

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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 10666 of 2018

(Arising out of Order-in-Original No. MUN-CUSTM-000-17& 18-17-18 dated 16.02.2018 passed by Commissioner of Customs-Mundra)

Mittal Pigments Pvt. Ltd.

A-203, Indraprastha Industrial Area, Road No.5,
KOTA-Rajasthan-324005

...Appellant

VERSUS

C.C.-MUNDRA

Office of the Principle Commissoinerate of Customs, Port
User Buld. Custom House Mundra,
Kutch Gujarat-370421

...Respondent

WITH

- (i) Customs Cross Appeal /10518/2018 in Customs Appeal/10665/2018 (National Thermoplast Industries);
- (ii) Customs Cross Appeal /10519/2018 in Customs Appeal/10667/2018 (Jammu Pigments Ltd);
- (iii) Customs Cross Appeal /10520/2018 in Customs Appeal/10668/2018 (Mittal Chemicals);
- (iv) Customs Cross Appeal /10521/2018 in Customs Appeal/10669/2018 (Ardent Builders And Storeages Pvt Ltd.);
- (v) Customs Cross Appeal /10522/2018 in Customs Appeal/10670/2018 (R G Pigments Pvt Ltd);
- (vi) Customs Cross Appeal /10523/2018 in Customs Appeal/10671/2018 (Hi Rel Metals Pvt Ltd);
- (vii) Customs Cross Appeal /10524/2018 in Customs Appeal/10672/2018 (Fornax International);
- (viii) Customs Cross Appeal /10525/2018 in Customs Appeal/10673/2018 (Chem Color India Ltd);
- (ix) Customs Cross Appeal /10526/2018 in Customs Appeal/10674/2018 (Pioneer Ceramics);
- (x) Customs Cross Appeal /10527/2018 in Customs Appeal/10675/2018 (Ramesh Kumar Agarwal);
- (xi) Customs Cross Appeal /10528/2018 in Customs Appeal /10676/2018 (Success Exim Pvt Ltd);
- (xii) Customs Appeal/11597/2018 (Commissioner of Customs, Mundra);
- (xiii) Customs Appeal /13159/2018 (Commissioner of Customs, Mundra);
- (xiv) Customs Appeal /13160/2018 (Commissioner of Customs, Mundra);
- (xv) Customs Appeal /13161/2018 (Commissioner of Customs, Mundra);
- (xvi) Customs Appeal /13162/2018 (Commissioner of Customs, Mundra);
- (xvii) Customs Appeal/13163/2018 (Commissioner of Customs, Mundra);
- (xviii) Customs Appeal /13164/2018 (Commissioner of Customs, Mundra);
- (xix) Customs Appeal /13165/2018 (Commissioner of Customs, Mundra);
- (xx) Customs Appeal /13166/2018 (Commissioner of Customs, Mundra);

- (xxi) Customs Appeal /13167/2018 (Commissioner of Customs, Mundra);**
(xxii) Customs Appeal /13168/2018 (Commissioner of Customs, Mundra);

(Arising out of Order-in-Original No. MUN-CUSTM-000-17& 18-17-18 dated 16.02.2018 passed by Commissioner of Customs-Mundra)

(Arising out of Order-in-Original No. MUN-CUSTM-000-APP-187-200-18-19 dated 24.09.2018 passed by Commissioner of Customs-Mundra)

APPEARANCE:

Shri Rajat Mittal, Advocates appeared for the appellant

Shri Girish Nair, Authorised Representative appeared for the Respondent

CORAM:

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

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER NO. 10545-10567/2026

DATE OF HEARING: 04.08.2026

DATE OF DECISION: 21.08.2026

SOMESH ARORA:

This is second round of litigation. In the first stage when the matter was decided by this Bench (different composition) affording relief to the party, it was contested right up to the Apex Court by the department. The order passed by the Hon'ble Supreme Court as reported in 2022 (380) ELT 243 SC, in the matter of the Commissioner of Customs, Mundra vs Mittal Pigments Private Limited directs and observes as follows:

"2. During the course of the hearing of the civil appeal it has emerged before this Court that the bunal dated 25 April, 2018 (2019 (370) ELT. 596 (Tri. Ahmd.)) does not consider the rival submissions entire reasoning is contained in the last paragraph of the order which virtually contains no reasons at all.

3. The appellant has a serious grievance of fact that their submissions have not been dealt with and that the appeal was disposed of by the Tribunal before the stipulated period for filing cross objections had come to an end.

4. In this view of the matter, we allow the appeal and set aside the impugned judgment and order of the Tribunal dated 25 April, 2018. We restore Appeal No. C/10666/2018-DB to the file of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Ahmedabad for disposal afresh. All the rights and contentions of the parties on merit are kept open.

5. The appeal is accordingly disposed of."

Accordingly, this matter is taken up fresh for decision after considering all the submissions including made by the department. The brief facts of the matter are as follows:

1.1 M/s. Jammu Pigments Ltd and M/s. R.G. Pigments Pvt Ltd (Importers) were engaged in recovery of Lead Metal from various types of Lead Scrap/Waste for which they were importing Lead Waste / Scrap of Used

Batteries / Lead Scrap by declaring the same as "Lead Concentrate" under CTH 26070000. However as per the department, the said imported goods should have been properly classified under CTH 7802. Further, Lead Scrap /waste in powdered form merits classification under CTI 78020090 and is restricted for import into India as per Foreign Trade Policy 2009-2014 as well as FTP 2014-2019.

1.2 Examination of live consignments was done at Mundra Port wherein the contents were declared as 'Lead Concentrate'. The goods were found to be in powder form. Four sets of samples were drawn out of which one set of samples was sent for testing to Customs Laboratory, Kandla and a second set of samples was sent to Customs Laboratory, CH Nhava Sheva for ascertaining the exact description of the goods.

1.3 Shri Ramesh Kumar Agarwal, who was a common director in Jammu Pigments Ltd, R G Pigments P Ltd, Mittal Pigments Ltd, in his statement gave his version that they were importing powdered material of drained batteries and since it was in powder form similar to lead concentrate, they used to call it Lead Concentrate and therefore classified it under CTH 2607. On being shown some custom documents filed at Port of Loading obtained from Shipping Lines in which the subject goods were declared as Lead Scrap with CTH 7802, he agreed that the subject imports were actually waste and scrap of lead obtained from batteries. When specifically asked about Environment Clearance, he further admitted that all their lead metal extraction plants were Secondary Metallurgical Plants and covered under Secondary Metallurgical Industry as per EIA Notification of 2006.

1.4 The Test Reports from Customs Laboratory, Kandia reported that the samples. were greyish black powder having soft lumps, on breaking showed white colour in few It is mainly composed of Lead Sulphate together with small amount of carbonaceous matter, siliceous matter and iron etc. The lead

contents in the import documents was declared as 40% whereas in the Test Reports it was found to be 65.8% and 65.7% for RG Pigments and for consignment of Jammu Pigments Ltd was found to be 67.08%.

1.5 Further, reports from Customs Laboratory, CH Nhava Sheva reported that the goods were mixture of grey powder along with friable lumps of irregular shape and size; that the goods were other than 'Lead Concentrate and were having characteristics of Used Lead Battery scrap.

1.6 On the request of the importers and following the principle of natural justice, samples were sent for testing to Director, CRCL, New Delhi for analysis and final opinion. As per the Test Reports, the sample has no characteristics of Lead Concentrate; that sample has characteristics of washed & dried electrode paste derived from Lead Acid Battery. "The content of lead was also reported to be above 65%.

1.7 The market survey of Lead & Zinc market also confirmed that there was no Primary Producer of Lead other than M/s. Hindustan Zinc Ltd. Other industrial plants including the importers are Secondary Lead Producers engaged in recycling of Lead Waste scrap. Further, manufacturing process described in Kirk-Othmer Encyclopedia of Chemical Technology and in Lead and Zinc Market Survey (MS-34) reveals that Lead from Lead Concentrate is produced using Blast Furnace, whereas Lead from lead scrap / waste can be recovered using a simple rotary furnace. The importer had, in his statement stated that they use Rotary Furnace for recovery of Lead and it is not practically feasible to produce Lead from Lead Concentrate in a Rotary furnace.

1.8 The Central Pollution Control Board vide their letter dated 21.08.2015 informed that Secondary Metallurgical Process is a process where Lead Metal is recovered by recycling Lead Scrap; that M/s. R.G. Pigments Pvt Ltd, M/s. Mittal Pigments Pvt. Ltd and M/s. Jammu Pigments Ltd are Secondary

Mettallurgical Process Industry and are granted registration for recycling of Lead Scrap under Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008. They further informed that production of Lead from Lead Ore is a Primary Mettallurgical Process and no industry other than M/s. Hindustan Zinc Ltd has been engaged in manufacture of Lead from Lead Ore/ Concentrate. Further, the units of the importer had not obtained Environment Clearance for Primary Mettallurgical Processing and are not allowed to process lead concentrate for production of lead.

1.9 Further, based on the Test Reports, literature, Pre-Shipping Certificates, Country of Origin Certificates and other evidences, Show Cause Notices dated 04.11.2015 were issued to the importers and the co-noticees.

1.10 The Adjudicating Authority found that Hindustan Zinc Ltd was the only producer of Primary Lead in India i.e. Lead Metal from Lead Concentrate and the importers were not involved in production of primary lead from lead concentrate. It was also clear from the letter dated 21.08.2015 from Central Pollution Control Board, Delhi that the manufacturing units of the importer are Secondary Producers of Lead i.e. engaged in recovery of Lead Metal by recycling Lead Scrap and are not allowed to process Lead Concentrate for production of lead.

1.11 He further found that the description mentioned in Load Port Customs Export Document in most of the cases shows the description as "Lead Waste / Scrap" and CTH as 7802 but mis-declared in the Bills of Entry under CTH 26070000. The Pre-Shipment Inspection Certificate also certifies the goods to be metallic waste / scrap/seconds / defective. He further found that the suppliers of the importers viz. "Shar Metal Scrap Co Ltd, UAE", "Al Muqarram Metal Scrap TR CO LLC etc are exporters of scrap metals. He further found that the Pre Shipment Inspection Agencies authorized by Proper Authority to conduct specified inspections and certify the goods to be Mettalic waste / scrap

or otherwise have confirmed in their certificates and through their statements / correspondence that their goods were metallic scrap /waste. The Inspection of battery recycling plant of one such supplier M/s. Sharif Metal International DMCC, UAE by employees of M/s. Worldwide Inspection Services Pvt Ltd have revealed the exact procedure of generation and collection of subject goods (waste).

1.12 The Adjudicating Authority found that every import/export consignment of Hazardous Waste is required to be accompanied by Transboundary Movement Documents in Form 9, in terms of Rule 16 of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008. The Form 9 is issued by Suppliers themselves to specify the goods to be generated in recycling plant of exporter. In some other Form 9, CTH is also mentioned as 7802. Further, the subject goods have been classified under CTH 7802 and declared as "Lead Scrap" in Shipping Bills before Customs Department of Exporting Country. Further, the subject goods are also declared as "Lead Scrap' in Country of Origin Certificates issued by Designated Agency of the exporting country.

1.13 He further observed that Silver would have been extracted as by-products in the case of process of Lead Concentrate but as per records no production of silver was recorded in the last five years. Extraction of silver as a by-product was also confirmed from the website of the only primary producer of Lead in India i.e. M/s. Hindustan Zinc Ltd.

1.14 The Adjudicating Authority further observed that statement of various persons viz. Shri Ramesh Kumar Agarwal, Director, High Seas Sellers, Authorised persons of Pre-Shipment Agencies have corroborated the fact that the imported goods were Lead Scrap/Waste.

1.15 It was confirmed by Customs Laboratory, Nhava Sheva that the subject goods were other than Lead Concentrate and were having characteristics of Used Battery Scrap.

1.16 In view of the difference in opinion between the laboratories of CRCL Kandla and Customs Laboratory, Nhava Sheva, as per request of the importers and following the principles of natural justice, the remnant samples were sent to Director, CRCL New Delhi for analysis and final opinion. The Director, CRCL, New Delhi opined that "the samples have no characteristics of Lead Concentrate; that they have characteristics of washed & dried electrode paste derived from Lead Acid Battery." The Lead content was reported as 65.6% and 68.66% and presence of metals Zinc, Copper, Iron, antimony and arsenic were detected in all samples but silver was not detected in any of the samples. The metallic/plastic parts found in the consignments. were also sent to CRCL, New Delhi separately and in this case CRCL, New Delhi opined that "the sample has the resemblance with Lead Acid Battery parts". As the opinion of Director, CRCL, New Delhi was in sync with the reports of Customs Laboratory, Nhava Sheva, the Adjudicating Authority held that the impugned import goods was none other than "Lead Scrap/Waste of Lead Battery" and the contention of the authorize representative claiming the same as "Lead Concentrate" was not correct, appeared to be an afterthought and only an attempt to deviate the issue.

