आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

26305065-079 : टेलेफैक्स26305136 - 079 :

DIN-20210364SW0000621189
स्पीड पोस्ट

क फाइल संख्या : File No : V2(CEX)5/EA-2/GNR/2020-21

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-003-APP-58/2020-21**
दिनाँक Date : 29.01.2021 जारी करने की तारीख Date of Issue : 04.03.2021

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. GNR Comm'rate/ C.Ex./AC-MKS/Kalol/03/ 2020-21 dated 29.04.2020 passed by the Assistant Commissioner, Central GST& Central Excise, Hqrs., Gandhinagar Commissionerate.

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant : The Assistant Commissioner, Central GST & Central Excise,
Kalol Division, Gandhinagar Commissionerate.

Respondent: M/s J.D. Metals Industries,
162/B, Dhanot,
Kadi-Chhatral Road, Taluka Kalol,
District Gandhinagar-382729.

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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.

(क) 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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।

(c) 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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–बी/35–इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:–

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 an appeal lies to :-

(क) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 adjudicating 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 in invited to the rules covering these and other related matter contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील'** दाखिल करने **के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

(iv) amount determined under Section 11 D;
(v) amount of erroneous Cenvat Credit taken;
(vi) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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 has been filed by the Assistant Commissioner, Central GST & Central Excise, Kalol Division, Gandhinagar Commissionerate [hereinafter referred to as "appellant/department"] , in pursuance of Review Order No.07/2020-21 dated 02.07.2020 issued under F.No.IV/16-16/OIO/RRA/2020-21 passed by the Commissioner, Central GST & Central Excise, Gandhinagar, against Order-in-Original No.GNR Comm'rate/C.Ex./AC-MKS/Kalol/03/2020-21 dated 29.04.2020 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, Central GST & Central Excise, HQRS., Gandhinagar [hereinafter referred to as "adjudicating authority"] in the case of M/s J.D. Metals Industries, situated at 162/B, Dhanot, Kadi-Chhatral Road, Taluka Kalol, Distric Gandhinagar-382729 [hereinafter referred to as "respondent"].

2. Briefly stated, the facts of the case are that during the course of preliminary scrutiny of ER-1 return filed by the respondent, it was observed that they have cleared various kinds of Micronutrients, viz. 'Manganese Sulphate', 'Zinc Sulphate' and 'Ferrous Sulphate' by availing the exemption from Central Excise duty under the Notification No.12/2012-CE dated 01.03.2016 under entries at Sr.No.89 and No.103 respectively. The Central Government, vide Notification No.12/2016-CE dated 01.03.2016, had amended the above Notification No.12/2012-CE by inserting a new entry by way of Sr.No.109A for providing exemption from payment of central excise duty in excess of 6%, payable on micronutrients classifiable under Chapter 28, 29 or 38 and covered under serial number 1(f) of Schedule 1, Part (A) of the Fertilizer Control Order, 1985 and manufactured by manufacturers registered under the Fertilizer Control Order, 1985. After the insertion of Sr.No.109A to the Notification No.12/2012-CE referred above, the department, based on Circular No.1022/10/2016-CX dated 06.04.2016 issued by the CBEC on the subject of classification of Micronutrients, Multi-micronutrients, Plant Growth Regulators and Fertilizer, took objection to the exemptions claimed by the respondent vide entries at Sr.No.89 and 103 of the said Notification on the grounds that the products, Manganese Sulphate, Zinc Sulphate and Ferrous Sulphate, manufactured and cleared by them do not qualify as the characteristic of products of being "Fertilizer" mentioned under the said entries and are aligning with the description of micronutrients mentioned under the entry at Sr.No.109A of the of Notification No.12/2012-CE and therefore the exemptions claimed by them in terms of entry at Sr.No.89 and 103 of the Notification ibid were not available and they were required to pay excise duty @6% in terms of entry at Sr.No.109A of the Notification ibid for the products during the period from March, 2016 to June, 2017. Accordingly, a Show Cause Notice dated 13.03.2108 was issued to the respondent demanding central excise duty amounting to Rs.37,76,735/- on the products, Manganese Sulphate and Zinc Sulphate, cleared by them during the period from March, 2016 to June, 2017 and Rs.41,643/- on the product, Ferrous Sulphate, cleared by them during the period from March, 2016 to June, 2016, on the basis of details obtained from the monthly ER-1 returns filed by the respondent for the said

