

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)61 /Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-085-16-17

दिनांक Date : 09.08.2016 जारी करने की तारीख Date of Issue 10-8-2016

श्री अभय कुमार श्रीवास्तव आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Abhai Kumar Srivastav 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-009-010-15-16 Date: 11.09.2015
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।

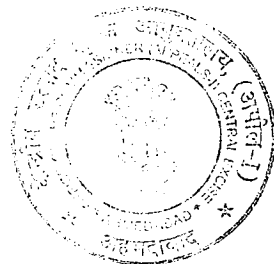
(ii) In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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

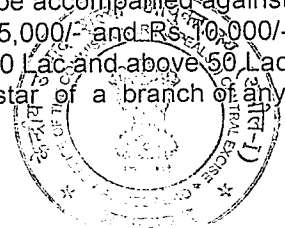
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(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 मैन्टल 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 इ.ए-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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर 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 paise 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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 73 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 अर्जी एवं अपील को लागू नहीं होगा।

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 संदर्भ में, 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, on 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, (hereinafter referred to as "the appellant" for the sake of brevity) against OIO No. AHM-CEX-003-ADC-009-010-15-16 dated 11.9.2015 passed by the Additional Commissioner, Central Excise, Ahmedabad-III Commissionerate.

2. The facts briefly are that officers of Central Excise Audit, Ahmedabad-III during the course of audit of the appellant, raised two objections [a] wrong classification of their product '*Rapigro G*' under tariff item no. 35071099 instead of 3808934; and [b] wrong availment of CENVAT Credit of Rs. 3,30,060/- based on three ISD invoices, issued by their Head Office.

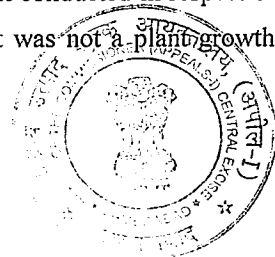
3. A show cause notice dated 7.5.2014 was therefore issued, *inter-alia*, demanding the differential duty along with interest arising out of the wrong classification, demanding the CENVAT credit wrongly availed along with interest and further proposing penalty under Rule 25 of the Central Excise Rules, 2002 and Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act 1944. Subsequently, another notice dated 26.2.2015 was also issued on the aforementioned grounds for the succeeding period. These two notices cover the period from 2009-10 to 2013-14 [upto January 2014] and February 2014 to December 2014, respectively.

4. The adjudicating authority, vide his order dated 11.09.2015, supra, confirmed both the demands along with interest and also imposed penalty under Rule 25 of the Central Excise Rules, 2002 and Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act 1944. It is against this order that the present appeal has been filed.

5. The grounds raised in the appeal are:-

- (a) that the show cause notice in para 7 states that the product '*Rapigro G*' is a plant growth promoter but contends to classify it under 3808934; that when the product is a plant growth promoter, it cannot be classified under 3808934;
- (b) A plant growth regulator inhibits, promotes or otherwise alters physiological process while a plant growth promoter, only promotes plant growth and would not inhibit it; that the process of inhibition is the primary requirement for the product to be considered as plant growth regulator;
- (c) that the notice does not contain the proposal to classify the product in question under sub heading 3808934;
- (d) *Rapigro G* is mainly enzymes, which has different effects on different plants; it stimulates photosynthesis, enhances CO₂ fixation & plants ability to utilize available nutrients; and
- (e) that the credit distributed is not in relation to CHA services for export purposes but in relation to C&F agents.

5. Personal hearing in the matter was held on 13.7.2016. Shri Vinay Kansara, Advocate and Shri Paresh Prajapati, Excise Executive appeared on behalf of the appellant. They reiterated the grounds mentioned in their appeal. On being asked about the grounds for the product being classified as rennet, he sought two weeks time for submitting a note on the issue. Thereafter, vide letter dated 28.7.2016, received on 29.7.2016, the appellant submitted a detailed submission enclosing various reports from laboratories, wherein they had got the test conducted in respect of the product *Rapigro G* to furtherance their claim that the said product was not a plant growth regulator but a plant growth promoter, classifiable under 35071099.



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?.

Classification of Rapigro G

7. Matters involving classification of the disputed goods require a detailed study of manufacturing process, chapter notes relating to tariff item, statutory provisions, reports of Chemical Examiner and the usage, statements of the company officials, etc.