1.17 The Adjudicating Authority further observed that the discussion on the subject had revealed the actual identity of the impugned goods to be "Lead Waste / Scrap of Lead Battery", more precisely "washed & dried electrode paste derived from Lead Acid Battery" which are precisely covered under CTH 78020090. He also held that the importers were not eligible to avail the benefit of exemption prescribed at Sr. No. 117 of Not. No. 12/2012-Cus dated 17.03.2012 and further held the goods were liable for confiscation under the Customs Act, 1962.

1.18 The Adjudicating Authority further found the importers, the common Director Shri Ramesh Kumar Agarwal and the High Seas Sellers liable to penalty under Section 112(a) of the Customs Act, 1962 for their roles in the case.

1.19 On appeal this bench in Mittal Pigments (P) Ltd. vs CC-Mundra vide order No. A/10766/2018 dated 25.04.2018 decided the matter against the Revenue in the first round of litigation, which was relied upon by Commissioner (Appeals) in later proceedings. Since the above order has now been remanded by the Apex Court, therefore, department is also in appeal.

1.20 However, it needs to be highlighted that with regard to this Tribunal order in Appeal No. C/10666/2018, the department went in appeal before the Hon'ble Supreme Court wherein the said judgement was set aside and the appeal in Hon'ble Tribunal restored for disposal afresh on the following observations indicated above in opening para.

Arguments for the Appellants:-

2. Opening the argument for the appellant, the Learned Advocate with the help of following details specially highlighted various test reports that were conducted by the department or by themselves through independent sources and gave the following details.

- i. The issue in the present proceeding pertains to denial of exemption under Sr. No. 117 of Notification No. 12/2012-Cus which provides concessional rate of BCD @ 2.5% to all goods falling under heading 2601 to 2617.
- ii. Appellants had imported lead concentrate under CTI 26070000 and claimed benefit of concessional rate.

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

- iii. Tariff Item 2607 00 00 covers "Lead Ores and Concentrates". Department on the other hand contends that the imported goods

merit classification under Chapter Heading 7802 that covers "Lead Waste & Scrap".

The Respondent Department on the other hand claims classification under Customs Tariff Heading 7802 as Lead Waste & Scrap'. For coming to the aforesaid conclusion, the department relies on the following evidences:

i. Statement of Shri Ramesh Agarwal. Director of M/s Mittal Pigments

As per the department, Shri Ramesh Agarwal in his statement submitted as under:

- Imported goods are not sold as such to any third party.
- Imported goods are referred to as 'Lead Concentrate' in 'business parlance'.
- Agreed that the imported item is "lead waste' or 'scrap' on being shown the details/literature, etc.
- The plant of Mittal Pigments Private Limited was secondary Metallurgical Industrial Plant.
- Agreed that Metal Ore is not an input for Secondary Metallurgical Plant.
- They declared the metal scrap as lead concentrate as it looked like lead concentrate.
- Apart from antimony, copper, arsenic, no other metal is produced in the process.

ii. Statement of officials of Customs Laboratory, Kandla

Statement of Shri G.P Sharma

Since the Customs Laboratory, Kandla described the impugned goods as lead concentrate". the DRI officials in order to contest the report of the Customs Laboratory, Kandla examined the officials of the Customs Laboratory, Kandla.

As per the Statement of Shri G.P Sharma and in charge of Customs Laboratory since the verification was requested for 'lead concentrate', it was concluded that the said goods are 'lead concentrate'.

On this basis, department concludes that the impugned goods are battery waste and scrap falling under CTH 7802.

Summary of Statement of Shri Ajay Kumar Singh (Chemical Examiner, Kandla Lab) (Recorded on 22.06.2015)

In the samples described as "lead concentrate," the laboratory did not test for the presence or percentage of lead sulphate, which would be relevant to rule out whether the material was lead waste or battery residue.

iii. Statement of pre-shipment inspection agencies

Statement dated 04.06.2015 of Asia Globe Trade Ltd. (Shri K.K. Ahuja)

- The Department relies on this officer to claim that goods are metallic waste, not ore/concentrate.
- Description "Lead Concentrate" appears only because exporter used this term

Novatech Inspection Services LLC (Shri Prem Ranjan Kumar)

- Goods declared as Lead Concentrate by supplier
- But supplier allegedly told them it was actually "metallic waste/lead waste"
- They claim the so-called "lead concentrate" is actually a waste product generated from breaking used lead-acid batteries.
- It is powder-like, looks like ore/concentrate, and therefore is called "Lead Concentrate" in trade parlance.

Worldwide Inspection Services Pvt. Ltd. - Two statements (16.06.2015 & 22.09.2015)

- In the Second Statement (22.09.2015): they visited Sharif Metals International, UAE What was being produced is not ore but a by-product of battery recycling. Used batteries are broken lead-bearing dust/ashes collected dust collected in airbags that dust is exported as "Lead Concentrate." Assert that what is exported as "Lead Concentrate is not natural ore/concentrate.

Chemical Testing Reports

Report by Customs Laboratory, Kandla - Test Report Nos. 500 & 501 (both dated 11.12.2014) based on Test Memos 06/2014-15 and 07/2014-15

- The laboratory describes the samples as a greyish-black powder containing soft lumps, some of which, upon being broken, reveal white interiors.
- Material is predominantly composed of Lead Sulphate, accompanied by minor quantities of carbonaceous matter, siliceous matter, iron, and other trace constituents typically found in lead-bearing mineral materials.
- The assay results show a very high lead content, measured at:
 - 65.8% (Sample under TM 06/2014-15), and
 - 65.7% (Sample under TM 07/2014-15),

indicating a substantial presence of lead consistent with lead-bearing mineral products.

- Notably, the Kandla laboratory does not describe the goods as scrap or waste.

Customs Laboratory, C.H. Nhava Sheva - Test Reports dated 06.01.2015

- States that the samples are "other than Lead Concentrate" and asserts that the material exhibits "characteristics of used lead battery scrap." In this report, the laboratory does not provide any detailed chemical composition, assay values, or metallurgical analysis to substantiate its opinion.

CRCL Testing and Findings Sample Registration Nos. CLR-22 and CLR-23, both dated 15.10.2015.

- In these reports, CRCL recorded that the samples did not exhibit the characteristics of Lead Concentrate and instead resembled washed and dried electrode paste derived from used lead-acid batteries.
- The laboratory quantified the lead content in the two samples at 65.6% and 68.66% respectively, and additionally detected the presence of metals such as zinc, copper, iron, antimony, and arsenic. CRCL specifically noted that silver was not detected in either of the samples.

CRCL Testing and Findings-C No. 35/CRCL-2015/CL 410 DRI dated 24.09.2015 & C No. 35/CRCL-2015/CL 411 DRI dated 24.09.2015

Department also sent metallic and plastic fragments recovered from the consignments under Bills of Entry dated 10.11.2014 to CRCL, New Delhi. In two separate reports dated 16.10.2015 (C. No. 35/CRCL/2015/CL-410 DRI and CL-411 DRI), CRCL opined that these particular samples resembled parts of lead-acid batteries. This observation, however, pertained only to the metallic/plastic pieces, not to the main powder material, whose chemical analysis continued to show high lead content (65.6% and 68.66%) with detectable traces of zinc, copper, iron, antimony, and arsenic, but no silver.

CRCL Findings on Three Additional Consignments

The DRI also examined three more consignments of goods bearing the same declared description of "Lead Concentrate." These consignments were imported by M/s Mittal Pigments Pvt. Ltd., Kota in November 2014, and were covered under the following container and Bill of Lading numbers:

- Container No. TGHU2255271-B/L No. HLCUJED141103739
- Container No. HLXU3335479-B/L No. HLCUJED141103750
- Container No. CPSU1739702-B/L No. HLCUJED141102535

CRCL issued three separate test reports:

- No. 35/CRCL/2015-16-CLD 477 DRI (22.01.2016),
- No. 35/CRCL/2015-16-CLD 478 DRI (22.01.2016), and
- No. 35/CRCL/2015-16-CLD 477 DRI (22.01.2016, for the third sample).

In these reports, CRCL described the samples as consisting of greyish fine powder accompanied by small, friable lumps of irregular shape and size. The laboratory analysis revealed that the material was composed primarily of lead oxide and lead sulphate, along with very small quantities of metallic lead, zinc, silver, copper, cadmium, arsenic, antimony, iron, and sulphur in trace amounts.

The Deputy Director, DRI, Gandhidham, addressed detailed letters dated 22.01.2016 and 05.02.2016 requesting the Director, CRCL, to provide a conclusive view on the nature of the material.

In response, the Director, CRCL issued a clarificatory letter dated 09.05.2016 (P. No. 35/Cus/Misc-Corres/2016-17 (P-1)), categorically opining that: "The sample has no characteristics of Lead Concentrate: it has the characteristics of washed and dried electrode paste derived from used Lead-Acid Battery."

Factory Samples examined at JNCH, Nhava Sheva (Lab No. 173 DRI/4/3/15 dated 28.04.2015. based on Test Memo No. 38 dated 02.03.2015)

- The DRI also drew samples from the factory premises of M/s Mittal Pigments Pvt. Ltd., Kota, where certain imported consignments were stored. These samples were collected under a Panchanama dated 17.11.2014 and initially sent for analysis to the Customs Laboratory at JNCH, Nhava Sheva.

- The JNCH laboratory issued its report (Lab No. 173 DRI/4/3/15 dated 28.04.2015, based on Test Memo No. 38 dated 02.03.2015), observing that the material "had the composition of Lead Concentrate."
- To obtain clarity, the DRI sent follow-up letters on 08.07.2015 and 23.12.2015, specifically asking the Joint Director of the Customs Laboratory to explain what was meant by "composition of Lead Concentrate." These letters, however, received no reply from the laboratory.
- The DRI forwarded the remnants of the factory sample to CRCL, New Delhi under Test Memo No. 78/2015-16 dated 04.11.2015 for a conclusive opinion.
- CRCL issued its Test Report (Sample Regn. No. CLR-27/30.11.2015), providing a categorical and contradictory assessment. According to CRCL: The sample was neither Lead Concentrate nor material derived from Lead-Acid Batteries. It was instead an off-specification industrial product, whose composition did not match any recognised or standard mineral or industrial product.
- CRCL noted that the sample contained 4.2% metallic zinc and only very small quantities of metallic lead in fine particulate form features not consistent with lead ore or battery scrap.

Descriptive Summary of Department's Literature-Based Evidence (Paras 7.1 & 7.2)

The Department also relies heavily on literature to argue that the imported goods could not be "lead concentrate" and must therefore be waste or scrap.

- In Para 7.1 (i), reference is placed on extract from Britannica as per which primary lead ores consist mainly of galena (lead sulphide - PbS) and occasionally associated minerals containing zinc, arsenic, and silver. Secondary minerals-formed through natural weathering include cerussite (lead carbonate) and anglesite (lead sulphate). Lead concentrates produced at mineral concentration mills generally contain 40% to 80% lead with significant quantities of sulphur (up to 30%) and zinc (up to 15%). The extract further distinguishes between:
 - Primary lead extraction, which is carried out in blast furnaces, and
 - Secondary lead extraction, generally from battery scrap, processed using rotary or reverberatory furnaces.
- The Department cites this distinction to argue that imported goods should align with the compositional and process expectations of primary concentrates.
- In Para 7.1 (ii) Wikipedia Extract on Lead Ore and Concentrate, it is noted that most lead ores contain less than 10% lead and are upgraded through beneficiation (often froth flotation) to 70% or more lead in concentrate form. Concentrate is defined as "dressed ore," where waste rock is removed and the metal-bearing portion enriched. This is a general description intended to show that ore concentrates arise from mining and beneficiation, not from recycling processes.

- In Para 7.1 (iii) Kirk-Othmer Encyclopaedia of Chemical Technology is relied on as an authoritative chemical technology reference. The Department emphasizes that primary lead is generally extracted from such concentrates using blast furnace, ISASMELT, KIVCET, QSL, etc. It highlights that rotary furnaces are not used for primary lead ore concentrates, but instead for secondary lead recovery from scrap.
- In Para 7.1 (iv) Lead & Zinc Market Survey (MS-54) - The Market Survey report from the Indian Bureau of Mines is cited to explain that lead and zinc ores generally occur together. Smelting of ore concentrates normally occurs in blast furnaces or other primary smelting technologies, not rotary furnaces. The survey also states that Hindustan Zinc Ltd. is the only primary lead producer in India, operating smelters for the extraction of primary lead. Secondary producers (including Mittal Pigments, as per the Department) obtain lead from battery scrap rather than ore.
- In Para 7.1 (v) Lead and Zinc Industry in India-ILZDA (2013 Overview)-the ILZDA overview reiterates that India's primary lead production comes exclusively from Hindustan Zinc Ltd. The Department argues that since Mittal Pigments: operates rotary furnaces, and did not report any silver recovery (which, they say, is usually found in natural ores), their materials must necessarily be secondary lead waste, not primary ore concentrate.