period. The said Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order wherein he had dropped the demand of excise duty on Zinc Sulphate and Manganese Sulphate manufactured and cleared by the respondent in the present case by observing that they are appropriately covered under entry No.89 and 103 of the Notification No.12/2012-CE dated 17.03.2012 and confirmed the demand of excise duty along with interest on Ferrous Sulphate by holding that the said product is covered under entry at Sr.No.109A of the Notification ibid whereby duty @6% is liable to be paid and imposed penalty of Rs.5,000/- on the demand confirmed.

3. Being aggrieved with the dropping of demand on the products, Manganese Sulphate and Zinc Sulphate, vide the impugned order, the appellant department has filed the present appeal on the following grounds:

(a) Board's clarification vide Circular No.1022/10/2016-CX dated 06.04.2016 from F.No.106/03/2013-CX.3 is in conformity with the Fertilizer Control Order wherein the descriptions of the items which can be categorized as 'Micronutrients' has been explicitly illustrated. Once, such clarification issued for a particular category of a product (Micronutrients in this case) and the Government allows specific exemptions for such category of products, there remain no dispute/scope of availing any other exemption by the assessee;

(b) As per schedule I of the Fertilizer Control Order, 1985 specified at Sr.No.1(f) – Micronutrients category is grouped separately. The ground of demand in the instant case is that the list of fertilizer specified in Part A of Schedule I of the FCO, 1985 indicates non-inclusion or exclusion of 'Zinc Sulphate' and 'Manganese Sulphate' rather the products are listed as 'Micronutrients' in the list of Serial Number of 1(f) of Schedule Part (A) of the Fertilizer Control Order, 1985 and since the products Zinc Sulphate and Manganese Sulphate aligning with the description of Micronutrients, therefore the duty exemption on the said product is available in terms of Sr.No.109A to the Notification No.12/2012, as amended vide Notification No.12/2016 dated 01.03.2016 and not in terms of the exemption claimed and availed by the assessee. The correct chargeable rate of Central Excise duty is @6% accordingly;

(c) With the insertion of the Sr.NO.109A vide Notification No.12/2016 dated 01.03.2016 to the Notification No.12/2012 dated 17.03.2012 to exempt duty of excise in excess of 6% payable on micronutrients classifiable under Serial No.1(f) of the Schedule 1, Part (A) of the Fertilizer Control Order, 1985, it is explicitly clear that 'Micronutrients' under Chapter 28, 29 or 38, in the instant case Product 'Manganese Sulphate' under the CETH 28 is liable for payment of Central Excise duty @6% which is more appropriately covered in the instant case. It is unambiguous that the assessee cannot claim the exemptions as provided in the Sr.No.89 and 103 to the Notification No.12/2012 dated 17.03.2016 after the insertion

of Sr.No.109A vide Notification No.12/2016 dated 01.03.2016 to Notification No.12/2012;

(d) From the Board's Circular No.1022/10/2016-CX dated 06.04.2016, it is crystal clear that the micronutrients cannot be termed as 'fertilizer' or classified under the category 'other fertilizer' unless it has any one of the elements viz. nitrogen, phosphorous or potassium as an essential constituent classified under Chapter heading 31 of CETA. It is mentioned in the Circular very clearly that for any product to merit classification under CETH 3102 they may, *inter alia*, be minerals or chemical fertilizers – nitrogenous (CETH 3102), phosphatic (CETH 3104), Pottassic (CETH 3104) or fertilizer consisting of two or more three of the fertilizing elements namely nitrogen, phosphorous and potassium; other fertilizer (CETH 3105). There remains no doubt that Micronutrients would not merit classification under CETH 3105 in the category of other Fertilizer;

(e) As per the functions/characteristic of the elements Manganese and Zinc as provided in the detailed explanation of ICAR appended with the Board's above Circular, it is without any doubt that they are micronutrients. Further, Manganese Sulphate and 'Zinc Sulphate' are separately categorized as 'Micronutrients' under Sr.No.1(f) of Schedule I to the Fertilizer Control Order, 1985. It is, therefore, definite that the assessee cannot claim the exemptions as provided in the Sl.No.89 and 103 to the Notification No.12/2012 dated 17.03.2012 after the insertion of Sr.No.109A vide Notification No.12/2016 dated 01.03.2016 to Notification No.12/2012;

