538	02.01.06	14,28,382
29	200210810	167744	19.10.05	3,19,310
			<b>TOTAL</b>	4,69,45,252

8. During this period, the consignments were provisionally cleared based on the directions of the Hon'ble High Court and also it is to be noted that the Hon'ble High Court of Kerala at Ernakulam in the appellant's Writ Petition (**Maliakkal Industrial Enterprises Versus Union of India 2013 (290) E.L.T. 330 (Ker.) (15-2-2012)**) observed as follows:

"8. .... According to me, for valid imposition of such a condition on importers, Section 38 of the Insecticides Act, 1968 should have been qualified by words like, "subject to provisions of the export-import policy", "except otherwise provided for in any other law for the time being in force", which is not the case here. Or else, an appropriate provision should be made in the Foreign Trade (Development and Regulation) Act, 1992, or at least in the import policy, making it obligatory on the authorities under the Insecticides

Act, to consider applications for registration of boric acid, which is not intended for use as an insecticide. In the above circumstances, I have no doubt in my mind that the impugned condition in the import policy requiring the petitioners to take out a registration under the Insecticides Act, 1968, for applying for licence to import boric acid is arbitrary and unsustainable and is liable to be quashed. I do so”.

Thus, it is pertinent to note that the Hon’ble High Court (Single Bench) during the period of dispute had clearly held that the appellant was not required to produce the registration certificate. However, the Division Bench on appeal by the Revenue had set aside the above decision of the Hon’ble High Court (Single Bench) and held that registration certificate was necessary for the imports. The Division Bench on appeal filed by the Revenue **(Union Of India Versus Maliakkal Industrial Enterprises 2015 (330) E.L.T. 924 (Ker.) (3-6-2014)** observed as follows:

“3. A learned Single Judge allowed the writ petitions (four in number). The writ petitions have been allowed on two grounds. It was firstly found that subordinate legislation should not only be in conformity with the Constitution and parent legislation, but it also must conform to any other law made by the legislature. It was accordingly found that imposition of condition of registration under the Act, in respect of insecticides which were imported for non-insecticidal purposes, was contrary to the Act in view of Section 38 of the Act, which exempted insecticides which were imported meant to be used for non-insecticidal purposes. The next ground on which the writ petitions were allowed was that requiring the importers to get themselves registered under the Act was arbitrary and it was unworkable since the Act did not apply to insecticides imported for non-insecticidal purposes. Registration was not contemplated in respect of such insecticides and it could also be

refused by the authorities. Another learned Single Judge allowed one of the writ petitions [W.P.(C) No. 11388/2005] following the judgment of the learned Single Judge in the batch of writ petitions.....

.....

**55.** No doubt, if the restriction had not been imposed by law (the amendment on 7-4-2006 to the statutory policy), the question would arise as to what is the effect of executive instructions on the right to import boric acid as per the statutory policy till the date of the amendment that is 7-4-2006. An executive order cannot impinge on a legal right. There was a right available under the extant statutory policy before the amendment. It could be said that an executive order could not have imposed a restriction on the right available under the policy. But, after the amendment with effect from 7-4-2006 the issue is purely academic as restriction is placed by statutory amendment”.

9. The Review Petition against the above order filed by the appellant was also dismissed (**Maliakkal Industrial Enterprises Versus Union of India 2017 (353) E.L.T. 172 (Ker.) (dated 28-2-2017)**) observing as follows:

**16.** The learned counsel for the review petitioners submits that though the liability initially mulcted upon by the Commissioner was to a nominal extent, it has now been sought to be enhanced by filing an appeal at the instance of the Department and hence the grievance. This Court does not intend to express any opinion with regard to the quantification of the liability, either towards the duty or the penalty, as it is open for the review petitioners to have the same challenged by way of appropriate proceedings in accordance with law.

**17.** Before parting with the case, it is necessary to make an observation that the common judgment was passed by the Division Bench of this Court nearly 2½ years ago. Despite the specific

observation made by the Bench in Paragraph 45 as to the course being pursued in respect of 'Local manufacturers', the fact remains that they are still to obtain the registration, though their application is stated as pending, as put forth by Mr. Santhosh Mathew - the learned counsel appearing for the 6th respondent. Absolutely no explanation is forthcoming from the part of the Government, as to the delay involved, virtually permitting the 'Local manufacturers' to deal with the product without getting any registration envisaged under the relevant provisions of law. This being the position, the plea of 'discrimination' raised by the review petitioners, which was 'left open' by the Division Bench assumes more importance. It is open for the review petitioners to pursue appropriate proceedings, in accordance with law, for redressal of the grievance, by virtue of the right reserved in Paragraph 53 of the common verdict, extracted already.

**18.** With the above observations, interference is declined and the review petitions are dismissed”.

10. From the above discussions, it is clear that the imports made by the appellant have been cleared under the directions of the Hon'ble High Court and during the relevant period of dispute, the Hon'ble High Court had held in favour of the appellant. The decision of the Division Bench of the Hon'ble High Court dated 03.06.2014 was much later after the imports had taken place. Moreover, the Division Bench of the Hon'ble High Court of Kerala vide order dated 23.07.2013 had also held that the consignment already cleared provisionally by the appellant shall be used only for industrial purposes. Accordingly, the Revenue vide letter dated 30.07.2013 (reproduced below) had directed the appellant to produce evidence to the effect that the impugned goods are used only for industrial purposes. The appellant in turn complying with the above condition produced various end-use

certificates vide letter dated 09.10.2014 (reproduced below) indicating that the consignments were used for industrial purposes only.