Summary of Misc. Evidences relied upon in Para 7.3 to 7.9

- The DRI claims that the PSICs recovered during investigation explicitly certified the goods as lead waste/scrap, and that officials of the Pre-Shipment Inspection Agencies (PSIAs), in their statements, confirmed that these consignments were examined and certified as lead scrap, even though traders commonly referred to this material as "lead concentrate".
- According to the Department, Country of Origin Certificates (COOs) recovered from the CHA's office during search proceedings showed the goods described as "Lead Waste/Scrap" and classified under HS 7802.00.00.
- In Para 7.5, the DRI relies heavily on literature stating that lead concentrates derived from mined ores typically contain silver, often in significant quantities. Silver is normally recovered as a valuable by-product during primary smelting. They obtained reportedly showed zero production or clearance of silver from Mittal Pigments over the ER-1 returns and internal stock records from the Central Excise Department, which previous five years. From this, the Department infers that the raw material processed in the factory did not contain silver and therefore could not have been genuine lead concentrate. They contrast this with Hindustan Zinc Ltd., the only primary lead producer in India, which recovers silver as a by-product.
- In Para 7.6- correspondence from the Central Pollution Control Board (CPCB) is relied upon to assert that Mittal Pigments and its sister units are registered as recyclers of lead waste/scrap under the Hazardous Waste Rules. Companies processing lead concentrate must obtain Environmental Clearance under EIA Notifications, but Mittal Pigments did not possess such clearance for primary smelting. The DRI uses this to argue that the factory's equipment (rotary furnaces) is suitable only

for secondary recycling, not primary smelting of concentrates, thereby suggesting the imported material must have been scrap-derived.

- DRI points out that many foreign suppliers were clearly scrap dealers.

2.1 Highlighting the above facts, the Advocate further argued the following grounds to buttress his position.

A. The Impugned Goods have composition of Lead Concentrate

As per Kirk-Othmer Encyclopaedia of Chemical Technology (4th Edition), lead concentrate has:

Pb.-45% to 75%
Zinc-0% to 15%
Gold-0% to 0.001%
Silver-0% to 0.15%
Copper-0% to 3%
Antimony-0.1% to 2%
Fe-1% to 8%
Cao-traces to 3.0%
Sulphur (S)-10% to 30%

This is consistent with the imported goods. Refer Chemical composition as described in Para 6.1 (as per Kandla Laboratory report No. 500/501 dated 11.12.2014 in respect of TM No. 06/2014-15 & 07/2014-15 dated 02.12.2014). Refer Para 6.1 of Page 49 of the Impugned Order. Also refer to the reports of Kandla Laboratory @ Page 124 as per which "it has the characteristics of lead concentrate".

This is also consistent with the report of the CRCL discussed in Para 6.4 of the Impugned Order vide Reports No. C. No. 35/CRCL/2015-16 dated 22.01.2016 for TM No. 80 dated 18.11.2015 and Report C. No. 35/CRCL 2015-16 478 DRI (for TM No. 81 dated 18.11.2015 and C. No. 35/CRCL/2015-16 477 DRI (for TM No. 82 dated 18.11.2015, each of which opined "the goods are in the form of greyish fine powder with small friable lumps of irregular shape and size. It is composed of lead oxide, lead sulphate, together with very small amount of metallic lead, silver, zinc, cadmium, arsenic, sulphur, etc."

Also consistent with the samples taken from the factory which were tested JNCH Nhava Sheva. The Customs Laboratory JNCH, Nhava Sheva vide Test Report Lab. No. 173/DR1/4/3/15 issued on 28.04.2015 for TM No. 38 dated 02.03.2015 that the subject goods had composition of Lead Concentrate.

In order to discredit the report of the Customs Laboratory JNCH Nhava Sheva, the remnants of the samples were forwarded to CRCL New Delhi for Final Opinion vide TM No. 78/2015-16 that opined "nature and composition of samples indicate that it is neither lead concentrate nor material derived from lead acid battery. It is an off specification industrial product."

B. The Impugned Goods are referred to as 'Lead Concentrate in common parlance

All the load port documents describe the product as lead concentrate. There is no definition of the "concentrate" in the Customs Tariff, hence resort should be held to common parlance test. As per common parlance test, the product is known in the market as "lead concentrate".

From the above, it is clear that the Respondent's entire case is built on presumptions, selective reliance, inconsistent laboratory reports, and statements recorded under duress. There is no single, reliable, scientific test report that classifies the goods as "waste and scrap" under 7802.

Conversely, all positive chemical parameters match standard literature for Lead Concentrate under Heading 2607

It is submitted that in the present case, burden of proof is on the Department. Doubts must favour the assessee in classification matters.

The Impugned Goods are not classifiable under 7802

Classification under Chapter 78 requires the goods to be "waste and scrap" of metal in the sense understood by the Tariff.

Section Note 8 defines "waste and scrap" to mean (1) all metal waste and scrap; (11) metal goods definitely not usable as such because of breakage, cutting up, wear or other reasons.

Thus, classification under 7802 presupposes:

- the material originates from articles or finished products,
- which have undergone use, wear, breakage, or manufacture,
- and is now unfit for its original use.

Our imported goods do not satisfy a single one of these conditions.

The chemical reports show a mineralogical mixture of lead sulphate, lead oxide, and minor naturally occurring trace metals (Zn, Cu, Fe, As, Sb).

Contain no alloying metals used in battery plates (e.g., Ca, Sn, Sb in elevated proportions)

Contain no plastics, rubber, separators, carbon, or other residues of battery manufacturing.

Show no metallic form of lead in remeltable pieces,

Exist in fine powder/friable lumps, not in scrap form.

A material that is non-metallic in appearance, chemically oxidic/sulphate, comprising mineral constituents, non-remeltable as-is, cannot fall under Chapter 78, because it is neither "metal", nor "waste" of metal, nor "scrap" of metal articles.

Battery scrap has a distinct, well-known Composition that does NOT match the imported goods

Moreover, if the imported product was indeed a battery scrap, it would have contained 99 percent lead.

Absence of silver recovery is a flawed argument

In Para 7.5 Pages 58-59, the department relies on the ER-1 records and manufacturing record of the Appellant to contend that since there is not even a kilogram of silver produced, the imported material could not be Lead Concentrate. Also relies on the data of Hindustan Zinc which is the primary producer of the lead and silver is produced as a by-product by the said company. This evidence is thereafter reiterated as finding in Para 21.7 of the Impugned Order Page 76.

CRCL issued three separate test reports-bearing reference numbers:

- No. 35/CRCL/2015-16-CLD 477 DRI (22.01.2016).
- No. 35/CRCL/2015-16-CLD 478 DRI (22.01.2016), and
- No. 35/CRCL/2015-16-CLD 477 DRI (22.01.2016, for the third sample).

In these reports, CRCL described the samples as consisting of greyish fine powder accompanied by small, friable lumps of irregular shape and size. The laboratory analysis revealed that the material was composed primarily of lead oxide and lead sulphate, along with very small quantities of metallic lead, zinc, silver, copper, cadmium, arsenic, antimony, iron, and sulphur in trace amounts. [Refer Para 6.4 Page 501. This is consistent with the available literature such as Kirk-Othmer Encyclopaedia of Chemical Technology (4" Edition), lead concentrate has: Silver -0% to 0.15%.

Same argument was also raised in the case of Gravitas India Ltd. Vs. Commissioner of Customs, Mundra [2024 (18) CENTAX 1991.

Department’s evidence is inconsistent and supports classification under Customs Tariff Heading 2607 and not CTH 7802

It was submitted that the reports relied on by the department are itself contradictory as the table below would show:

Sl. No	Lab	Report Details	Key findings	Remarks
1	Customs Laboratory, Kandla	Test Report Nos. 500 & 501, both dated 11.12.2014, for TM 06/2014-15 & 07/2014-15 (02.12.2014) Referred at OIO Para 6.1, Pg. 49, Test reports in Appeal at Pg. 124-127	Greyish black powder with soft lumps, white in some cross-sections. Mainly composed of lead sulphate, with carbonaceous, siliceous etc. Lead content: 65.8% (TM 06) and 65.7% (TM 07) In several similar reports Kandla records that the goods "have the characteristics of lead concentrate."	Supports Appellant’s claim of imported goods being ‘lead concentrate’
2	Customs Laboratory, C.H. Nhava Sheva	Test reports dated 06.01.2015 Same samples from BE 7325446 & 7325448	Concludes goods are "other than the lead concentrate". States that goods "have the characteristics	Direct conflict with Kandla and later CRCL composition.

		Referred in continuation of Para 6.1 (OIO Pg. 494 50	of used lead battery scrap".	No chemical composition revealed.
3	CRCL, New Delhi	Test Reports Sample Regn Nos. CLR-22 & CLR-23, both dated 15.10.2015 Remnant samples of consignments under BE 7325446 & 7325448 (10.11.2014) sent on importer's request due to lab conflict Referred in OIO Para 6.3, Pg. -50	Opines that "samples have characteristics lead concentrate. They characteristics have of washed & dried electrode paste derived from lead acid battery. Lead content: 65.6% and 68.66%.- Presence of Zn, Cu, Fe, Sb, As detected, However, Silver not detected	Composition (Pb 65-69% consistent with composition described in Kirk- Othmer. No comparison with known battery pastes composition.
4	CRCL, New Delhi	Two reports both dated 16.10.2015, issued vide C. No.35/CRCL/2015/CL-410 DRI and CL-411 DRI Referred in OIO Para 6.3 @Page 50.	Reports state that the "sample has the Resemblance with lead-acid battery parts".	These samples are not the powder in dispute, but bits of metallic/plastic parts.
5	CRCL, New Delhi	Reports C. No. 35/CRCL/2015-16-CLD 477, 478 & 477 DRI, all dated 22.01.2016, for TM 80, 81 & 82 (18.11.2015) Samples from three consignments imported by Mittal Pigments Referred in OIO Para 6.4, Pg. 50	Samples are greyish fine powder with small-friable lumps, Composed of lead oxide, lead sulphate, with very small amount of metallic lead and zinc, silver, copper, cadmium, arsenic, antimony, iron, sulphur in traces	This is textbook concentrate type chemistry. Although, no explicit opinion at this stage as "concentrate" or "scrap"; only composition.
Department later persuades CRCL to give a label via clarificatory letter.				
6	CRCL, New Delhi (Clarificatory Letter)	Letter P. No. 35/Cus/Misc-Corres/2016-17 (P-1) dated 09.05.2016 in respect of same three consignments (TM 80, 81, 82) as above Referred in OIO Para 6.4, Pg. 50	After DRI's letters seeking "specific opinion", Director CRCL states: "sample has no characteristics of Lead Concentrate it has the characteristics of washed and dried electrode paste derived from used Lead Acid Battery"	Post-facto opinion after request. DRI's Tutored opinion
7	Customs Laboratory. JNCH, Nhava Sheva	Test Report Lab No. 173/DRI/4/3/15, dated 28.04.2015, for TM 38 dated 02.03.2015 Samples drawn from factory premises of Mittal Pigments under Panchanama dated 17.11.2014, from heaps of imported goods identified	Opines "subject goods had the composition of Lead Concentrate."	Independent Report

		by Shri Ramesh Agarwal as "lead concentrate"		
		Referred in OIO Para 6.6, Pg. 51		
8	CRCL, New Delhi (Factory Sample Retest)	Test Report Sample Regn No. CLR-27/30.11.2015, sent under TM 78/2015-16 (04.11.2015) Remnants of factory sample originally tested by JNCH (see above) Referred in OIO Para 6.6, Pg. 51; Report itself at Pg. 192 of Appeal Memo	Concludes "nature that and composition of the sample indicates that it is neither Lead Concentrate nor material derived from Lead Acid Battery." States it an specification of industrial product, composition not matching any standard product. - Notes 4.2% metallic zinc and very small quantity of metallic lead in fine particle form.	Fatal to Department's own "battery scrap" theory: CRCL itself says "not derived from Lead Acid Battery.
9	CRCL, New Delhi - metallic plastic parts from BE consignments	Two reports dated 16.10.2015 (C. No. 35/CRCL/2015/CL-410 & 411 DRI)-same as at SI. 4 above Only metallic/plastic pieces from consignments under BE 7325446 & 7325448 Referred in OIO at Para 6.3	Metallic /plastic pieces have resemblance with lead-acid battery parts.	This does not analyse the powder itself; just ancillary solid parts. Used by Dept to "colour" entire consignments as battery scrap which is an impermissible extrapolation.