(f) In view of the above, if the conclusion given by the adjudicating authority in his impugned order is accepted and if the said assessee would be allowed exemptions under Sr.No.89 and 103 of Notification No.12/2012 dated 17.03.2012, it would render the insertion of Sr.No.109A vide Notification No.12/2016 dated 01.03.2016 as redundant; and

(g) The adjudicating authority has inappropriately dropped the demand of central excise duty along with interest and penalties taking various technical grounds which are not all necessary for discussion in the present case. It is an admitted fact on record that their product 'Manganese Sulphate' and 'Zinc Sulphate' is agricultural grade and used as micronutrient. There is absolutely no dispute that the product is 'Micronutrient'. If the product is micronutrient, it falls under exemption entry No.109A of the Notification No.12/2016. Further, it is also undisputed that the product falls under Sr.No.1(f) of Schedule 1, Part (A) of FCO. Hence, it is clear and an explicit case that once the Board has issued clarification and inserted exemption entry for micronutrients, the product automatically falls under the exemption entry No.109A. There is no dispute about description, classification and use of the product but there is ambiguity in claiming the exemption. It is well settled law position that any doubt or ambiguity will be resolved in favour of the revenue. The Hon'ble Supreme Court of India in the case of Liberty Oil Mills (P) Ltd. [1995 (75) ELT 13

(SC)] held that "*in case of ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the revenue and not in favour of the assessee*".

4. The respondent vide their letter dated 11.08.2020 has submitted their Cross-Objection/Written submissions on the appeal filed by the department contending, *inter alia,* that:

- As per entry at Sr.No.103 of Notification No.12/2012-CE dated 17.03.2012, it is evident that 'Zinc Sulphate' ordinarily used as micronutrient attracts 'NIL' rate of duty. It is pertinent to mention that no condition has been attached at column No.5 under the said Sr.No.103 for being eligible for NIL rate of duty. As per the said entry, Agricultural grade 'Zinc Sulphate' used as micronutrient attracts NIL rate of duty;
- As per the definition of 'fertilizer' as per Fertilizer (Control) Order, 1985, 'fertilizer' means any substance used for or intended to be used as a fertilizer of the soil and/or crop and specified in Part A of Schedule I and 'Zinc Sulphate' finds mention in the Schedule-I of Fertilizer (Control) Order, 1985. Therefore, there is no doubt that 'Zinc Sulphate' is a fertilizer as per Fertilizer (Control) Order, 1985 and the products manufactured under Fertilizer (Control) Order, 1985 is used as fertilizer only;
- Had the intention of the Government to levy duty of excise on these items, it would have deleted the said two serial numbers from Notification No.12/2012-CE. In the present case, the Government, consciously, did not want to take away the benefit already given to the above mentioned two products.
- In any way, the goods manufactured by the respondent viz. 'Zinc Sulphate' falling under Chapter 28 is specifically mentioned at Sr.No.103 of the Notification No.12/2012-CE, which attracted NIL rate of duty unconditionally and hence the benefit of exemption availed is absolutely in order;
- The department has not denied the fact that the Zinc Sulphate manufactured by them is agricultural grade and is used micronutrient. As an evidence, they hav e produced a copy of letter bearing No.B-1/K-II/SAC/19/2015-16 dated 16.06.2015 of the Deputy Commissioner, Kalol Division who has issued the certificate for procurement of the goods i.e., Sulphuric Acid used in the manufacture of Zinc Sulphate (Agricultrual grade)
- Further, the State Agriculture Department has issued registration certificate/license to the respondent which clearly shows that the goods in question manufactured by the respondent are 'fertilizers'. A copy of such certificate/license is submitted for reference. Therefore, the benefit of exemption under Sr.No.103 of Notification No.12/2012-CE is correctly availed and cannot be denied merely on the ground that micronutrient is mentioned at Sr.No.109A of the said Notification;