8. CBEC vide its circular no. 1022/10/2016-CX dated 6.4.2016, has clarified on the issue. The relevant extracts are enumerated below for ease of reference:

3.1 Plant Growth Regulators are defined as organic compounds other than nutrients that affect the physiological processes of growth and development in plants when applied in low concentration. Plant growth regulators are active at low concentrations in promoting, inhibiting or modifying growth and development. They are either natural or synthetic compounds that are applied directly to a target plant to alter its life processes and its structure to improve quality, increase yields, or facilitate harvesting etc. These are in the nature of plant hormones and classical of them are auxins, cytokinins, gibberellins (all three promoters) and abscisic acid, ethylene (both inhibitors). PGRs in the list are not exhaustive and more growth substances are being discovered in this category. PGRs are naturally produced by plants and they act by controlling or modifying, plant growth processes such as formation of leaves and flowers, elongation of stems, development and ripening of fruits etc. Synthetic organic chemicals are also used as PGRs and are industrially produced and marketed. A list of some of the PGRs industrially produced in India is enclosed with the reply of IARI.

3.2 It would thus be noted that PGRs are different from nutrients, be it macronutrient or micronutrient. The difference between PGR and micronutrient has been clearly brought out in the reply from ICAR. PGR as a substance is specifically covered under CETH 3808. More specifically, Gibberellic acid and Plant Growth regulators are respectively covered under tariff item 3808 9330 and 3808 9340.

9. The tariff item, as contended by the appellant and the one confirmed by the adjudicating authority is reproduced below, for ease of reference:

3507	Enzymes; prepared enzymes not elsewhere specified or included
350710	-Rennet and concentrates thereof;
35071099	----Other
3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles [for example, sulphur treated bands, wicks and candles and fly papers]
38089340	---Plant growth regulators

10. The appellant has submitted the manufacturing process, wherein it is informed that the raw material is received from M/s Sowbhagya Biotech (P) Ltd. The manufacturing process of the supplier [of the appellant] is also submitted – states that their product "Cereal Protein Hydrosate Liquid (CPH Liquid) – which is an outcome of maize gluten, goes through slurry preparation, hydrolysis, filtration, carbon treatment, formulation, filtration and thereafter gets packed after quality control approval. This product after it is received by the appellant's unit at Panoli, Gujarat, goes through glass lined reactor along with DM water, the output of which is the RAPIGRO solution. This Rapigro solution is sprayed on bentonite-granules in the Granulator machine, the outcome of which is the disputed product *Rapigro Granules*.

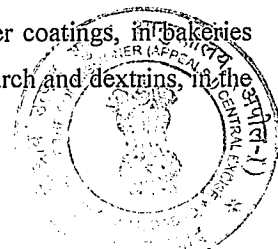


11. The Excise Executive of the appellant, in his statement dated 1.5.2014, after informing the manufacturing process of the product *Rapigro G*, further stated that it contains organic acids, protein, protein hydrolyzates, amino acids, peptides and vitamins as its chemical composition; that the said product is used as a plant growth promoter, which stimulates photosynthesis, enhance CO₂ fixation and juvenile plant's ability to utilize available nutrients, etc. It is, however, pertinent to note that *Rapigro G* was classified under Chapter heading 3808 in the invoices by the appellant, but in ER-1 returns it was claimed that the product was falling under chapter heading 3507.

12. The packaging and the literature of the product mentions *Rapigro Granules*, as a biologically derived plant growth stimulant. The advantages claimed include maximizing utilization of available soil nutrients, improving crop quality, enhancing yield significantly; that it increases plant resistance/tolerance to pest and diseases; that it rejuvenates plant exposed to climatic stresses and other injuries; that it is a biological plant rejuvenator which stimulates yield and crop quality by improving the expression of genetic potential of the crop. Further, the appellant vide his letter dated 13.3.2014 informed that the said product is used for stimulating photosynthesis; that it enhances carbon dioxide fixation and juvenile plants' ability to utilize available nutrients and helps to normalize metabolic imbalances caused as a result of high doses of pesticides, giving strength to resist high temperatures. Further in their appeal, it is mentioned that *Rapigro G* is mainly enzymes, which had altogether different effects on the different plants. Thereafter, the appellant in his additional written submission dated 29.7.2016, has again reiterated that their product is neither an insecticide or a pesticide; that their product in question contains amino acids; that enzymes are made of amino acids; that since enzymes are amino acids their classification under 35071099 is correct. The appellant has, accordingly, vehemently denied that their product is a plant growth regulator.