He thus, pointed out that out of 9 reports 3 are against them, two are inconclusive and four are in their favour.

Erroneous reliance on Scientific Literature, Market Surveys, CPCB Correspondence etc. to presume that the Appellant Must be processing Battery Scrap and not Lead Concentrate under 2607

The Department relies on the literature (Paras 7.1(i)-(v); Pages 53-54); Market Surveys (Para 7.3-7.9@ Page 54-71), findings of the Adjudicating Authority in Para 71-78 [Para 20-22 to conclude that Mittal Pigments cannot be handling lead concentrate because it is not a primary producer, uses rotary furnaces. Without prejudice to the fact that above-mentioned presumption is wholly incorrect, it is important to note that the entire approach of the Department is legally unsustainable because classification under the Customs Tariff must be determined solely by the physical characteristics of the goods at the time of import, not what equipment the importer owns. What the composition of the imported goods is and not whether the importer can smelt ore using blast furnaces. What is the chemical composition and not whether silver is later recovered.

There is nothing in the Tariff that mandates that concentrates must originate from mines only, or prohibits beneficiated secondary materials, or excludes enriched secondary materials meeting the composition of concentrates. The Department's interpretation reads into the Tariff a limitation that does not exist.

The Department claims that blast furnaces can only be used for primary ore processing and that rotary furnaces can only be used secondary scrap recycling and therefore imported material must be scrap is legally untenable.

Rotary furnaces can process concentrates after roasting/sintering, which is acknowledged even in metallurgical practice. In fact, the Appellant at Annexure-4 (@Page 137 of the Appeal Memo) has appended a certificate from engineer employed by HZL who has categorically stated that "thus, it is certified that all operations carried out in the rotary furnace are similar to those which are being carried out in the blast furnace or imperial smelting furnace used in large industries such as HZL, etc." "Further, it is confirmed that the Rotary Furnaces used by Mittal Pigments at Kota for smelting the Lead Concentrate are the best suitable equipment and capable enough to used in the art of making lead ingots/ bullion as secondary recovery material from lead concentrate at small scale/" The Appellant has also appended the US Patent Office disclosure as to how lead can be extracted from lead concentrate etc, by use of rotary furnace.

Load port documents and PSICs cannot override statutory Tariff classification

PSICs were issued to ensure absence of hazardous/substandard scrap, they do not test or certify the chemical nature of lead concentrate.

The PSICs themselves describe the goods as "lead concentrate" under the column "description of metallic scrap".

Foreign exporters' HS codes are not binding on Indian Customs.

The present proceedings are squarely covered by the recent decision of the Hon'ble CESTAT, Ahmedabad in Gravitas India Ltd. v. Commissioner of Customs, Mundra, 2024 (390) ELT 394 (Tri-Ahmd.), Final Order Nos. 10781-82/2024 dated 09.04.2024.

This judgment deals with the same product (lead concentrate), identical composition, and arises from the same set of suppliers, PSIC practices, and identical DRI methodology. including: reliance on CRCL reports, reliance on load-port documents wrongly mentioning 7802, reliance on PSIC statements, and allegations that absence of gold/silver traces disproves "lead concentrate.

All these grounds were rejected.

The Gravitas judgment therefore squarely applies and is determinative of the issue. Following the binding precedent, the present classification under 7802 and all consequential allegations must fail.

For DRI to be correct, ALL must be true simultaneously:

- Multiple Customs Laboratory, Kandla lab reports are wrong.
- JNCH, Nhava Sheva Report in respect of samples from factory is also wrong
- Multiple self-contradictory reports of CRCL reports are to be selectively read in favor of department.
- PSIA knows classification better than customs,
- Scrap can look exactly like ore concentrate,

- Every supplier worldwide is mis-describing "scrap" as concentrate,
- Every lab disagreeing with DRI is wrong.

2.2 Further it was pointed out by them that there are similarity in their own case in the matter of Gravitas India Limited vs Commissioner of Customs, Mundra [2024 (18) CENTAX 199 (Tri. Amd.)] which also went in that case in favour of the party. He drew our attention to comparison of the various reports which had appearing as part of that order with their reports in the instant case. He therefore, stated that the decision of Gravitas India Limited being passed on legality and also on the HSN Chapter Notes and Section Notes etc., which have the legal force needs to be followed in this case and substance of the matter.

Department's submission:-

3. The AR, on the other hand, opposes the prayer of allowing benefit and states that there were other factual details based of various RUDs which need to be considered additionally to arrive at the right decision. Following grounds were taken by the department as per its adversarial position:

(i) Classification based on True Nature of goods as imported:

Tariff classification is governed by the legal and technical description of goods, not commercial parlance or end use. The appellant cannot escape correct classification by calling battery waste "lead concentrate."

Dunlop India Ltd. (1983) 13 [E.L.T.](#) 1566 (SC): Classification must be based on the description of goods at import and their true character rather than their end-use.

Here, extensive chemical tests and documentary evidence show that the imported goods are "washed and dried electrode paste" or lead battery scrap, thus falling squarely under CTH 7802.00 90.

(ii) Reliance on Competent Chemical and Technical Data:

Lab tests conducted by recognized laboratories (including CRCL) reveal that:

- Lead content is in range 65-75%, consistent with battery waste and not pure lead concentrate obtained from mining ore.

- Presence of lead sulphate and ancillary metals (zinc, copper, arsenic) typical of battery scrap residue and inconsistent with lead concentrate from ore.
- As per Supreme Court ruling in Gastrade International, opinion of the Expert needs to be given due weightage.

(iii) PSIC and Export Documentation Are Trustworthy Evidence

- PSICs issued on the basis of detailed port inspections certify the goods as metallic waste/scrap.
- Exporter's country of origin certificates and Form 9 under Hazardous Waste Rules corroborate the scrap classification.
- The appellant cannot claim ignorance of these documents which affirm the scrap nature. This indicates knowledge and intent.

(iv) Intentional Misdeclaration to Evade Duty

- The appellant's own director admitted to awareness that the material is lead battery scrap but maintained "lead concentrate" declaration for tariff benefits.
- The consistent use of an incorrect classification leading to lower customs duty rates over several years reflects clear mens rea.
- Import restrictions on scrap under Foreign Trade Policy (restricted item) were knowingly circumvented.

(v) Redemption Fine Imposable

- In *Weston Components Ltd.* (2000 (115) ELT 278 SC), the Supreme Court expressly held that redemption fine is imposable where goods are released against bond and later found to be liable for confiscation physical availability of goods is not a precondition to impose such fine.
- The Karnataka High Court in *Shilpa Trading Company* (2014 (309) ELT 641 Kar) affirmed that redemption fine can be imposed even if the bond is not in force and the goods are no longer with Customs. The law is clear that actual possession or existence of goods is irrelevant once released against bond.
- CESTAT Ahmedabad in *National Impex Corporation* (Order No. A/10259/2015) applied *Weston Components* to order imposition of redemption fine even when goods were not available, contrary to the adjudicating authority's decision.
- Department also relied on Para 3.3.3.3 of Technical EIA Guidance Manual for Metalurgical Industry prepared by Ministry of Environment & Forests as under:

3.3.3.3 Secodary lead production

“The secondary production of lead begins with the recovery of old scrap from worn-out, damaged, or obsolete products and new scrap that is made of product wastes and smelter-refinery drosses, residues, and slags. The chief source of old scrap is lead-acid batteries, though cable coverings, pipe,

sheet, and terne bearing metals also serve as a source of scrap. Solder, a tin-based alloy, may also be recovered from the processing of circuit scrap boards for use as lead charge.

While some secondary lead is recovered directly for specialty products like babbitt metal, solder, re-melt, and copper-base alloys, about 97% of secondary lead is recovered at secondary lead smelters and refineries as either soft (unalloyed) or antimonial lead, most of which is recycled directly back into the manufacture of new batteries. Unlike copper and zinc, where scrap processing varies tremendously by scrap type and ultimate use, the dominance of lead battery scrap allows for a more standard secondary recovery process. Prior to smelting, batteries must be broken by one of several techniques, and classified into their constituent products. The modern battery breaking process classifies the lead into metallics, oxides and sulphate fragments, and organics into separate casing and plate separator fractions. Cleaned polypropylene case fragments are recycled back into battery cases or other products. The dilute sulphuric acid is either neutralized for disposal, or recycled into the local acid market. One of three main smelting processes is then used to reduce the lead fractions to produce lead bullion

The majority of domestic battery scrap is processed in blast furnaces or rotary reverberatory furnaces. Used to produce a semi soft lead, a reverberatory furnace is more suitable for processing fine particles and may be operated in conjunction with a blast furnace. The reverberatory furnace is a rectangular shell lined with refractory brick, and is fired directly with oil or gas to a temperature of 1260°C. The material is heated by direct contact with combustion gases. The average furnace can process about 50 tonnes per day. About 47% of the charge is recovered as lead product and is periodically tapped into mold or holding pots. Forty six percent of the charge is removed as slag and later processed in blast furnaces. The remaining seven % of the furnace charge escapes as dust or fume. Short (batch) or long (continuous) rotary furnaces may be used. Slag from reverberatory furnaces is processed through the blast furnace for recovery of alloying elements.

Blast furnaces produce hard lead from charges containing siliceous slag from previous runs (about 4.5% of the charge), scrap iron (about 4.5%), limestone (about 3%), and coke (about 5.5%). The remaining 82.5% of the charge comprise oxides, pot furnace refining drosses, and reverberatory slag. The proportions of rerun slags, limestone, and coke, vary to as high as 8%, 10%, and 8% of the charge respectively. Processing capacity of the blast furnace ranges from 20 to 80 tonnes per day. Similar to iron cupolas, the blast furnace is a vertical steel cylinder lined with refractory brick. Combustion air at 350 to 530 mm WC is introduced through tuyeres (pipes) at the bottom of the furnace. Some of the coke combusts to melt the charge, while the remainder reduces lead oxides to elemental lead.

As the lead charge melts, limestone and iron float to the top of the molten bath and form a flux that retards oxidation of the product lead. The molten lead flows from the furnace into a holding pot at a nearly continuous rate. The product lead constitutes roughly 70% of the charge. From the holding pot, the lead is usually cast into large ingots, called pigs or sows. About 18% of the charge is recovered as slag, with about 60% of this being matte. Roughly five % of the charge is retained for reuse, and the remaining seven % of the charge escapes as dust or fume.

Refining/casting is the use of kettle type furnaces for re-melting, alloying, refining, and oxidizing processes. Materials charged for re-melting are usually lead alloy ingots that require no further processing before casting. Alloying furnaces simply melt and mix ingots of lead and alloy materials. Antimony, tin, arsenic, copper, and nickel are the most common alloying

materials. Refining furnaces, as in primary lead production, are used either to remove copper and antimony to produce soft lead, or to remove arsenic, copper, and nickel for hard lead production. Newer secondary recovery plants use lead paste desulphurization to reduce sulphur dioxide emissions and waste sludge generation during smelting.

The storage battery scrap is the chief source of secondary lead production in India. More than 40% of the total lead consumption goes to the manufacture of batteries and around 80% of this re-enters the market as secondary lead. This secondary lead containing antimony is used in the battery manufacture.

The smelting of battery scrap in an unscientific way has been practiced for a long time in India as a small scale industry mostly located in residential areas creating considerable pollution due to sulphur and lead emission. The recovery of lead is not very good due to slag matte losses and sulphur fumes. Cost effective scientific technologies are needed to be provided to these small scale operators.

Lead can be recovered from waste battery scrap by electrolysis method as well. Ponomarev and Znev obtained compact lead of 99.5% purity from waste powder consisting of lead and zinc by electrolysis. The solution from lead electrolysis was used for zinc extraction.”

4. Further additional submission post hearing as per liberty granted were submitted by A.R. as follows:-

4.1 At the outset, the issue involved is that M/s. Jammu Pigments Ltd and M/s. R.G Pigments Pvt Ltd (Importers) were importing Lead Waste / Scrap of Used Batteries /Lead Scrap by declaring the same as "Lead Concentrate under CTH 26070000. However, the said imported goods should have been properly classified under CTH 7802. Further, Lead Scrap/waste in powdered form merits classification under CTI 78020090 and is Restricted for import into India as per Foreign Trade Policy 2009-2014 as well as FTP 2014-2019

4.2 Vide Daily Order dated 04.08.2026 this bench had given five days time to the AR to find out from the RUD, the evidences in rebuttal to the other side indicating that the material imported was lead scrap and waste and not Lead Concentrate.

