

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा GST Building, 7 th Floor, कर भवन, Near Polytechnic, सतवी मंजिल, पोलिटेक्निक के पास, Ambavadi, Ahmedabad- आम्बावाडी, अहमदाबाद-380015 380015	
 079-26305065	टेलीफैक्स : 079 - 26305136	

क फाइल संख्या : File No : V2/164/GNR/2018-19 / 11539 to 11544

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-023-19-20

दिनांक Date : 10-07-2019 जारी करने की तारीख Date of Issue:

17/07/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

C. file

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-STX-003-JC-AKS-005-18-19 दिनांक : 30-10-2018 से सृजित

Arising out of Order-in-Original: AHM-STX-003-JC-AKS-005-18-19, Date: 30-10-2018
 Issued by: Joint Commisisoner, CGST, Div:RRA, HQ, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Vimal Crop Care 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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 प्रक्रिया 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- १0बी/35-इ के अंतर्गत:-

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

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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 पढ़ी कार्य से बचने के लिए यथारिथति 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 Appellant 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 अनुसूची-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 34F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 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 हैं

- (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 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This appeal has been filed by M/s Vimal Crop Care Private Limited, Plot No.98, Survey No.114/4, N.H.No.8, Limbadia, Dist. Gandhinagar [hereinafter referred to as "the appellant"] against Order-in-Original No.AHM-CEX-003-JC-AKS-005-18-19 dated 30.10.2018 [hereinafter referred to as "the impugned order" passed by the Joint Commissioner of CGST & CE, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the fact of the case is that the appellant is engaged in the manufacture and clearance of Insecticides, Rodenticides, Fungicides, Herbicides, Anti-Sprouting etc and similar products falling under chapter Heading 3803. During the course of Audit of the records of the appellant, it was noticed that the said goods were cleared by the appellant, by following MRP based assessment under Section 4A of Central Excise Act, 1944 after availing abatement as per Notification 49/2008-CE (NT). On verification of ER-1 return for the month of June 2015 to September 2015, it was noticed that they had cleared a product named "BIOVITA" under exemption notification No.12/2012-CE dated 17.03.2012 (E No.127); that it was also noticed that in ER-1return for July 2013, they classified the said product under CH 380891 and in ER-1return for June-2015, August 2015 and September 2015, they classified the said product under CH 31059090. As it appeared the said product having qualities of "plant growth regulator" and not having qualities of "fertilizers", the audit officers has raised observation for classifying the said products under CH 38089340 and denied the benefit of exemption notification 12/2012-CE. Accordingly, a show cause notice dated 01.07.2018 was issued to the appellant for [i] classifying the product "BIOVITA" under CH 38089340; [ii] demand of central excise duty amounting to Rs.67,88,925/- short paid during June 2015 to September 2015 with interest; and [iii] imposition of penalty under Section 11AC of CEA. The adjudicating authority has classified the said product under CH 38089340 and confirmed the duty with interest. He also imposed penalty equal to the duty amount confirmed.

3. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- The subject product manufactured by them is correctly classifiable under chapter heading 31010099, attracting nil rate of duty; that though they were mentioned the chapter heading as 3105 in the ER-1 returns, in the invoices, they have mentioned as chapter heading 31010099 and it was also informed to the department vide letter dated 20.03.2017.
- The product viz Biovita Granules is an admixture of Biovita solution & bentonite (sand) and both were provided to the appellant by M/s their Principal Manufacturer M/s PI Industries. On receipt of the said item, the appellant transfer the granules in desired proportion to ratary mixer and slowly sprayed the required quantity of Biovita solution through nozzle tip into rotary Mixer while rotating. The mixer rotation takes place for 15 minutes



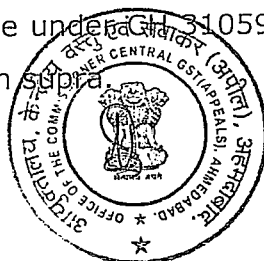
until the resultant product i.e Biovita granules is obtained. The mixture is emptied, tested for quality parameter and packed as per market requirements. According to label/leaflet of the product, Biovita granules are meant for soil application and can be used in combination with any other fertilizers. The said product does not have any fertilizing property of its own, rather, it acts only as a carrier/medium for soil application.