13. The lower authority has noted that the chemical composition disclosed by the appellant does not specifically name the elements or compounds that are the ingredients; that a rather general description is given; that the benefits claimed are due to presence of plant growth regulator; that specific care has been taken not to name the specific chemical compound which is responsible for growth stimulation, etc. The adjudicating authority has held that the product is a plant growth regulator.

14. HSN notes in respect of Chapter heading 38.08, states that the products of heading 38.08 can be divided into (i)insecticides, (ii)fungicides, (iii)herbicides, anti sprouting products, plant growth regulators and (iv)disinfectants. It further goes on to state that plant growth regulators are applied to alter the life process of a plant so as to accelerate or retard growth, enhance yield, improve quality or facilitate harvesting, etc. Plant hormones (phytohormones) are one type of plant growth regulator [eg. Gibberllic acid]. Synthetic organic chemicals are also used as plant growth regulators. While the HSN notes in respect of Chapter heading 35.07, clearly lists out the uses of Enzymes. It states that heading includes enzymes intended **for use in medicine for treating digestive disturbances** and as haemostatics or in scientific research, for tenderizing meat, for manufacturing chillproof beer, production of starch based paper coatings, in bakeries and other food industries and desizing textiles, to produce maltose from starch and dextrins, in the



manufacture of golden syrup, chocolate and marzipan, etc. It further states that rennet is mainly used in the cheese industry.

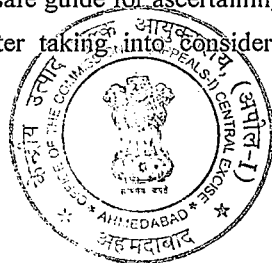
15.1 The quest, as to what exactly the product [Rapigro Granules] is, lead me to an experiment, reported in *National Center for Biotechnology Information (NCBI)* website [<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4158787/>] on the biostimulant action of a plant-derived protein hydrolysate, produced through enzymatic hydrolysis. NCBI is part of the United States National Library of Medicine (NLM), a branch of the National Institutes of Health, located in Bethesda, Maryland, United States of America. The aim of this study was to investigate the biostimulant action (hormone like activity, nitrogen uptake and growth enhancement) of the plant-derived protein hydrolysate "Trainer" by means of two laboratory bioassays (a corn coleoptile elongation rate test, a rooting test on tomato cuttings) and two greenhouse experiments (a dwarf pea growth test, and a tomato nitrogen uptake trial).

TRAINER is a liquid organic fertilizer based on 100% vegetal aminoacids and peptides obtained from the innovative LISIVEG system. The combined presence of organic nitrogen and vegetal amino acids lets the formulated energetically active on the plant development, helping also the overcoming of climatic stress situations. Now, the advantages claimed by Trainer a product of M/s. Italpollina, is similar to the one claimed by the appellant for its product Rapigro Granules. [<http://www.italpollina.com/en/Product/72/TRAINER>]

15.2 The experiment/study concluded that:

- protein hydrolysate could also act as plant growth regulators due to the presence of peptides.
- the application of plant-derived protein hydrolysate "Trainer" at all doses significantly increased the shoot length of the gibberellin (GA)-deficient dwarf pea plants by an average value of 33% in comparison with the control treatment providing additional evidence of a gibberellin-like activity.
- the application of plant-derived protein hydrolysate "Trainer" elicited an auxin and gibberellin-like activity, enhanced nitrogen uptake, and crop performance. The high nitrogen uptake observed in plants treated with "Trainer" could be explained by the extensive root apparatus and the increase of nitrogen assimilation process.
- finally, the use of this product could be of practical interest for promoting plant growth and reducing nitrogen fertilizers because it can increase nitrogen use efficiency. However, further researches are required for understanding the action mechanisms of the biostimulation on plants.