(1) Re-test Reports and correspondence with Central Revenues Control Laboratory (CRCL), New Delhi from Page No. 216 to 219 and 240 to 243 of RUD.

The Re-tests conducted by CRCL, New Delhi clearly indicate that

"Sample has no characteristics of lead concentrate, it has characteristics of washed and dried Electrode paste derived from used Lead Acid Battery."

"Sample has characteristics of washed and dried Electrode paste derived from used Lead Acid Battery"

"Literary evidence reveals that Anglesite form of PbSO4 exists in paste in lead-acid batteries also"

PbSO4 Lead Sulphate

(2) Inspection Report of Worldwide Inspection Services Pvt Ltd where the whole process is explained Page No. 177

(3) Pre-Inspection Certificates of Load Port: The evidences brought out here by the under-signed are samples meant to bring out a bigger picture.

Page Nos. 62 to 72, 76, 83, 147 to 160, 164 to 174, 700

Relevant Description	Page No of RUD
Type of Scrap- Shredded/Unshredded	62, 66, 70, 147 to 160, 164 to174
Import Scrap is actually metallic scrap/seconds/defective as per the internationally accepted parameters for such a classification	62, 76, 147 to 160, 164 to 174
Waste Generator (name & address): Same as Exporter	63, 67, 71,
Method(s) of Recovery R Code R4 (Recycling / reclamation of metals and metal compounds	64, 65, 67,72,78
Method of Recycling - Recycling /reclamation of metals	68, 72,
Alsaggaf Trading Est-Exporter of Non-Ferrous Scrap Metals	83
(v) As per nomination letters, we receive requests for various types of scrap commodities like HMS, Copper, Brass, Lead Concentrate etc which are conducted visual inspections by us, as per DGFT guidelines for the concerned party. In each case, the subject goods were declared to us as "Lead Concentrate as per above nomination received. In every case, it is confirmed by us the subject consignment is metallic scrap, according to the declarations provided by our respective party. And please note, we had not found any of the consignment to be other than mettalic scrap, as declared by the client.	700

(4) Relevant portion of RUD-57-Lead & Zinc Market Survey (MS-34) Controller General, Indian Bureau of Mines - Page 336

"Hindustan Zinc Ltd (HZL) is the only producer of primary lead which operates three smelters having a total capacity of 93 thousand tonnes per year.."

(5) Relevant portion of RUD 58-Lead & Zinc Industry in India: An Overview (2013) India Lead Zinc Development Association - Page 581

(6) Country of Origin Certificates from Dubai Chamber, UAE "78020000" "Lead Waste & Scrap" - Pages 811, 812

(7) Customs Load Port Documents:

The Load Port Documents show the description as "Lead Scrap" and CTH as *78020000"

Relevant Description	Page No of RUD
Description of goods as - Lead Scrap	585 to 588, 603, 606, 618 to 623, 629 to 634, 648 to 653,
CTH as 78020000/78020010	585 to 588, 599, 600, 603, 606, 610, 618 to 623, 625, 629 to 632, 647 to 654,
Lead Scrap Concentrate	600

(8) RUD 68-Letter F.No. B-29016/1(Misc)/15/HWMD dated 21.08.2015 from Central Pollution Control Board which clearly state

(i) Primary Metallurgical Process

(ii) Secondary Metallurgical Process

(iii) Hindustan Zinc Ltd is the only Primary Producer of lead from lead ore

(iv) M/s. Mittal Pigments Pvt Ltd, M/s. R G Pigments Pvt Ltd, M/s. Jammu Pigments Pvt Ltd. M/s. Gravita India Ltd are Secondary Metallurgical Process Industries and have been granted registration for recycling of lead scrap and legally cannot process Lead Concentrate for production of lead. They are not permitted to use Lead Concetrate / Lead Ore for manufacture of lead metal.

(9) Statement under Section 108 of the Customs Act in respect of Shri Dhasarathan, Joint Director, Customs Laboratory, Kandia (Page 135) states as follows at Page 137 of RUD:

"Q. What is the difference between "Lead Concentrate" and "Lead waste powder /residue of used batteries"?

Ans: The Lead Concentrate may consist of Lead Sulphide, Lead Carbonate, Lead Oxide, Lead Chloride and Lead Sulphate as per the Standard Literature but in case of "Lead waste powder (Lead residue) of used batteries Lead Sulphate is the pre-dominant component. In battery scrap / waste, Lead Sulphide is either absent or present in very trace quantity. Plastic and metallic pieces may also be present in the Lead Waste / Scrap if they are not properly segregated".

4.3 It is very clear from the aforesaid documents that the imports made by the appellants are not Lead Concentrate but are actually Lead Scrap and Waste.

5. Per contra, in their further submissions dated 12.08.2026, the advocate for the appellant in rebuttal further submitted as follows, with in time frame allowed to either side, post hearing.

5.1 It is submitted that not a single test report relied on by the Department describes the imported goods as "lead waste and scrap", or as metal. Every test report and laboratory that examined the goods reported them to be a powder composed of lead oxide and lead sulphate, with metallic lead present only in a "small" or "very small" amounts in particle form.

5.2 The entire evidence relied on by the department has been considered and rejected in Gravita India Ltd. v. Commissioner of Customs, Mundra, Final Order Nos. 10781-10782/2024-WZB/AHD dated 09.04.2024.

SIMILARITY WITH THE GRAVITA CASE

Sl.	Feature	Gravita India Ltd. (F.O. 10781-82/2024)	Present case (RUD reference)
1	Both matters arise from the same investigation	F. No. DRI/AZU/GRU/LEAD/INT-24/2014 — DRI, Gandhidham Regional Unit dated 23.11.2016 (paras 2 of the Judgment)	The SCN issued to Mittal Pigments is F. No. DRI/AZU/GRU/LEAD/INT-24/2014/ Mittal is the identical file. Refer SCN appended at Page 304 of Appeal No. C/10666/2018)
2	Test Memo proforma	The Test Memos referred after Para 29 of the Judgment in Gravita India refers to six standard queries viz. percentage of lead; compound form etc.	The identical six queries, verbatim, in every Test Memo (Refer RUD-48 @ p. 233; RUD-54 @ p. 250)
3	Same CRCL file number, sample registration and report date	CRCL File No. - F. No. 26/Cus/C-21/2015-16 dated 30.12.2015 Sample Regn. No. CLR-26/30.11.2015 Report: Test Memo No. 77/2015-16 dated 04.11.2015 (Refer Judgment of Gravita just above Para 30)	F. No. 26/Cus/C-21/2015-16 dated 30.12.2015 Sample Regn. No. CLR-27/30.11.2015 Report: Test Memo No. 78/2015-16 dated 04.11.2015 (Refer RUD-54 @ pp. 249–250).
4	The clarificatory 'opinion' relied on by the Department	CLR-26/30.11.2015 (TM 77) was the report reproduced and analysed by this Tribunal (Refer Judgment of Gravita just above Para 30)	CRCL letter dated 09.05.2016 (RUD-50 @ p. 240) states in terms that the opinion on TM Nos. 80, 81 and 82 was reached "on pursuing the retest reports ... of similar

			type of samples covered under TM No. 77 (CRCL Reg No CLR-26/30.11.2015)" This is transposed from the sample in Gravita
5	Same foreign supplier / shipper	M/s. Sharif Metals Intl. — load-port export documents (Refer para 4)	M/s. Sharif Metals International (RUD-61 @ pp. 678–695 RUD-62 @ p. 700)
6	Similar pre-shipment inspection certificates	Six PSICs referred which bears the recital that the item "is actually a metallic scrap/waste/seconds/defective" While, under the head 'description of metallic scrap', describing the goods as 'lead concentrate' (Refer paras 4.1, 16, 17 of the Judgment)	The identical recital in the identical standard format: RUD-15 @ pp. 62–82; RUD-26 @ pp. 147–160; RUD-28 @ pp. 164–174
7	Same CPCB letter relied in both the cases	F. No. B-29016/1(Misc.)/15/HWMD dated 21.08.2015 (paras 9, 27.1)	Same letter and that letter names M/s. Gravita India Ltd. alongside the present Appellants. Refer RUD-68 @ pp. 819–820
8	Load-port documents said to show 7802	Export documents showing description 'Lead Waste/Scrap' and tariff 7802 (Refer para 27.1 of Judgment)	Similar description in the present case in load port documents Refer RUD-59 @ pp. 582–666 (Pg. 585) RUD-65 @ pp. 811–813
9	Absence of gold / silver	Argued in paras 11, 23(ii). Argument rejected	Same Argument raised in the present case: Refer RUD-66 @ pp. 814–816 (ER-1 returns relied upon to show that no production of gold or silver). Items 4 and 5 of the Department's Written Submissions
10	Kandla laboratory officers examined to discredit their own reports	Chemical Examiners and Joint Director, Kandla, examined to depose that their test parameters were insufficient (para 27.1)	Same modus operandi here. RUD-19 to RUD-23 @ pp. 88–140
11	JNCH report favourable to the assessee, then overridden	JNCH, Nhava Sheva reported "composition of lead concentrate"; DRI, dissatisfied, sent remnants to CRCL (Refer paras 29–30)	The identical sequence is followed in the present case. Refer RUD-52 @ pp. 245–246 (is the JNCH report that describes the imported goods

			as "composition of Lead Concentrate" This led to two DRI letters seeking clarification→ RUD-53 @ pp. 247–248. No reply was received so remnant sent to CRCL (RUD-54 @ pp. 249–250)
12	Contemporaneous imports	Period September 2011 to August 2014	Overlapping period
13	Pre-shipment Inspection Agencies Statement	It was contested by the department that statements of PSIAs that Pre-shipment Inspection Certificates are issued for waste/scrap (Ref. para 16)	Similar statements relied on in RUD-24, RUD-25, RUD-27, RUD-29 @ pp. 141–176

REBUTTAL TO DEPARTMENT’S EVIDENCE IN PARA 3

ITEM (1): THE RE-TEST REPORTS

The Department's item (1) cites RUD pages 216 to 219 and 240 to 243. Those pages contain four re-test reports of the Central Revenues Control Laboratory, all dated 15.10.2015. The Department has quoted three sentences of conclusion from them. It has not quoted the composition. The composition is set out below from the Department's own RUD.

Report / Test Memo	RUD pg.	Pb %	Lead Oxide%	Lead Sulphate%	Metallic lead
CLR-22/28.09.2015	216–217	65.6	28.5	58.4	Refer Sl. No. 1(b) - small amount of metallic lead in fine particle form
CLR-23/28.09.2015	218–219	68.66	27.0	64.8	Refer Sl. No. 1(b) - small amount of metallic lead in fine particle form
CLR-21/28.09.2015	241–242	67.5	30.3	58.6	Refer Sl. No. 1(b) - small amount of metallic lead in fine particle form
CLR-24/28.09.2015	243–244	66.25	30.8	57.9	Refer Sl. No. 1(b) - small amount of metallic lead in fine particle form

5.3 In Gravita India, PB composition was 64.2%, Lead Oxide 18.2 – 34.6% and Lead Sulphate was 52.1 to 60.5%. On the basis of this very composition

(discussed in Para 35 – 36 of the Gravita Judgment), this Hon'ble Tribunal in Gravita held that classification under Tariff Item 7802 00 90 has absolutely no merit. In the four reports the Department itself relies upon, lead oxide and lead sulphate together account for 86.9%, 91.8%, 88.9% and 88.7% of the material respectively. Metallic lead is present, but only as a "small" or "very small" amount in fine particle form.

5.4 The reasoning at paragraphs 35 to 37 of Gravita applies:

- (i) Lead oxides are covered by Heading 2824;
- (ii) sulphates of metals are covered by Heading 2833;
- (iii) only lead in primary metallic form falls under Chapter 78; and
- (iv) accordingly, if the goods are not "lead concentrate" as the Department contends, then at best they could be classified under Chapter 28 and the Department's claim to Tariff Item 7802 00 90 fails.

5.5 The Department quotes, as though it were adverse, the CRCL entry: "Literary evidence reveals that Anglesite form of PbSO_4 exists in paste in lead-acid batteries also".

5.6 The word "also" is a concession. It concedes that the anglesite form of PbSO_4 is a lead ore mineral, whose ordinary habitat is ore, and states only that it exists in battery paste as well.

5.7 The Explanatory Notes to Heading 28.33 of the HSN, extracted at paragraph 37 of Gravita states "Natural lead sulphate (anglesite) is excluded (heading 26.07)".

5.8 RUD-54, at RUD pages 249–250, is a re-test report of the CRCL. The analytical results in that report are lead 50.2%; zinc 13.7%; iron 4.3%; a further 4.2% of metallic zinc; and, by XRF, silver 0.04%. Metallic lead is recorded as present only in "very small quantity ... in fine particle form (which could not be estimated)".