- Sr.No.109A of Notification No.12/2012-CE gives partial exemption to micronutrients falling under chapter 28, 29 or 38 of Central Excise Tariff Act, 1985 which are covered under Sr.No.1(f) of Schedule-I, Part (A) of Fertilizer (Control) Order and are manufactured by the manufacturers which are registered under Fertilizer (Control) Order 1985. Thus, in a way, the said benefit is conditional as there is a condition that it has to be manufactured by manufacturers which are registered under Fertilizer (Control) Order, 1985;
- Sr.No.109A mentioned general entry for micronutrients whereas Sr.No.103 specifically mentioned 'Zinc Sulphate'. When there is specific entry for a product, it is quite logical and natural that the specific entry prevails over the general entry and when it is most appropriate also. In this case, their product viz. 'Zinc Sulphate' find listed at Sr.No.103 of Notification No.12/2012-CE and is most applicable in the case. Therefore, contention raised in the grounds of appeal that the product attracts 6% duty as per Sr.No.109A of Notification No.12/2012-CE where general entry for micronutrient is incongruous and fallacious;
- It is settled law that if two exemption notifications are available, the assessee is entitled to the benefit of that exemption notification which may give him greater or larger benefit. They have relied on the case laws in the cases of Collector of Central Excise Vs. Indian Petro Chemicals [1997 (92) ELT 13 SC], HCL Ltd.[2002-TIOL-847-SC-CUS-LB] ; M/s Savana Ceramics [2014-TIOL-1499-CESTAT-AHM] and M/s Ajay Industrial Corporation Ltd. [2013-TIOL-1419-CESTAT-MUM] in support of their contention in this regard; and
- The assessee is entitled to the benefit of exemption which is favourable to him when there are two exemptions available. In the present case, Zinc Sulphate is specifically mentioned in the Notification at Sr.No.103 @ NIL rate whereas Sr.No.109A @6% is general entry. Thus, the Sr.No.103 is more beneficial to the respondent and hence the impugned order dropping the demand is legal , proper and sustainable under law.

5. Personal hearing in the matter was held on 15.12.2020 through virtual mode. Shri M.H.Raval, Consultant, appeared on behalf of the respondent for the hearing. He re-iterated the submissions made in written reply. He stated that their case is covered under specific exemption. He also submitted a written submission dated 15.12.2020 on 17.12.2020 again re-iterating the submissions made earlier. No one attended the hearing from the appellant's side.

6. I have carefully gone through the fact of the case and submission made in the appeal memorandum of the department as well as the cross-objection filed by the respondent. The issue to be decided in the case is whether after insertion of new entry for providing exemption to 'Micronutrients' by Sr.No.109A in Notification No.12/2012-CE dated 17.03.2012 by Notification No.12/2016-CE dated 01.03.2016, the products, Manganese Sulphate and Zinc Sulphate, manufactured and cleared by the respondent, are eligible for

exemption in terms of entry at Sr.No.89 and Sr.No.103 of the Notification No.12/2012-CE dated 17.03.2012 as claimed by them or not. It is the case of the department that since the products, Manganese Sulphate and Zinc Sulphate, are used as micronutrients, the exemption eligible would be in terms of entry at Sr.No.109A of Notification No.12/2012-CE rather than the entry at Sr.No.89 and Sr.No.103 of the Notification. The demand pertains to the period March, 2016 to June, 2017.

7. Before proceeding to merits of the issue, the relevant entries viz. Sr.No.89, 103 and 109A of Notification No.12/2012-CE dated 17.03.2012 as amended, are reproduced below for better appreciation of facts:

Sl.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condi-tion No.
(1)	(2)	(3)	(4)	(5)
89	28	Ammonium Chloride and Manganese Sulphate intended for use – (a) as fertilizers; or (b) in the manufacture of fertilizers, whether directly or through the stage of an intermediate product. **Explanation**.-For the purposes of this entry, "fertilizers" shall have the meaning assigned to it under the Fertilizer (Control) Order, 1985	Nil	-

Sl.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condi-tion No.
(1)	(2)	(3)	(4)	(5)
103	2833.29	Agricultrual Grade Zinc Sulphate ordinarily used as micronutrient	Nil	-