सीमाशुल्क आयुक्त का कार्यालय  
OFFICE OF THE COMMISSIONER OF CUSTOMS  
सीमाशुल्क गृह CUSTOM HOUSE: कोचिन COCHIN-682 009

दूर भाष Tel: 0484-2666328, 2666861 to 64, Fax 0484-2668468

F.No. S32/135/2013 AP(I) Cus

BY Regd. Post AD

Dated: 30.07.2013

To

✓ M/s Maliakkal Industries Enterprises,  
D.No. XXI/1773, Palluruthy,  
Kochi-682011

G'men,

Sub: Clearance of Boric Acid imported vide Bill of Entry No. 2540154 dated 26.06.2013 as per the Order of Hon'ble High Court of Kerala in I A 500/2013 in WA 617/2012 – reg.

1. Please refer to your letter No.NIL dated.26.07.2013 on the above subject.
2. In this connection, you are directed to submit a Bond for provisional Clearance of the consignment. In addition to the normal conditions the following conditions may also be incorporated in the Bond.

"As per Order of Hon'ble High Court of Kerala in I.A 500/2013 in W.A 617/2012 we hereby undertake that,

- a. No further consignments of Boric Acid will be received / imported by us till finalization of the issue.
  - b. We will produce the documentary evidence certified by the Assistant / Deputy Commissioner of the Jurisdictional Central Excise or by an Independent Chartered Accountant to the satisfaction of the Deputy Commissioner of Customs (Appraising Imports), to show that the goods covered under this Bill of Entry are used only for industrial purpose as ordered by the Hon'ble High Court.
3. The Bond in proper form may be produced at the earliest so as to order clearance of the goods after payment of appropriate duties of Customs.

Yours faithfully,

(B LOKNATHA REDDY)  
ASST. COMMISSIONER OF CUSTOMS (APPG. IMPORT)

Copy to:

M/s The General Shipping & Forwarding Services, Customs Brokers,  
Ninan's Building, P B No. 523, Willingdon Island, Cochin-682003.

THAJUDEEN & ASSOCIATES  
CHARTERED ACCOUNTANTS

No.36/2126, 1st Floor  
Mathilicherril, Kaloor  
Shenoy Road  
Kochi-682 017  
Tel.2533033

CERTIFICATE

09-10-2014

With regard to the imports of Boric Acid Powder and Boric Acid granular by M/s Maliakkal Industrial Enterprises XXI/1773, Palluruthy, Kochi-682006 under various Bills of Entry, we hereby certify as follows:

It is certified that we, Thajudeen & Associates are the Statutory Auditor / Chartered Accountant of M/s Maliakkal Industrial Enterprises.

Boric Acid (ITCHS 28100020) is an industrial input and falls under Serial number 103 (2) in List A-Industrial Inputs SL No.66 under Third Schedule of The Kerala Value Added Tax Act, 2003.

As Statutory Auditor / Chartered Accountant of M/s Maliakkal Industrial Enterprises, We hereby certify that we have verified the Bills of Entry of imports of Boric Acid and corresponding invoices of sale, sales registers and supporting documents like Purchase Order, Transport documents etc for the period 01-04-2005 to 31-07-2014. Based on said verification, It is certified that the importer M/s Maliakkal Industrial Enterprises has sold the goods imported, Boric Acid Powder and Boric Acid granular to registered and genuine buyers for Industrial purpose as raw material / industrial input only.

We further certify that the goods imported, Boric Acid Powder and Boric Acid granular under the Bills of entry have been sold under various sales invoices and on each such sale, appropriate VAT/CST had been paid to the concerned Commercial Tax authorities and the copies of Sales Invoices had been already submitted to Customs department for the purpose of Refund claim of AD4% under Notification No.102/2007 dated 14-09-2007

For Thajudeen & Associates  
Chartered Accountants,

  
Roy Varghese B Com FCA  
Partner  
Membership No. 326211



11. In view of the above, I find that during the disputed period, the consignments were cleared on the directions of the Hon'ble High Court of Kerala and the directions of the Revenue to comply with the condition that it will be used only for industrial purpose also stands complied. Hence, the question of imposing penalty under Section 112(a) does not arise. Also taking into consideration the fact that the Commissioner in the

impugned order held that since the goods are not physically available cannot be confiscated nor redemption fine be imposed. I do not find, any irregularity in clearance of the imports to attract penalty under Section 112(a) of the Customs Act, 1962. Moreover, it is a fact that the bond is executed under Section 18 while the show-cause notice is issued under Section 124 read with Section 143 of the Customs Act, 1962, which is not in accordance with provisions of Section 18 of the Customs Act, 1962. Accordingly, the penalty is set aside and the appeal No.C/21028/2015 filed by the appellant is allowed.

12. In Appeal No. C/21153/2015, the Revenue is in appeal on the ground that the Commissioner had failed to impose redemption fine under Section 125 of the Customs Act, 1962 and in not imposing commensurate penalty under Section 112(a). For the reasons discussed above, since the goods were cleared based on the directions of the Hon'ble High Court of Kerala, we do not find any reason to impose redemption fine and penalty, in the circumstances, the goods were imported and cleared. Consequently, the appeal filed by the Revenue is rejected.

Appeal No. C/21028/2015 is allowed and Appeal No. C/21153/2015 is dismissed.

(Order pronounced in Open Court on 05.12.2025.)

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

rv