5.9 The Kirk-Othmer Encyclopaedia of Chemical Technology at RUD-56, pages 257–280, which the Department itself put on record as the authoritative specification for lead concentrate, the result is as follows:

Constituent	Kirk-Othmer range for lead concentrate (RUD-56)	RUD-54 (CLR-27) result	Within specification?
Lead (pb)	45-75%	50.2%	Yes
Zinc (Zn)	0-15%	13.7%	Yes
Iron (Fe)	1.0-8.0%	4.3%	Yes
Silver (Ag)	0-0.15%	0.04% (detected)	Yes

5.10 Four consequences follow, and each is fatal to a distinct limb of the Department's case:

- (a) The absence of silver is the foundation of the Department's items (4) and (5) in RUD-66 (ER-1 returns, pp. 814–816). Silver was in fact detected at 0.04%. Silver range for lead concentrate begins at 0%.
- (b) If the material is neither concentrate nor battery-derived, Chapter 78 is excluded. An off specification industrial product of inorganic nature is, not metal, not metal waste, and not a metal good rendered unusable by breakage or wear. Section Note 8(a) to Section XV cannot be satisfied by it.

ITEM (2): THE WORLDWIDE INSPECTION REPORT AT RUD PAGE 177

5.11 The Department's item (2) is the Inspection Report dated 17.09.2015 of M/s. Worldwide Inspection Services Pvt. Ltd. (RUD-30, p. 177). The following is respectfully submitted.

- (a) It is not evidence of the goods, but of a process at a foreign supplier's premises.
- (b) It post-dates the imports. The Bills of Entry in issue are of October to December 2014. The report is of 17.09.2015
- (c) The report itself records that a sample was drawn and tested, and annexes Test Certificate No. BD1350 dated 07.07.2015 of M/s. TCR Engineering Services Pvt. Ltd. (RUD-31, p. 178). That certificate

describes the "Nature of Sample" as "Lead Powder" and the lead content as "62.90%".

(d) The report and the statements of Shri Prem Ranjan Kumar (RUD-27, RUD-29) were relied upon without the deponent being examined before the adjudicating authority and without any opportunity of cross-examination.

ITEMS (3), (6) AND (7) - PSICs, CERTIFICATES OF ORIGIN AND LOAD-PORT DECLARATIONS

5.12 These three items are the heart of the Department's tabulated case, and they are the very items which paragraphs 4.1, 16, 17 and 27.1 of Gravita considered and rejected.

5.13 The Department's item (3) quotes, at RUD page 700, the reply of M/s. Geo-Chem Middle East.

(a) "which are conducted visual inspections by us". The inspections were visual. A visual inspection of a grey powder cannot distinguish Heading 2607 from Tariff Item 7802 00 90.

(b) The agency's own record is that the goods were nominated, presented and inspected as lead concentrate.

(c) The inspection charges were billed to and paid by the foreign suppliers. The same page records that charges were collected from, and payment received from, "SHARIF METAL INTL DMCC. The PSIC template was the supplier's routine, not the importers' election.

5.14 The PSIC evidence and the CRCL evidence are mutually destructive. The PSICs certify "metallic scrap". The CRCL re-test reports on which the Department's item (1) depends record that the material contains only a "small" or "very small" amount of metallic lead in fine particle form, the mass being 86.9% to 91.8% lead oxide and lead sulphate. Both cannot be right.

5.15 As to items (6) and (7), the Dubai Chamber certificates of origin (RUD-65, pp. 811-813) and the load-port customs documents (RUD-59, pp. 582-666):

(a) These are declarations made by foreign exporters before a foreign customs administration, in a foreign nomenclature, for foreign statistical and regulatory purposes.

(b) The Department's own table concedes that the load-port documents describe the goods as "Lead Scrap Concentrate" at RUD page 600. The document at that page is a Dubai Customs export declaration of M/s. Sun Metal Casting LLC dated 13.04.2014 in which the "Goods Description" field reads "LEAD SCRAP/CONCENTRATE" against H.S. Code 78020000.

ITEMS (4), (5) AND (8)

5.16 Items (4), (5) and (8) establish three propositions, (i) that Hindustan Zinc Ltd. is India's only primary lead producer (RUD-57 @ p. 336; RUD-58 @ p. 581); (ii) that primary and secondary metallurgical processes are distinct; and (iii) that the assessee holds registration as secondary metallurgical units and not environmental clearance for primary metallurgical processing (RUD-68 @ pp. 819-820).

Classification under the Customs Tariff is determined by the nature of the goods presented for assessment and not by the identity of the importer, the licences he holds, or the furnace in his factory. The argument is in any event foreclosed. Paragraphs 9, 14 and 27.1 of Gravita record the identical submission. The rotary-furnace premise is contradicted by material already on record. The certificate of the engineer formerly employed with HZL (Annexure-4, appeal paper book p. 137) and the US patent disclosure (Annexure-18, pp. 249-250), establish that rotary furnaces are capable of processing concentrate at small scale. The Department has produced nothing to meet that material. As to silver, the Department's own RUD-54 detected silver at 0.04%, and the Department's own RUD-56 puts the range for lead concentrate at 0% to 0.15%.

ITEM (9) THE STATEMENT OF SHRI R. DHASARATHAN (RUD-23, RUD PAGES 135-140)

The Department reproduces, at page 137 of the RUD, a single question and answer.

(a) As per the statement "The Lead Concentrate may consist of Lead Sulphide, Lead Carbonate, Lead Oxide, Lead Chloride and Lead Sulphate as per the Standard Literature". The samples are 86.9% to 91.8% lead oxide plus lead sulphate. This composition is a composition of lead concentrate.

(b) The Customs Laboratory, Kandla (of which the deponent was a Joint Director), had reported contemporaneously and repeatedly that the goods "have the characteristics of lead concentrate" (RUD-40 @pp. 201-204; RUD-73 and RUD-74 @ pp. 841-858).

Findings:

6. In the instant case, we find that there are conflicting reports at various levels produced by the department as well as by the party with the help of table at page 16(supra).

6.1 It has been pointed out to us that out of 9 reports, 3 are against the appellants, 2 are inconclusive and 4 are in favour of the appellants. We find that the department wishes to rely upon various documents indicating as to what is their capacity to process and also how the products have been differently described in various documents during the imports-export transactions with the help of pointing out various relied upon documents. Department has also relied upon technical literature to buttress its case whereas the party has purely sought to rely upon the reports in its favour as well as case laws and on rebuttal of various evidences of the department as is available from pages 28 to 33 (Item No. 1 to 9).

6.2 We find guidance of the following case laws and we take support of following in reaching our conclusions.

- 1987 (28) ELT 346 Jenson Enterprises vs Collector of Customs, Cochin and Another, Hon'ble High Court of Madras decided that in case of conflicting reports, the basis of scientific investigation is to be preferred them the opinion given without any basis.

We are therefore of the view that varied descriptions given in various documents does not help the case of any party and emphasis is to made only to the scientific evidence and not mere nomenclature used by either side.

- In 2026 (395) ELT 429 (Guj.) Aparajita Energy Pvt. Ltd. vs UOI, the Hon'ble High Court basing the decision in the Matter of Gastrade International vs CC Kandla reported in 2025 (392) ELT 529 (SC), in para 23 held as under:-

“23.By applying the “most akin” test, as enunciated by the Apex Court in the case of *Gastrade International* (supra), the Customs authorities released the goods classified as Distillate Marine Fuel. In the present case, if the “most akin” test is applied, the same would, in fact, be in favour of the petitioner, as the respondents have not definitively concluded that the Distillate Oil imported by the petitioner is, in fact, automotive oil or Diesel, but it only refers to that it has characteristic of automotive oil. The report does not refer to the extent of “characteristic” which would change the nature of classification from Distillate Oil to Automotive Diesel oil. The petitioner cannot be discriminated in view of the aforesaid communications written by the CRCL, Delhi, to the Assistant Commissioners of Kandla authorities relating to the similar parameters/characteristics which were found in the tests of the samples of Distillate Oil.”

- In 2023 (383) ELT 241 (SC) Hewlett Pack and India Sales Pvt. Ltd. vs Comm. Of Cus. (Import) Nhava Sheva, the Hon'ble Supreme Court held as following in para 23.

“23.It goes without saying that since the customs authorities wanted to classify the goods differently, the burden of proof to showcase the same was on them, which they failed to discharge [*Dabur India Ltd. v. CCE, Jamshedpur* - (2005) 4 SCC 9 = [2005 \(182\) E.L.T. 290](#) (S.C.) = 2005 taxmann.com 1222]. Hence under the prevalent self-assessment procedure, the classification submitted by the Appellants must be accepted.”

Same views resonate in 2018 (361) ELT 577 (SC) in C.C., Mumbai vs Dilip Kumar and Co. In the instant case, the imports have taken place in the year 2014-15 and were covered by the amended section 17 of the Customs Tariff Act providing for self assessment.

- In UOI vs Garware Nylons Ltd. as reported in 1996 (87) ELT 12 (SC), it was held that the burden of proving confiscation is on Revenue.
- In 2012 (286) ELT 321 (SC), the Hon'ble Apex Court held that in absence of Statutory definition, the products have to be construed according to their common parlance understanding.
- 2022 (382) ELT 23 (SC) in the matter of CC Mundra vs Sunrise Traders, in the matter decided by this Bench of the Tribunal, Hon'ble Supreme Court held that the expert opinion of Chemical Examiner if inconclusive cannot be accepted to disturb the classification.
- (2022) 1 Centax 200 (Orissa) Tarini Minerals Pvt. Ltd. vs Deputy Commissioner of Custom House, Pradeep – when conflicting reports of CRCL are there, matter to be resolved as per statute.

6.3 Firstly, we will analyse the reports to see which is more detailed and acceptable to us. At the outset, we find that majority of the reports are in favour of the assessee out of 9 reports obtained. We find that Customs Laboratory, Kandla had given the report of the imported goods as lead concentrate in favour of the party stating that they have characteristics of

'lead concentrate', whereas Customs Laboratory at Nhava Sheva had indicated it to be 'other than the lead concentrate' in conflict with the Kandla report. The report did not reveal any chemical composition. The CRCL New Delhi vide report dated 15.10.2015 gave composition however gave report that the samples have characteristics of 'lead concentrate'. CRCL New Delhi report while dealing with the bits of metallic/ plastic parts found in the consignment, gave report that 'samples have resemblance with lead-acid battery parts'. In the other report dated 18.11.2015, CRCL New Delhi stated that the samples are greyish fine powder with small-friable lumps and also found some small amount of lead and zinc, silver, copper, cadmium, arsenic antimony, iron, sulphur in traces. CRCL New Delhi then gave a clarificatory letter at the behest of DRI vide letter dated 09.05.2016 that this sample has no characteristics of 'lead concentrate' it has characteristics of 'washed and dried electrode paste derived from used Lead Acid Battery'. The Customs Laboratory JNCH, Nhava Sheva vide their letter dated 28.04.2015 gave the opinion that the subjected goods had the composition of 'lead concentrate'. The samples was drawn by DRI from the factory of the appellants which this time states that the samples is neither 'lead concentrate' nor 'material drawn from lead acid battery' as was being claimed by the department (contrary to what was being made out by the department). In the 9th report dated 16.10.2015, the report stated that there were metallic/ plastic pieces which have resemblance of the lead acid battery parts but as per the party, the same was not a sample of powder. We also find that the term concentrate has not been defined in the tariff and Chapter 26 of the Customs Tariff Act which, inter alia, includes 'Ores, slag and ash', therefore, to classify the product under Chapter 26 it is not necessary that the lead should be in its primary form but can also include various other forms. The heading with which we are concerned is 2607 00 which reads 'lead ores and concentrate' as contrasting with the Chapter heading 7802 under which department is seeking classification and same deals with 'lead waste and scrap'. Particularly, Chapter 7802 describes various kinds of lead scrap

such as 'Racks, Radio, Relay, Ropes, Roses, as per ISRI code. Chapter 78 only in case of "refined lead", provide sub-heading note and requires that it should have limiting content percentage by weight of silver 0.02% therefore, even 0.02% is the "limiting content" and cannot be considered as a compulsory requirement as its non-recovery has been emphasized by the department. We also find that the test report dated 04.11.2015 of CRCL New Delhi, had revealed that the material was derived from lead acid battery as have been made out by the department but penultimate report obtained by the department did not agree with this. In view of these conflicting test reports at various levels, within the Government Laboratories only, we are inclined to consider that all the reports are inconclusive even though majority are leaning towards the stand of the party, and therefore, the classification made by the party cannot be easily be disturbed by the department on the basis of evidence adduced, which in any case, being the product of scientific nature is primarily required to be proved through scientific tests.