Sl.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condi-tion No.
(1)	(2)	(3)	(4)	(5)
109A	28,29 or 38	Micronutrients, which are covered under serial number 1(f) of Schedule 1, Part (A) of the Fertilizer Control Order, 1985 and are manufactured by the manufacturers which are registered under the Fertilizer Control Order, 1985	6%	-

8. On examining the entry at Sr.No.89 above, it is observed that the excisable goods specified therein viz. Ammonium Chloride and Manganese Sulphate, intended for use as fertilizer or in the manufacture of fertilizers, directly or indirectly, attracts 'Nil' rate of duty without any condition. It is further explained that the term 'fertilizer' used in the said entry shall have the meaning assigned to it under the Fertilizer (Control) Order, 1985 (hereinafter referred to as 'FCO' for the sake of brevity). Fertilizer has been defined under clause 2(h) of FCO as "*any substance used or intended to be used as a fertilizer of the soil and/or crop and specified in Part A of Schedule I and includes a mixture of fertilizer and special mixture of fertilizers provisional fertilizer, customized fertilizer, Bio-fertilizers specified in Schedule III and Organic fertilizers specified in Schedule IV*". The meaning of the term 'fertilizer' used in the first part of the above definition viz. *any substance used or intended to be used as a fertilizer of the soil* has to be understood in its literal meaning or as understood in the common parlance as a chemical or natural substance added to soil or land to increase its fertility. Micronutrients, by its very nature and use, clearly falls under this category. Part A of Schedule I of FCO contains 'Specifications of Fertilizers" where specifications have been provided for different fertilizers by broadly classifying fertilizers under different sub-headings wherein the sub-heading 1(f) has been assigned to 'Micronutrients' whereunder Manganese Sulphate is covered at Sr.No.2. It is not in dispute in the present case that the product 'Manganese Sulphate' is used or intended to be used as a 'Micronutrient'. When 'Micronutrients' is clearly covered as 'Fertilizer' under FCO under sub-heading 1(f) of Part A of Schedule I, all the products/chemicals specified under said the sub-heading would qualify as 'Fertilizers' within the meaning of 'Fertilizers' as defined under the FCO by virtue of which Manganese Sulphate, for its use as micronutrient, would qualify as 'Fertilizer' for the purpose of entry at Sr.No.89 of the Notification No.12/2012-CE dated 17.03.2012. Therefore, the product 'Manganese Sulphate' manufactured and cleared by the respondent in the present case was rightly leviable to excise duty at 'Nil' rate as specified under the said entry, as assessed by the respondent.

8.1 Similarly, vide entry at Sr.No.103 above, the product Zinc Sulphate of agricultural grade ordinarily used as micronutrient attracts duty at 'Nil' rate without any condition. As is evident, there is no other requirement for being eligible for exemption vide the said entry except that Zinc Sulphate has to be of agricultural grade normally used as micronutrient. In the present case, there is ample evidence that the Zinc Sulphate manufactured and cleared by the respondent is of agricultural grade and is used as micronutrient. This fact is not disputed by the department but on the contrary they rely on this fact in support of their contention. When the product Zinc Sulphate manufactured and cleared by the respondent fulfills the criteria required under the above said entry of the Notification and more over there being no dispute on this aspect , the exemption envisaged vide the said entry cannot be denied to the product and it was legally admissible to it.