16.1 The claims in respect of both "Trainer" and 'Rapigro G' are similar. Both these products are biologically derived plant growth stimulant. Further, on going through the HSN notes in respect of the competing tariff headings it is clear that nowhere, the HSN mentions a usage of *enzymes* as a plant growth regulator/promoter. **However, the HSN notes clearly states gibberellic acid as one of the plant growth regulator.** Table-I of the Circular dated 6.4.2016, supra, mentions a list of marketed growth regulators with active ingredients, which list *Auxims, Gibberellins, etc.* As is evident, the above study also concludes that the application of the plant derived protein hydrolysate, elicits an auxin and gibberllin, like activity. HSN notes assume significance as the Hon'ble Supreme Court in the case of Wood Craft Products Ltd [1995(77)ELT23(SC)], has held that for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. Therefore, after taking into consideration the



manufacturing process, chapter notes relating to tariff item, statutory provisions, statement of the company official, etc and primarily the HSN notes, a *prima facie* view can be formed that the product in dispute – *Rapigro G* is a plant growth regulator. But one needs to tread cautiously. Confirmation can be had only after the product is tested by drawing samples after following the prescribed procedure. Once the chemical components are known, the classification can be safely and conclusively, arrived at. It is learnt that the product is still being manufactured; therefore, it would be to the benefit of all – the appellant as well as the department - to get the product tested and arrive at the correct classification. The test reports, certificate of analysis, etc. produced by the appellant vide his submission dated 29.7.2016, would not suffice since the testing subsequent to drawal of samples need to be done in the prescribed manner.

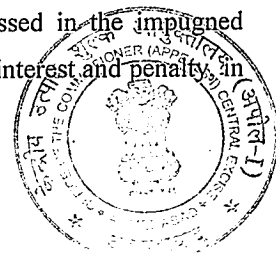
16.2 It is therefore directed that samples may be drawn by following the procedure as stipulated in chapter 11 of the CBEC's Excise Manual of Supplementary Instructions, 2005, and the samples be tested in a Government laboratory. Proper care should be taken while drawing the Test memo so that the Chemical Examiner understands the purpose for which the test is to be carried out and the subsequent report is specific - which will enable the original authority to come to a conclusion about the classification of *Rapigro G*.

16.3 Finally, the question that the demand relating to the classification portion was barred by limitation has also been addressed by the original adjudicating authority.

Availment of CENVAT Credit

17. The appellant has also challenged the confirmation of the demand in respect of CENVAT Credit wrongly availed during the years 2013 and 2014. This credit was availed on the strength of Input Service Distributor invoices, issued by their Head Office, relating to services namely Custom House Agent services, Manpower Recruitment services, C & F Agents services, etc. The adjudicating authority after going into the relevant provisions in vogue during the period of dispute, held that since the said unit was not exporting their product, the credit appeared to have no nexus with their manufactured excisable goods; that if a particular service has not been availed by a unit, it cannot be an input service for that particular unit and so the question of distribution of such credit to that unit would not arise.

18. It is the contention of the appellant that the credit is in respect of C&F agents service and not CHA service; that all the services in question are only in relation to the appellant's unit; that the definition allows CENVAT credit on the services used in relation to sales promotion of the final products. The appellant there-after, contrarily submits that their Head Office has distributed CENVAT credit correctly in terms of turnover ratio, quite contrary to the contention that the credit was only in relation to the appellant's unit, in which the entire credit could have been availed by the appellant's ZAK unit. The contention that the show cause notice has been issued without jurisdiction; that the notice should have been issued to the Input Service Distribution as per the judgement in the case of M/s. Godfrey Philips India Ltd [2009(14) STR 375(T), has already been addressed in the impugned original order. I find that nothing new has been produced/no new averment has been raised, which was not addressed in the impugned original order. Therefore, I uphold the confirmation of demand along with interest and penalty, in this regard.



19. In view of the foregoing, the OIO dated 11.9.2015 is partly set aside, in so 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 contained in paras 16.1 and 16.2. The demand in respect of CENVAT credit wrongly availed along with interest and penalty is upheld. The appeal is disposed of accordingly.

Date: 09.08.2016

Abhai
9/8/16
(Abhai Kumar Srivastav)
Commissioner (Appeals-I)
Central Excise, Ahmedabad

Attested

Vinod
(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise, Ahmedabad.

BY R.P.A.D

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