6.4 We further find technical literature produced can be of use only if identity of the product is conclusively established which has not been the case in this particular instance. We also find that as indicated by the appellant, from the same investigation has arisen another case of *Gravitas India Limited vs Commissioner of Customs, Mundra* (reported in 2024 (390) ELT 394 (Tri. Amd.)) which has discussed at length the similarities in this case to that case and in which this Bench has eventually after discussion set aside the classification of the goods under Chapter 78 and even various reports and reached conclusions with the help of description in H.S.N. and its explanatory notes which is most potent tool of interpretation preferable to any technical literature, which may or may not offer assistance with the four folds of Chapter/ Section Notes etc., which have statutory force. We are therefore, inclined to adopt the reasoning given in that order as part of this order. Even the reports in that case were conflicting and are also being reproduced to show the similarities of the products:

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

Appeal No. and Impugned Orders	Period of Dispute	Classification	Amount involved
Appeal- C/0241/2022 Impugned Orders- Order-in-Appeal No. MUN-CUSTOM-000-APP-262 to 263-21-22 dated 05.01.2022 Order-in-Original No. MCH/ADC/AK/68 /2020-21 dated 25.09.2020 Show Cause Notice- S/20-13/Misc.SCN. Gravita/SIIB/CH M/17-18 dated 20.12.2017	September, 2011 – August, 2014	By Appellant – CTI 26070000 (Lead Concentrate) Ordered by AA – CTI 78020090 (lead waste and scrap)	Customs duty - Rs. 33,74,039/- Penalty u/s 114A- Rs. 33,74,039/- Confiscation u/s 111- 1697.278 MT valued to Rs. 7,10,18,510/-
Appeal- C/0242/2022 Mr. Krishna Gopal Gupta, General Manager, Gravita India Ltd.			Penalty- Rs. 25,00,000/- u/s 112(a) Rs. 10,00,000/- u/s 114AA

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

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

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

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

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

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

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

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

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

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

Constituent	Wt %	Constituent	Wt %
Lead (Pb)	45-75	Iron (Fe)	1.0-8.0
Zinc (Zn)	0-15	Insolubles	0.5-4

Gold (Au)	0-0.01	CaO	trace-3.0
Silver (Ag)	0-0.15	Sulfur (S)	10-30
Copper (Cu)	0-3	Bismuth	trace-0.1
Arsenic (As)	0.01-0.4	Antimony (Sb)	0.1 - 2

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

12. It was submitted that the presence of 'lead sulphate' instead of 'lead sulphide' is not the deciding factor to determine if the subject goods are lead concentrate or lead scrap/waste. Kirk-Othmer states that lead was found in various ore minerals i.e. PbS (lead Sulphide), PbSO₄ (lead sulphate) and PbCO₃ (lead carbonate) i.e. lead ore was found in nature in the form of lead sulphide (Galena ore), lead sulphate (Anglesite ore) and lead carbonate (Cerussite ore). This clears the fact that one of the form in which lead was present in mineral ore is lead sulphate. Therefore, the whole premise of the impugned order that presence of lead in the form of lead sulphate proves that the subject goods are battery waste was incorrect and not sustainable. In fact, the test reports of CRCL, New Delhi on which the impugned order places reliance itself confirm the fact that anglesite was present in the samples of impugned goods.

13. Further, the test reports issued by various testing labs of the Customs at Kandla and Jaipur proved this point beyond doubt that the subject goods were lead concentrate. Again, the test report obtained by DRI from JHCH Customs lab confirmed that the goods were lead concentrate.

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

15. The impugned order further observed that the goods were battery scrap/waste if the lead was present in the form of lead sulphate relying on the statements given by the officials of Customs House Laboratory, Kandla. It is submitted that presence of lead sulphate to prove lead scrap/waste is an incorrect premise as per the Kirk-Othmer wherein it has been stated that lead ore is found in ore mineral i.e. PbS, PbSO₄ and PbCO₃ i.e. the lead ore is found in nature in the form of lead sulphide (Galena ore), lead sulphate (Anglesite ore) and lead carbonate (Cerussite ore). This clears the fact that one of the form of lead ore is lead sulphate as well. Therefore, the presence of lead sulphate cannot be decisive as to determine the nature of goods being lead concentrate or lead scrap. On the contrary, presence of lead sulphate would establish that the lead concentrate has been derived from Anglesite ore.

16. The impugned order further observed that there was mis-declaration of goods on the basis of the statements of Pre-shipment Inspection Agencies (hereinafter referred to as "PSIA") wherein it has been stated that PSICs are issued in respect to waste/scraps as per the requirements of the FTP. Since, PSICs have been issued for imports made by the Appellants, therefore, the goods are lead waste/scrap. Appellants submitted that it was also important to mention here that the PSICs under the head 'description of metallic scrap', themselves described the goods as 'lead concentrate'. Therefore, the PSIC also certified that the goods were 'lead concentrate'. Further, it was submitted that PSICs were issued in order to certify that the imported goods did not contain any hazardous, toxic waste, radioactive contaminated waste/scrap containing

radio-active material, any type of arms, ammunitions, mines, shells, live or used cartridge or any type of explosive material in any form. PSIA never undertook any activity to test whether the goods were lead concentrate or lead waste/scrap. Without prejudice, it was submitted that although the mandatory requirement of PSICs arose only in case of waste etc., there was otherwise no bar in law on getting the goods testing by PSIA if the goods imported were lead concentrates. The tests done were merely to rule out the existence of any hazardous, toxic radioactive or explosive material in any form.

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

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

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

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

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

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

samples to be of composition containing lead concentrate. This report had also been said to be not reliable by DRI.

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

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

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

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

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

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

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

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

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

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

27.1 That the Lead from Lead concentrate is produced using blast furnace, whereas. Lead from Lead Scrap/ Waste can be recovered using a simple rotary furnace. That the Lead mostly occurs with Zinc, Silver and copper and in many mines value of Silver content often exceeds that of Lead however, the appellant

company has not reported any manufacturing/ sale of even a single kilogram of Silver. It was noted that HZL is the only producer of primary Lead in India, i.e., producing Lead metal from Lead concentrate and the appellant company is not involved in production of primary Lead from Lead concentrate. The appellant company runs recycling plant and is engaged in recovery of Lead metal from various types of Lead Scraps and Wastes and is registered under Hazardous Wastes (Management, handling and Trans-boundary Movement) Rules, 2008 as recyclers of various types of Lead Scrap/ Waste. That in Central Pollution Control Board (CPCB)'s letter dated 21.08.2015 clarified that the nature of metallurgical plant of the appellant company and finds that environment clearance was required to be obtained even before setting up a processing plant or while enhancing capacity of existing plant and the appellant company has not obtained such clearance for primary metallurgical plant and are not allowed to process Lead concentrate for production of Lead. This confirms that the appellant company is a secondary producer of Lead. i.e., engaged in recovery of Lead metal by recycling Lead Scrap and is not allowed to process Lead concentrate for production of Lead. It was found that that the description mentioned in load port customs export documents showed description of imported goods as Lead Waste/ Scrap and tariff classification as 7802 confirming that the goods were actually Lead Waste/ Scrap; that even where description was Lead concentrate, the customs tariff classification is declared as 7802 suggesting clearly the waste and Scrap nature of the subject goods. That even in pre-shipment certificates, the subject goods have been certified to be metallic scrap; that the PSIAs authorized by proper authority to conduct specified inspections have confirmed in their certificates and through their statements/ correspondence that the goods are metallic Scrap/ Waste. That there was no manufacture/ clearance of Gold/Silver/ Zinc. That even in his statement dated 08.04.2015. Shri Gopal Krishna Gupta, General Manager (Commercial) has confirmed that the goods imported by them as Lead concentrate did not contain Silver or Gold. That as per literature about Lead concentrate, Silver and Zinc are necessary ingredients of Lead concentrate and are recovered from Lead concentrate for sustainable profitability and therefore, nil production of metals like Silver/ Zinc by the appellant company suggests that the raw material used by them in their factory was not Lead concentrate as it did not contain Silver, Zinc or Gold. With regard to chemical testing of the product, it was found that the chemical examiners/ joint director of Kandla Laboratory have admitted in their statements that the test parameters analyzed by their Laboratories were not sufficient to ascertain whether goods were Lead concentrate or Waste/ Scrap of Lead batteries. The adjudicating authority finds that the Customs Laboratory, Nhava Sheva opined that the subject goods had the composition of Lead concentrate, however, when the Joint Director was asked to clarify the term "it has the composition of Lead concentrate", no reply was received and when the remnant sample was sent to CRCL, New Delhi, it was confirmed that the goods were not having any characteristics of Lead concentrate and instead the goods were having the characteristics of Lead Scrap/ Waste. The similar reports were also received in respect of five samples taken from the goods cleared from Jaipur. That CRCL, New Delhi is the apex laboratory headed by a Director and CRCL, New Delhi has tested more parameters and its opinion confirmed that the goods are not having any characteristics of Lead concentrate, and instead having the characteristics of Lead Scrap/ Waste.

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

Findings

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

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



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

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

Date: 02.03.2015

TEST MEMO NO. 37/2014-15

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

[Signature]
2/3/15

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

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

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

2 Lab No 174 DRI
4/3/15

Test memo NO. 37/2014-15

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

Grey powder (dry basis)	Lumps (dry basis)
Lead — 60.83%	64.5%
Iron — 1.3%	1.38%
Zinc — 1.2%	1.1%
Cadmium — 0.2%	0.18%

Powder = 57.1%
Lumps = balance

It has the composition of Lead Concentrate
Sealed sample returned

[Signature]
29/4/15

[Signature]
29/4/15
RAJEEV ANAND
Principal Examiner Gr. I

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



3

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

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

Date: 04.11.2015

TEST MEMO NO. 77/2015-16

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

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

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

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

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

30.12.2015

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

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

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

Scaled remnant is being returned separately.

(Dr.Y.K.S. Rathore)
Director (Revenue Laboratories)
डा. य.के.एस. राठौर/Dr. Y.K.S. RATHORE
निदेशक (राजस्व प्रयोगशाला)
Director (Revenue Laboratories)
भारत सरकार/Ministry of India
विस्त मंत्रालय/Ministry of Finance
राजस्व विभाग/Deptt. of Revenue
केन्द्रीय राजस्व नियन्त्रण प्रयोगशाला
Central Revenue Control Laboratory
नई दिल्ली/New Delhi-110 012

A perusal of the above report indicates that the lead contained in the sample was in the form of compounds namely lead oxide 26.8% and lead Sulphate 58%. Apart from the lead Oxide and lead Sulphate, the sample also contained a minuscule quantities of zinc, copper cadmium antimony, arsenic, iron etc. The test report declared that the sample is not lead concentrate and has the characteristic of 'washed and dried electrode paste derived from used lead acid batteries'. The test report did not find it to be lead scrap.

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



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

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

Date: 24.06.2016

TEST MEMO NO. 41/DRI GRU

Sl. No.	Declared description :	"Lead Concentrate"
1	Sample collected from:	Sample of consignment imported by M/s. Gravita India Limited, Jaipur under Bill of Entry No. 4964857 dated 19.10.2011
2	Marks/ Description	Sample drawn by Customs, ICD, Jaipur during examination Customs ICD, Jaipur TM No. 55/2011
3	Test for:	1. (a) Percentage of 'Lead' content. (b) In which compound forms lead is present. (c) Percentage of different lead bearing compounds. 2. Percentage of other contents viz Zinc, Silver, Copper, Cadmium, bismuth, arsenic, antimony, iron, Sulphur etc. 3. Whether it is lead concentrate obtained from naturally occurring Lead Ore or otherwise. 4. If it is obtained from Lead Ore then nature of Ore viz. (i) Anglesite (lead sulphate), (ii) Cerussite (lead carbonate), (iii) Galena (Lead sulphide) (iv) Pyromorphite (Phosphate and Chloride of lead) 5. Whether it is 'Lead ash / lead residue / lead scrap' of spent lead acid batteries (i.e. derived from re cycling of Lead batteries). 6. If it is neither obtained from natural Lead Ore and nor from Spent battery then specific identity / description of the goods may be ascertained.