8.1 It is observed that the department in the appeal has stated that the ground of demand in the instant case is that the list of fertilizer specified in Part A of Schedule I of the FCO indicates non-inclusion or exclusion of "Manganese Sulphate' and 'Zinc Sulphate' rather the products are listed as 'Micronutrients' in the list of Serial Number 1(h) in Part A of Schedule I of the FCO. The above view of the department is in contradiction to the definition of fertilizer as defined under the FCO, as per which any substance used or intended to be used as a fertilizer of the soil and/or crop and specified in Part A of Schedule I would qualify as fertilizer within the provisions of the FCO. Micronutrients are undisputedly classified as a kind of fertilizer in Part A of Schedule I under sub-heading No.1(f). When micronutrients are specifically covered as a kind of fertilizer in Part A of Schedule I of the FCO, the product 'Manganese Sulphate' used as micronutrient would qualify as a fertilizer for the purpose of FCO so long as it is specified as a micronutrient under sub-heading No.1(f) therein. It is undisputed that Manganese Sulphate is covered under sub-heading No.1(f) of Part A at Sr.No.2. Simply because there came to be a separate exemption specifically for micronutrients does not *ipso facto* take Manganese Sulphate out of the ambit of exemption available under Sr.No.89 as it remained qualified as fertilizer in terms of FCO, even while being micronutrient, for the said entry. It is more so when it is undisputed that prior to insertion of the specific exemption for micronutrients vide Sr.No.109A with effect from 01.03.2016, the product Manganese Sulphate was allowed exemption under Sr. No.89 for being qualified as fertilizer as it was falling in sub-heading No.1(f) of Part A of Schedule I of FCO which pertains to 'Micronutrients'. It is a fact that even after the insertion of specific exemption for micronutrients vide Sr.No.109A with effect from 01.03.2016, the specific exemption for 'Ammonium Chloride' and 'Manganese Sulphate' envisaged vide entry at Sr.No.89 was continued without any amendment and that very clearly indicates the intention of the legislature to continue with such exemption on the said products. Therefore, it is not open for the department to challenge the said exemption which was accepted by it earlier prior to insertion of exemption to micronutrients when there is no change in facts and legal position of the exemption earlier allowed. It is unambiguous that the product 'Manganese Sulphate' as micronutrient would continue to get exemption under Sr.No.89 of the Notification No.12/2012-CE dated 17.03.2012 even after the insertion of entry vide Sr.No.109A for micronutrients for being qualified as fertilizer as per FCO as required under the said entry.

8.2 The reliance placed by the department on Board's Circular No.1022/10/2016-CX dated 06.04.2016 for canvassing the argument that micronutrients do not qualify as fertilizers is totally out of context and in fact does not have any relevance to the facts of the present case. The clarification issued by the Board vide the above circular was with reference to classification of micronutrients as fertilizers under Chapter 31 of the Central Excise Tariff Act, 1985 and it was in that context that was clarified that micronutrients would not merit classification as 'other fertilizers' as at least one of the elements, namely,

nitrogen, phosphorus or potassium should be an essential constituent of the fertilizer as per chapter note 6 of Chapter 31. The important aspect to note here is that the above clarification on classification was not with reference to fertilizer as defined under FCO which is the dispute in the present case. Further, in the case on hand, there is no dispute of any kind with regard to classification of the product as admitted even by the department. Since the dispute in the present case was on the eligibility of exemption with reference to fertilizer as defined under FCO and not in terms of fertilizer as covered under Chapter 31 of CETA, the above clarification of the Board does not have any relevance to the facts of the case and it does not in any way support the contention of the department. It is beyond comprehension to argue that micronutrients would not qualify as fertilizer as per FCO as it was not classifiable under Chapter 31 as the term 'fertilizer' under FCO is not defined in terms of Chapter 31 of the Central Excise Tariff Act.

8.3 Whereas in the case of Zinc Sulphate, the requirement for availing exemption vide entry at Sr.No.103 of the Notification is that it should be of agriculture grade ordinarily used as micronutrient. There is no requirement in the said entry that the product should qualify as a fertilizer for the said exemption. However, the department sought to deny the said exemption contending that the product does not qualify the characteristic of being a fertilizer. There is nothing in the appeal to suggest how the said ground is applicable to the product, Zinc Sulphate. It is apparent that they have applied the grounds taken for the product Manganese Sulphate discussed above, to Zinc Sulphate without proper examination of its applicability to the product. Since the use of the product described under entry at Sr.No.103 is as micronutrient and not as fertilizer, the above contention of the department is without any merit or relevance to the issue under dispute. The department has wrongly interpreted the insertion of the new entry of Sr.No.109A to mean that the benefit of exemption of Sr.No.103 would no longer be available. There is no cogent explanation/reasoning from the department as to how the exemption vide entry at Sr.No.103 ibid is deniable to the product when the eligibility criteria for the exemption stand fulfilled by it. Mere insertion of the new entry of exemption for micronutrients, won't disqualify the product, Zinc Sulphate, being eligible for exemption vide the said entry. It is undisputed that prior to insertion of the specific exemption for micronutrients vide Sr.No.109A with effect from 01.03.2016, the product Zinc Sulphate was granted exemption under Sr. No.103 for being qualified 'Micronutrient'. The said specific exemption envisaged vide entry at Sr.No.103 was continued without any amendment even after the insertion of specific exemption for micronutrients vide Sr.No.109A with effect from 01.03.2016 and that very clearly indicates the intention of the legislature to continue with such exemption on the said products. Therefore, it is not open for the department to question the eligibility of the said exemption which was accepted by it earlier prior to insertion of exemption to micronutrients especially when there is no change in facts and legal position of the exemption earlier allowed. Under the said facts and circumstances, the exemption available vide entry at