- The aforesaid process shows that the subject product, Biovita in granular form, is a mixture of solution and granules which is a sea weed based extract that imparts the essential character to the entire product; that it known in botoanical nomenclature as "Ascophyllum nodusum" in powder form which is well documented
- The HSN Explanatory Notes to heading 31.01 covers vegetable fertilizers even if chemically treated; that the notes to heading 31.01 are inclusive notes and do not restrict to any particular vegetable fertilizers. On the contrary, the heading excludes certain commodities but the kind of product in dispute is nowhere excluded.
- Technical literature/reports conclusively seal the issue in favour of the appellant that the product is a bio-fertilizer classifiable under tariff item 31010099. The appellant has discussed various literature in their submission to support their argument.
- Biovita Granules is not a separate chemically defined compound to merit classification as a plant growth regulator. They discussed various case laws in support of their argument and relied on the said case laws.
- The disputed regarding classification of Biovita at the end of their Principal manufacturer M/s PI Industries has already settled under Tariff heading 3101 by Commissioner (Appeals) Mumbai and Commissioner of CE Surat-II. In light of the said decisions the product Biovita granules in question qualify as bio-fertilizer under tariff heading 3101 and thus, no central excise duty is payable.
- Without prejudice, suppression of facts recorded by the adjudicating authority is incorrect; that there has no willful mis-statement or suppression of facts in this case; that non-disclosure of the information which is not required to be disclosed by law does not amount to suppression; that all facts were in the knowledge of the department.

4. Personal hearing in the matter was held on 21.05.2019. Shri Ashok Dhingra, Mis Sonia Gupta, Advocates and Shri Rohan Thakkar, Chartered Accountant appeared for the same and reiterated the grounds of appeal. The Ld. Advocates submitted additional submission, product literature and Advance Ruling by US Customs.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue need to be decided is regarding classification of the product 'Biovita'.

6. I find that the adjudicating authority has classified the said product under CH 38089340 as "plant growth regulator" and denied the benefit of exemption notification 12/2012-CE (Sr.No.127). On other hand, the appellant has argued that the said product is classifiable under CH 31059090 as "fertilizer" and eligible for nil rate of duty under notification 50/04.



7. With respect to cases involving classification of the disputed goods, it is a settled principle that such matters 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. The tariff item, as contended by the appellant and the one confirmed by the adjudicating authority is reproduced below, for ease of understanding:

Tariff Item	Description of goods	Unit	Rate of duty
3101	Animal or vegetable fertilizers, whether or not mixed together or chemically treated; fertilizers produced by the mixing or chemical treatment of animal or vegetable products		
31010099	Other	Kg	Nil
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	Kg	12.5%

9. 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) disinfectanats. 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 3101 covers: (a) Animal or vegetable fertilizers, whether or not mixed together or chemically treated; (b) Animal or vegetable products converted into fertilizers by mixing together or chemical treatment (other than bone superphosphates of heading 31.03).

10. 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 or 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.

4. **Fertilizers** are classified under chapter 31 of the Central Excise Tariff and for this purpose they may inter alia be minerals or chemical fertilizers - nitrogenous (CETH 3102), phosphatic (CETH 3103), potassic (CETH 3104) or fertilizers consisting of two or three of the fertilizing elements namely nitrogen, phosphorous and potassium; other fertilizers (CETH 3105). For the purpose of classification of any product as "other fertilizers", chapter note 6 of Chapter 31 is relevant which provides that the term "other fertilizers" applies only to products of a kind used as fertilizers and contain, as an essential constituent, at least one of the elements nitrogen, phosphorus or potassium. It is quite clear that for any product to merit classification under CETH 3105 as other fertilizers, the product must have nitrogen or phosphorus or potassium or their combination as an essential constituent providing the essential character to the product. The chemical elements - nitrogen, phosphorus and potassium are also referred as macronutrients or primary fertilizer elements and are required in higher quantity by the plants.

11. The appellant has submitted manufacturing process of their product viz "Biovita". According to appellant's submission, the product viz Biovita Granules is an admixture of Biovita solution & bentonite (sand) and both were obtained from their Principal Manufacturer M/s PI Industries. On receipt of the said item, the appellant transfer the granules in desired proportion to rotary mixer and slowly prayed the required quantity of Biovita solution through nozzle tip into rotary Mixer while rotating; the Mixer rotation takes place for 15 minutes until the resultant product i.e Biovita granules is obtained. The mixture is emptied, tested for quality parameter and packed as per market requirements.

