

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(38)62/Ahd-III/2016-17/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-305-16-17

दिनांक Date : 31.03.2017 जारी करने की तारीख Date of Issue 21/4/17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल
आदेश सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-MLM-067-15-16 Date: 28.03.2016
Issued by: Additional Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Isagro (Asia) Agrochemicals Pvt. Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में
पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार,
वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को
की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision
Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the
following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने
में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में
चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क
कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित
है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside
India of on excisable material used in the manufacture of the goods which are exported to any
country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया
माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of
duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- एबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

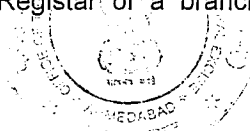
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 63 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जों एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

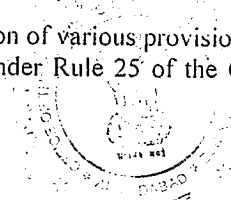
This appeal is filed by M/s. Isagro (Asia) Agrochemicals (P) Ltd., 339 & 340, Zak, Dehgam, Gandhinagar, Gujarat, (for short - "appellant") against OIO No. AHM-CEX-003-ADC-MLM-067-15-16 dated 28.3.2016 passed by the Additional Commissioner, Central Excise, Ahmedabad-III Commissionerate.

2. The facts briefly are that a show cause notice dated 27.1.2016 was issued to the appellant, in terms of Section 11A(7A) of the Central Excise Act, 1944, *inter-alia*, demanding the differential duty along with interest arising out of the wrong classification of their product 'Rapigro G' under tariff item no. 35071099 instead of 38089340; demanding the CENVAT credit wrongly availed on ISD invoices, issued by their Head Office, along with interest and further proposing penalty under Rule 25 of the Central Excise Rules, 2002 and Rule 15 of the CENVAT Credit Rules, 2004. The show cause notice covers the period from January 2015 to September 2015.

3. The adjudicating authority vide his impugned order dated 28.3.2016, *supra*, confirmed the demand along with interest and also imposed penalties under Rule 25 of the Central Excise Rules, 2002 and Rule 15(1) of the CENVAT Credit Rules, 2004. It is against this order that the present appeal has been filed.

4. The averments raised in the appeal are:-

- (a) the department on one side accepts that *Rapigro G* is a plant growth promoter while further contends that it be classified as plant growth regulator;
- (b) it has already been held by the Hon'ble Tribunal that plant growth regulator inhibits, promotes or otherwise alters physiological process on plants and is not based only on nutrients; the plant growth promoter only promotes plant growth and would not inhibit it; that essentiality of inhibition on growth is also considered as one of the primary requirements for the product to be called plant growth regulator;
- (c) that they would like to rely on the case of Northern Minerals Limited [2001(131) ELT 355], Chemcel Bio Tech [2007(211) ELT 414]
- (d) that the product which is admittedly plant growth promoter cannot be classified under chapter sub heading 38089340 as a plant growth regulator;
- (e) the demand of differential duty based on the provisions of Section 4A of Central Excise Act, 1944 has been raised without the proposal to classify the product in question;
- (f) that *Rapigro G* only promotes the growth of the plants and does not regulate the growth of the plants;
- (g) that the department has not drawn the samples and sent to the chemical laboratory for testing purpose;
- (h) that Doctor's Analytical Laboratories Private Limited has issued a Certificate of Analysis dated 6.9.2011 which states that the said product does not contain any pesticide residue;
- (i) that the appellant would like to refer the list of plant growth regulators issued by the GOI and that *Rapigro G* contains none of the ingredients referred to the said list;
- (j) that ISD has distributed the CENVAT credit correctly in terms of the turnover ratio as it is quite evident from the data mentioned in para 15 of the previous show cause notice;
- (k) that the present notice has been issued without any jurisdiction; that if the credit was distributed incorrectly then department should have raised the demand at the head office; that the credit has been distributed by the head office in respect of common services and has not been distributed in relation the services which are exclusively for the unit other than the appellant's unit;
- (l) that they would like to rely on the case of Godfrey Philips India Limited [2009(14) STR 375], Elder Pharmaceuticals [2014(203) ELT 556], United Phosphorus Limited [2013(30) STR 509], Erricson India Private Limited [2011(24) STR 346];
- (m) that the issue of classification is involved and hence interpretation of various provisions is involved in the circumstances, penalties cannot be imposed under Rule 25 of the CER '02;



(n) that penalty under Rule 25 of the CER '02 and Rule 15(1) of CCR '04 cannot be imposed.

5. Personal hearing in the matter was held on 17.2.2017. Shri Vinay Kansara, Advocate appeared on behalf of the appellant, wherein he reiterated the grounds of appeal. As requested by the advocate, seven days were granted to enable the appellant to submit ISD documents to substantiate their claim that the credit was pertaining to C&F and not CHA.

6. Two issues need to be decided; [a] classification of the product '*Rapigro G*'; and [b] whether the availment of CENVAT Credit based on ISD invoices, issued by their Head Office were correct?.

7. As far as the first issue of classification of product '*Rapigro G*' is concerned, I find that this issue has already been decided by my predecessor in a detailed order, in the appellant's own case, vide OIA No. AHM-EXCUS-003-APP-85-16-17 dated 9.8.2016, wherein the adjudicating authority was directed to draw samples of the disputed product and get the same tested in a Government laboratory. Since I concur with the findings of my predecessor, and also because of the fact that the appellant himself has stated that the goods were never tested by the department, it would be in the interest of justice if the matter, as far as classification of *Rapigro G*, [the disputed item] is concerned is remanded back, with a direction to pass appropriate orders once the tests are carried out and test reports are received. [refer para 16.2 of the OIA dated 9.8.2016].

8. Now moving on to the second issue i.e. availment of CENVAT Credit based on ISD invoices, issued by their Head Office. The CENVAT credit was denied on the grounds that use of service in a particular unit is the most decisive factor in determining the eligibility of the credit for the unit; that if a particular service has not been availed by the unit it cannot be an input service for that particular unit.

9. It is the contention of the appellant that the credit is in respect of C&F agents service and not CHA service; that the credit has been distributed by the head office in respect of common services and has not been distributed in relation to the services which are exclusively for the unit other than the appellant's unit. As is already mentioned, I had given ample time to the appellant to submit ISD documents to substantiate their claim that the credit distributed was not pertaining to CHA but was related to C&F, but till date nothing has been provided by the appellant. The appellant has failed to submit any proof to substantiate his averment neither before the original authority nor before me. Since, nothing new has been produced/no new averment has been raised, which was not addressed in the impugned original order, the confirmation of demand along with interest and penalty, is upheld.

10. In view of the foregoing, the OIO dated 28.3.2016 is partly set aside, as far as



classification of the product *Rapigro G* is concerned. The demand in this respect along with the interest and penalty will be re-determined by the adjudicating authority after following the directions as per para 7 supra. The demand in respect of CENVAT credit wrongly availed along with interest and penalty is upheld. The appeal is disposed of accordingly.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
11. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date : 31.03.2017

Attested

Vinod
(Vinod Lukose)
Superintendent (Appeals-I)
Central Excise, Ahmedabad



BY R.P.A.D

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Gandhinagar,
Gujarat.

Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division- Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A