Sr.No103 of the Notification No.12/2012-CE dated 17.03.2012 to the product, Zinc Sulphate of agriculture grade as micronutrient is available even after the insertion of entry vide Sr.No.109A for micronutrients.

8.4 Further, it is contended by the department that if the conclusion given by the adjudicating authority in his impugned order is accepted and if the appellant would be allowed exemptions under Sr.No.89 and 103 of Notification No.12/2012-CE dated 17.03.2012, it would render the insertion of Sr.No.109A vide Notification No.12/2012 dated 01.03.2016 as redundant. I am not in agreement with this contention as the entry at Sr.No.89 and 103 of the Notification do not cover in its ambit all micronutrients but only Manganese Sulphate and Zinc Sulphate. It is pertinent to note that there are 16 chemical compounds which are covered as micronutrients in sub-heading No.1(f) of Part A of Schedule I of the FCO. Of these only two products, viz. Manganese Sulphate and Zinc Sulphate, were given specific exemption under Notification No.12/2012-CE vide entries at Sr.No.89 and 103 therein when they are used as micronutrient. Therefore, the above contention of the department is factually incorrect. On the contrary, if the department contention that Manganese Sulphate and Zinc Sulphate are eligible for exemption in excess of 6% is accepted, then the exemptions envisaged vide Sr.No.89 and 103 of the Notification for Manganese Sulphate and Zinc Sulphate would definitely become redundant as they were covered therein by virtue of their nature and use as micronutrient.

8.5 Further, I am not in agreement the argument that once the Board has issued clarification and inserted exemption entry for micronutrients, the products automatically fall under the exemption entry at Sr.No.109A. It is because even after the insertion of new entry vide Sr.No.109A, the entry at Sr.No.89 and 103 have continued to exist without any modification/amendment and the products, Manganese Sulphate and Zinc Sulphate, were covered under the said entries because of their use as micronutrient. Further, the said argument was without considering the fact that micronutrients are clearly covered as fertilizers within the meaning of fertilizer as defined under clause 2(h) of FCO. On facts, it is unambiguous that the products, Manganese Sulphate and Zinc Sulphate, were in fact getting the exemption prior to and after the insertion of new entry for their characteristics of being used as micronutrient. As such, the new exemption entry for micronutrients does not override the exemptions available to the said products vide entry at Sr.No.89 and 103 ibid. In fact, in the instant case, the products, Manganese Sulphate and Zinc Sulphate, for being used as micronutrient clearly fall under the ambit of both the entries at Sr.No.89 and 103 as well as Sr.No.109A. Entry at Sr.No.89 and 103 are more specific in nature for they cover Manganese Sulphate and Zinc Sulphate specifically by their name whereas the entry Sr.No.109A cover the products generally under micronutrients. Therefore, the specific entry would prevail over the general one and for Manganese Sulphate and Zinc Sulphate used as micronutrient, the more specific entry are Sr.No.89 and 103 respectively of the Notification. It is a well settled legal position that an exemption has to be construed strictly and

reasonably in terms of the language used in the relevant notification. Therefore, so long as a product falls well within the four corners of a specific exemption, the benefit of exemption envisaged therein cannot be denied for the reason that there existed another exemption. Further, it has been consistently held by various judicial forums in catena of decisions that when there are two exemption notifications that cover the goods in question, the assesse is entitled to the benefit of that exemption which gives him more benefit or greater relief.

