Circular No. 34 /2007-Cus.

F. No. 528/9/2004-Cus.(TU)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi-1.
Dated 17th September, 2007.

To

All Chief Commissioners of Customs.
All Chief Commissioners of Customs & Central Excise.
Chief Departmental Representatives, CESTAT.
All Commissioners of Customs.
All Commissioners of Customs & Central Excise.

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Subject: Classification of Boric Acid and separate chemically defined compounds for the purpose of Customs & Central Excise - reg.

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It has been represented by the trade and industry associations that certain difficulties have been faced in classification of imported boric acid. Doubts have also been expressed by field formations as to whether 'Boric Acid', would be classifiable as 'separate defined chemical compound' under chapter 28 or as pesticides / insecticides, etc. under chapter 38 of the Customs Tariff.

2. Board discussed the issue of classification of Boric Acid and other separate chemically defined compounds. It was noted by the Board that 'Boric Acid' is a chemical compound specified under heading 2810 of the Customs Tariff. It has multifarious uses, which, *interalia*, include industrial raw material, insecticide use, etc. Following a Supreme Court"s decision in the case of Union of India Versus Pesticides Manufacturing & Formulators Association of India [2002 (146) ELT 19(SC)], the Board in the past had examined the matter regarding the classification of Boric Acid, and its admissibility for imports in terms of the Foreign Trade Policy. Accordingly, Circular No.61/2004-Cus dated 28.10.2004 was issued, classifying Boric Acid under Chapter 3808 of the Customs Tariff. Following the circular, all customs formations are classifying Boric Acid under Chapter 38, whereas the domestic manufacturers are classifying the commodity under Chapter 28, which has a specific heading for the commodity. Hence, differing assessment practices were prevailing, and the issue was required to be sorted out in respect of Boric Acid, which is imported for purposes other than for use as Insecticide.

3. The Board observed that Boric Acid is covered by two specific entries i.e. 2528 90 10 and 2810 00 20, based on its chemical composition. Heading 38.08 covers insecticidal / pesticidal or other similar preparations; insecticides / pesticides put up in forms or packings for retail sale; and insecticidal / pesticidal articles. The Board also took note of the view that as per rule 3 of the General Rules for the interpretation of Import Tariff, "When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description". Therefore, Boric Acid should be classifiable under Chapter 28 of the Tariff, both under Central Excise Tariff and Customs Tariff.

4. In view of the above, it has been decided by the Board that the classification of 'Boric Acid', in supersession of its earlier circulars, would be under heading 2810; technical grade pesticides for insecticidal use or Boric Acid put up for retail sale or other specified forms as preparations or articles alone will be classifiable under 3808. This is being clarified for the purpose of uniformity in classification and for the purpose of levy and assessment thereof in respect of Boric Acid and similar separate chemically defined compounds.

5 Customs and Central Excise field formations may finalise the pending assessments, if any, accordingly.

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Yours faithfully,
(M.M.Parthiban)
Director (Customs)