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

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

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

6

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

61-03-2016
Date: 29-08-2016

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

S. N.	Tests Advised in Test Memo	Test Results/reply of query
1.	(d) Percentage of Lead content	64.5 %
	(e) In which compound form lead is present	In the form of Lead Oxide and Lead Sulphate with small amount of metallic lead in fine particle form
	(f) Percentage of different lead bearing compounds	Lead Oxide= 28.5 % Lead Sulphate= 52.5 %
2.	Percentage of other contents viz. Zinc, Silver, Copper, Cadmium, Bismuth, Arsenic, Iron, Sulphur etc.	Zinc (Not detected), Silver (Not detected), Copper (Not detected), Cadmium (Not detected), Bismuth (Not detected), Antimony(0.597%), Arsenic (0.20%), Iron (.11 %), No free Sulphur is detected
3.	Whether it is Lead Concentrate obtained from naturally occurring Lead Ore or otherwise.	Sample has no characteristics of Lead Concentrate, It has characteristics of washed & dried Electrode paste derived from used Lead Acid Battery.
4.	If it is obtained from Lead Ore then nature of Ore viz.	Sample has no characteristics of any type of Lead Ore.
	(v) Anglesite (Lead Sulphate)	Literary evidence reveals that Anglesite form of PbSO4 exists in paste of lead-acid batteries also.
	(vi) Cerussite (Lead Carbonate)	Not detected
	(vii) Galena (Lead Sulphide)	Not detected
	(viii) Pyromorphite (Phosphate & Chloride of lead)	Not detected
5.	Whether it is lead ash/lead residue/lead scrap of spent lead acid batteries (i.e. derived from recycling of lead batteries)	Sample has characteristics of washed & dried electrode paste derived from used lead acid battery.
6.	If it is neither obtained from natural lead ore and nor from spent battery then specific identity/description of the sample may be ascertained.	Sample has characteristics of washed & dried electrode paste derived from used Lead Acid Battery.

Sealed remnant sample returned.

602

11/2/16

आर. बी. सक्सेना/R.B. SAXENA
रजिस्टर्ड इंस-III/Chemical Examiner Gr. II

The test report again indicated that the lead contained in the sample is in the form of lead compounds like lead oxide 28.5% and Lead Sulphate 52.5%. Apart from the said compound, the samples also contained the minuscule quantities of other materials. Based on above information the CRCL came to the conclusion that the sample does not have the characteristics of 'lead concentrate'. It also came to the conclusion that it has the characteristics of "washed and dried electrodes paste derived from used lead acid battery". It did not report that the sample was lead scrap.

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

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

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

Date: 24.06.2016

TEST MEMO NO. 42/DRI GRU

CL-67 (CDRI)
27.06.16

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

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

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

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

C.No. 35/CRCL/2016-17/CL-67 (DRI) dt 05.08.2016
 BIE 4995856 dt 22.10.2011
 T.M. No. 112 DRI GR4

Report: The sample is in the form of Grey & Reddish-brown coloured friable lumps & lumps along with small metallic pieces with oxidised surfaces, small broken metallic pieces of wire mesh & small broken plastic pieces. It is composed of lead oxide, lead-sulphate, small amount of metallic lead along with small broken plastic pieces as well as zinc, iron, Antimony etc. in traces. Result of Test advised in Test memo are as below:

S.No	Test Advised in Test memo	Test Result / Reply of Query
1.	(a) Percentage of lead content	73.0%
	(b) In which compound form lead is present	In the form of lead oxide & lead sulphate with small amount of metallic lead.
	(c) Percentage of different lead bearing compounds	Lead oxide = 18.2% Lead sulphate = 60.3%
2.	Percentage of other contents viz. Zinc, Silver, Copper, Cadmium, Bismuth, Arsenic & Sulphur etc.	Zinc = 0.10%, Silver (Not detected), Copper (Not detected), Cadmium (Not detected), Bismuth (Not detected), Arsenic (Not detected), Antimony = 0.14%, Iron = 0.19%. No free Sulphur detected.
3.	Whether it is lead concentrate obtained from naturally occurring lead ore or otherwise.	Sample has no characteristics of lead concentrate. It has the characteristics of washed & dried electrode paste derived from used lead-Acid Battery.
4.	Is it obtained from lead ore then nature of ore viz.	Sample has no characteristics of any type of lead ore.
	(i) Anglesite (Lead Sulphate)	Literary evidence reveals that Anglesite form of PbSO ₄ exists in paste of lead Acid Batteries also.
	(ii) Cerussite (Lead Carbonate)	Not detected.
	(iii) Galena (Lead Sulphide)	Not detected.
	(iv) Pyromorphite (Phosphate of lead)	Not detected.
5.	Whether it is lead alk/lead residue/lead scrap of spent lead-Acid battery (derived from recycling of lead battery).	Sample has characteristics of washed & dried electrode paste derived from used lead-Acid Battery.
6.	Is it is neither obtained from natural lead ore nor from spent battery then specific identity/description of the lead may be ascertained.	Sample has characteristics of Washed & dried Electrode Paste derived from used lead Acid Bttry.

Leadol Remot Returned.

PORS
 5/8/16
 M. A. GEFH/R.B. SANKH
 14-11-15 14-11/Chemical Examination

The test report again indicated that the lead contained in the sample is in the form of lead compound namely lead oxide 18.2% and Lead Sulphate 60.3%. Apart from the said compound, the sample also contained the minuscule quantities of other materials. It did not report that the sample was lead scrap.

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



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

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

Date: 24.06.2016

TEST MEMO NO. 43/DRI GRU

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

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

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

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

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C/10666/10519-10528/11597/13159-13168/2018 at 05.8.2016
B/E. 5019314 dt 25.10.2011
T.M. No. 43/DRI GRU
Pkg. 200 kg in 200 kg of redish-brown coloured friable lumps & powder along with small metallic wire pieces with oxidized surface & small broken plastic pieces. It is composed of lead oxide, lead sulphate, small amount of metallic lead along with small broken plastic pieces as well as iron, Antimony etc. in traces. Result of test advised in test memo one as below:-

Sr No	Test Advised in Test memo	Test Result / Reply of Query
1.	(a) Percentage of Lead content (b) In which compound form lead is present (c) Percentage of different lead bearing compound	76.1 % In form of lead oxide & lead sulphate with small amount of metallic lead. Lead oxide = 34.6 % Lead sulphate = 52.1 %
2.	Percentage of other contents viz. zinc, silver, copper, cadmium, bismuth, arsenic, antimony, iron, sulphur etc.	Zn (not detected), silver (not detected), copper (not detected), cadmium (not detected), bismuth (not detected), arsenic (not detected), antimony = 0.15 %, iron = 0.08 % No free sulphur is detected.
3.	Whether it is lead concentrate obtained from naturally occurring lead ore or otherwise.	Sample has no characteristics of lead concentrate. It has the characteristics of washed & dried electrode paste derived from used lead-Acid Battery.
4.	If it is obtained from lead ore then nature of ore viz. (i) Anglesite (Lead sulphate) (ii) Cerussite (Lead carbonate) (iii) Galena (Lead sulphide) (iv) Pyromorphite (Phosphate and Chloride of lead)	Sample has no characteristics of any type of lead ore. It has the characteristics of washed & dried electrode paste of Lead-Acid Battery also. Not detected Not detected Not detected
5.	Whether it is 'Lead ash / lead residue / lead scrap' of spent lead acid batteries (i.e. derived from re cycling of Lead batteries).	Sample has characteristics of washed & dried electrode paste derived from used lead-Acid Battery.
6.	If it is neither obtained from natural lead ore and nor from spent battery then specific identity / description of the goods may be ascertained.	Sample has characteristics of washed & dried electrode paste derived from used lead-Acid Battery.

Sealed Remnant Returned

P-518/16

DR. S. J. SINGH, Deputy Director, DRI, Gandhidham

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

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



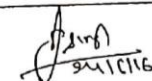
Directorate of Revenue Intelligence
Gandhidham Regional Unit
Plot No. 193, Sector - 4, Oslo,
Gandhidham (Kutch)
Tel: 02836-227891, 234948, 225298
Fax: 02836-239081, email id: driganru@nic.in

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

Date: 24.06.2016

TEST MEMO NO. 44/DRI GRU

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



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

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

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

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

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

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

Sealed remnant sample returned.

R. B. Saxena
 (R. B. Saxena)
 Chemical Examiner Gr.-II

The test report again indicated that the lead contained in the sample is in the form of lead compounds like lead oxide 31.33% and Lead Sulphate 52.37%. Apart from the said compound, the sample also contained the minuscule quantities of other materials.

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

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

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

Date: 24.06.2016

TEST MEMO NO. 46/DRI GRU

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

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

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

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

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28/7/16
मुंबई (स्ट) भारत सरकार
वित्त मन्त्रालय, राजस्व विभाग
केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड
केन्द्रीय राजस्व नियन्त्रण प्रयोगशाला
हिल्स साइड रोड, पुसा, नई दिल्ली - 110012

Government of India
Ministry of Finance, Department of Revenue
Central Board of Excise & Customs
Central Revenues Control Laboratory
Hillside Road, Pusa, New Delhi - 110012
Tel-01125847926/25843494/25841491; Telefax-01125843495

सी०सं०/C.No. 26-Cus/C-9/2016-17

दिनांक/Dated, the 30th September, 2016
03/10

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

Sir,

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

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

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

Report:-

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

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

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

Scaled remnant is being returned separately.

Yours faithfully,

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

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

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

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

Chapter 28				
Tariff Item	Description of goods	Unit		
(1)	(2)	(3)	(4)	(5)
	I. – CHEMICAL ELEMENTS			
2824	Lead oxides; red lead and orange lead			
2824 10	- Lead monoxide (litharge, massicot):			
2824 10 10	--- Litharge	Kg.	10%	-
2824 10 20	--- Massicot	Kg.	10%	-
2824 90 00	- Other	Kg.	10%	-
2833	Sulphates; Alums; peroxosulphates (persulphates)			
	- Sodium sulphates	Kg.	12.5%	-
2833 11 00	-- Disodium sulphate			
2833 19	-- Other :			
2833 19 10	--- Sodium hydrogen sulphate (acid sulphate)	Kg.	12.5%	-
2833 19 20	--- Sodium pyrosulphate	Kg.	12.5%	-
2833 19 90	--- Other	Kg.	12.5%	-
	- Other sulphates :			
2833 21 00	-- Of magnesim	Kg.	12.5%	-
2833 22	-- Of aluminium			
2833 22 10	--- Aluminium sulphate (iron free)	Kg.	12.5%	-
2833 22 90	--- Other	Kg.	12.5%	-
2833 24 00	-- Of nickel	Kg.	12.5%	-
2833 25 00	-- Of copper	Kg.	12.5%	-
2833 27 00	-- Of barium	Kg.	12.5%	-
2833 29	-- other			
2833 29 10	--- Ferrous sulphate	Kg.	12.5%	-
[2833 29 20	--- x x x x]			
2833 29 30	--- Quinidine sulphate	Kg.	12.5%	-
2833 29 40	--- Manganese sulphate	Kg.	12.5%	-
2833 29 50	--- Strontium sulphate	Kg.	12.5%	-
2833 29 90	--- Other	Kg.	12.5%	-

2833 30	- Alums			
2833 30 10	--- Ammonium alum	Kg.	12.5%	-
2833 30 20	--- Ferric ammonim alum	Kg.	12.5%	-
2833 30 30	--- Potash alum	Kg.	12.5%	-
2833 30 90	--- Other	Kg.	12.5%	-
2833 40 00	- Peroxosulphates (persulphates)	Kg.	12.5%	-

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

28-V

Sub-Chapter V

SALTS AND PEROXYSALTS, OF INORGANIC ACIDS AND METALS

GENERAL

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

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

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

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

28.33

- 28.33 - Sulphates; alums; peroxosulphates (persulphates).
- Sodium sulphates :
 - 2833.11 -- Disodium sulphate
 - 2833.19 -- Other
 - Other sulphates :
 - 2833.21 -- Of magnesium
 - 2833.22 -- Of aluminium
 - 2833.24 -- Of nickel
 - 2833.25 -- Of copper
 - 2833.27 -- Of barium
 - 2833.29 -- Other
 - 2833.30 - Alums
 - 2833.40 - Peroxosulphates (persulphates)

(A) SULPHATES

Subject to the **exclusions** mentioned in the introduction to this sub-Chapter, this heading covers the metal salts of sulphuric acid (H₂SO₄) (heading 28.07), but **excludes** mercury sulphates which fall in **heading 28.52**, ammonium sulphate which, even pure, falls in **heading 31.02** or **31.05** and potassium sulphate, which, whether or not pure, falls in **heading 31.04** or **31.05**.

The explanatory note further described the inclusions as follows.

(13) Lead sulphates.

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

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

It is also seen that the lead oxide is specifically covered under heading 2824. The inclusions are described in following terms.

28.24**28.24 - Lead oxides; red lead and orange lead.**

2824.10 - Lead monoxide (litharge, massicot)

2824.90 - Other

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

This amphoteric oxide gives the plumbates of heading 28.41.

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

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

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

7. In view of the foregoing position, case laws and discussion, we find that the case of the department cannot be sustained and classification indicated by

the party deserves to be undisturbed. Appeals are allowable. Same are allowed.

(Pronounced in the open court on 21.08.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Neha