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 the said product does not appear to contain the basic elements of fertilizers i.e Nitrogen, Phosphate and Pottasium but supplement plant with free element and minerals like Boron, Copper, Iron, Zinc, Molybdenum etc which micro-nutrients i.e mixture of soluble salts, which assist in growth of plants. The adjudicating authority has held that the product is a plant growth regulator.

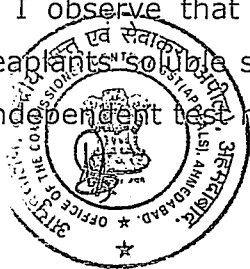
11. HSN notes assume significance as the Hon'ble Supreme Court in the case of Wood Craft Products Ltd [1995(73) 123 (SC)], has held that for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This is being the expressly 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. Chapter note 6 to chapter 31 stipulates that " for the purpose of heading 3105, in terms of other fertilizers applies only to product of a kind used as fertilizers and containing, as an essential constituent, at least one of the fertilizing elements Nitrogen, Phosphorus or Pottasium, ". According to their submission, the product viz "Biovita" in liquid form procured from their Principal manufacturers M/s P I Industries Ltd, is a sea weed extract known in botanical nomenclature as "Ascophyllum nodosum" in powder form and the sea weed extract is the active ingredient in the product which imparts essential character to the product in question in as much as it acts as a bio-stimulant which increases chemical activities in the plant cells, resulting into increase in photosynthesis and protein build up; hence, it is a vegetable fertilizer falling under tariff item 3101, based on Acadian sea plant seaweed extract (natural product). I do not find merit in their contention, looking into the product's leaflet furnished by them. According to label/leaflet of the product, Biovita granules are based on Seaweed Ascophyllum nodosum extract; it is a natural storehouse of plant nutrients and growth promoting substances based on vegetative origin seaweed for maximum yield and better crop quality. However, the element i.e Nitrogen, Phosphorous and Pottasium required for fertilizer are not present in the said literature of the product.

12. Further, on plain reading of Board's Circular supra, Plant growth Regulator are organic compounds other than nutrients that affect the physiological processes of growth and development in plants when applied in low concentration. It is promoting, inhibiting or modifying growth and development. The literature of the product stipulates that it promote better root system, vigorous plant growth and enhance plant health etc. The said circular further clarifies that fertilizers consisting of two or three of the fertilizing elements namely nitrogen, phosphorous and potassium. It is quite clear that for any product to merit classification as fertilizers, the product must have nitrogen or phosphorus or potassium or their combination as an essential constituent providing the essential character to the product. Therefore, after taking into consideration the manufacturing process, description and contents of the product declared by the appellant, chapter notes relating to tariff item, statutory provisions, etc, I am of the view that the product in dispute - Biovita- is a plant growth regulator and not a fertilizer.

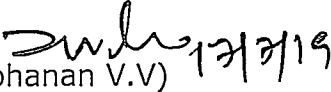
12. The appellant further submitted that the chemical test report Nhava Sheva Customs Laboratory is in their favour i.e the tested samples shows the element of phosphorous and potassium etc. I observe that the samples were drawn from imported material viz. Acadian seaweeds soluble seaweed extracts powder by M/s P I Industries Ltd. In absence of independent test report, I do not find any merit to



make applicable the said test report to the product in question in the instant case. The appellant further argued that classification of the said product was decided by the Commissioner of CE, Surat-II under chapter heading 31.01 which is not acceptable in view of foregoing discussion.

13. In view of above discussion, I reject the appeal filed by the appellant and uphold the impugned order. The appeal stands disposed of in above terms.

Attested


(Mohanan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.

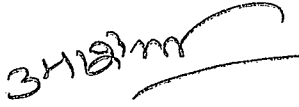
BY R.P.A.D

To,

M/s Vimal Crop Care Private Limited,
Plot No.98, Survey No.114/4,
N.H.No.8, Limbadia, Dist. Gandhinagar

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Gandhinagar.
3. The Joint Commissioner, CGST, Gandhinagar
4. The Asstt. Commissioner, (Systems), CGST, Hq., Gandhinagar
5. The Assistant Commissioner, Gandhinagar Division.
6. Guard file.
- ✓ 7. P.A file.


(उमा शंकर)
प्रधान आयुक्त (अपील्स)
Date : 08.08.2019