8.6 As regards the exemption provided vide new entry at Sr.No.109A, it is observed that the same appears to be meant for those goods qualifying as micronutrients which were not considered for exemption hitherto under any Notification. These goods, barring some of which like Manganese Sulphate and Zinc Sulphate, were subjected to levy of excise duty at prevailing rate corresponding to their CETSH. The intention behind granting exemption vide new entry discussed above is to extend the benefit of some concessional exemption to those products and not to deny any exemption already granted to some of them. Had it been the intention, then the specific exemption given vide entry at Sr.No.89 and 103 of the Notification would not have been retained/continued without any modification/amendment. When that is not the case, it is clear that the said exemptions would continued to be available regardless of the new entry inserted. A conjoint reading of the entries at Sr.No.89,103 and 109A of the Notification No.12/2012-CE dated 17.03.2012 as amended clearly and logically leads to the inference that the exemption envisaged vide the new entry at Sr.No.109A of the Notification ibid is applicable to those goods qualifying as micronutrients other than Manganese Sulphate and Zinc Sulphate which are already specifically stand exempted separately vide entries at S.No.89 and 103 respectively of the Notification ibid. Therefore, there is no ambiguity of any kind in the legal admissibility of the exemption available vide entry at Sr.No.89 and 103 of the Notification to the products, Manganese Sulphate and Zinc Sulphate, in the case and the department contention in this regard is liable to be rejected being bereft of any merit or substance.

8.7 For reasons discussed above, I do not find any merit in the contentions raised by the appellant department that with the insertion of specific exemption for micronutrients vide entry at Sr.No.109A of the Notification, the other exemption available for the products vide entry at Sr.No.89 and 103 of the Notification would no longer be available. Accordingly, the same are rejected.

9. Further, it is observed that the adjudicating authority has not appreciated the facts of the dispute in it's right perspective. He seems to have approached the issue on the premise that the product Manganese Sulphate is having two distinct roles as fertilizer and as micronutrient for the purpose of exemption under the two entries viz. Sr.No.89 and 109A of the Notification which is not correct as in fact the said product is qualified as fertilizer for the purpose of entry at Sr.No.No.89 ibid for it's characteristic as micronutrient. He appears to have missed to consider the crucial factors that the exemption envisaged vide Sr.No.89

was with reference to fertilizer as defined under the FCO and Manganese Sulphate, as micronutrient, would remain qualified as fertilizer for the purpose of entry at Sr.No.89 as micronutrients specified in sub-heading No.1(f) of Part A of Schedule I of the FCO falls within the meaning of fertilizer as defined under the FCO. The fact is that the products, Manganese Sulphate and Zinc Sulphate, even in their role as contended by the department, do not go out of the ambit of entry at Sr.No.89 and 103 of the Notification. When that being the case, the findings by the adjudicating authority that there is no allegation of the said products being not used as fertilizer or not of agricultural grade and there is no evidence in the form of any chemical test reports substantiate enough to place Manganese Sulphate and Zinc Suplphate under entry at Sr.No.109A in the show cause notice, do not have any substance or relevance in deciding the issue. Even any such allegation or an evidence would only substantiate the contention that product is micronutrient and it wouldn't vitiate the eligibility of the exemption of Manganese Sulphate under entry at Sr.No.89 and Zinc Sulphate under Sr.No.103 of the Notification as even as micronutrient they remained eligible for exemption vide the said entries as discussed above.

10. In view of my above discussions, the appeal filed by the appellant department is rejected for being devoid of any merits and the impugned order passed by the adjudicating authority is modified to the extent discussed in this order.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

29th January 2021

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 29.01.2021.

Attested:

(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY R.P.A.D/SPEED POST

To

1. The Assistant Commissioner,
Central GST& Central Excise, Division-Kalol,
Gandhinagar Commissionerate. — Appellant

2. M/s J.D. Metals Industries,
162/B, Dhanot,
Kadi-Chhatral Road, Taluka Kalol,
District Gandhinagar-382729. — Respondent

Copy to:-

1. The Chief Commissioner, Central GST & Central Excise, Ahmedabad Zone.
2. The Commissioner, Central GST & Central Excise, Gandhinagar.
3. The Assistant Commissioner, Central GST& Central Excise, Kalol Division.
4. The Asstt. Commissioner, (Systems), CGST & C.Ex., Hq., Gandhinagar.
5. Guard file.
6. P.A file.