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-20210464SW000049384F

स्पीड पोस्ट

क फाइल संख्या : File No : V2(CEX)2/EA-2/GNR/2020-21/1114 TO 1118

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-003-APP-73/2020-21**
दिनाँक Date : 26.03.2021 जारी करने की तारीख Date of Issue : 19.04.2021

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/10/2020-21 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 Sahaj Agro Industries,
Plot No.3486, Phase-IV,
GIDC, Chhatral, Taluka Kalol,
District Gandhinagar.

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 अपीलः–

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 अंतर्गतः–

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.06/2020-21 dated 29.06.2020 issued under F.No.IV/16-15/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/01/2020-21 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 Sahaj Agro Industries, Plot No.3486, Phase-IV, GIDC Chhatral, Taluka-Kalol, District Gandhinagar [*hereinafter referred to as "respondent"*].

2. Briefly stated, the facts of the case are that the respondent was engaged in manufacturing and clearance of various kind of micronutrients viz. 'Manganese Sulphate' falling under Chapter 28 and 'Gypsum' falling under Chapter 38 of the Central Excise Tariff Act, 1985 for which they hold Central Excise Registration No.ACJFS1086KEM001. During the course of preliminary scrutiny of Quarterly ER-3 returns filed by the respondent, it was observed that the respondent was availing the benefit of SSI exemption under Notification No.08/2003 dated 01.04.2003 and that while computing the aggregate clearance value for the purpose of eligibility for SSI exemption, they had not included the clearance value of the exempted product 'Manganese Sulphate' during the financial years 2015-16 and 2016-17 and hence the aggregate value of clearances for home consumption exceeded the specified limit of Rs.4 crore during the said financial years making them ineligible for taking benefit of SSI exemption for the year 2016-17 and 2017-18. This had resulted in evasion of central excise duty amounting to Rs.33,49,553/- on clearance of 'Manganese Sulphate' and Rs.12,306/- on clearance of 'Gypsum' quantified taking into consideration of the home clearance quantity and value of the products under dispute declared in the quarterly returns (ER-3) filed by them electronically. The respondent had paid the duty along with interest on the clearance of Gypsum, but did not pay the duty on clearance of Manganese Sulphate contending that it was exempted under Sr.No.89 of Notification No.12/2012-CE dated 17.03.2012.

2.1 The Central Government, vide Notification No.12/2016-CE dated 01.03.2016, had amended the 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 exemption claimed by the respondent vide Entry Sr.No.89 of the said Notification on the ground that the product, Manganese Sulphate, manufactured and cleared by them does not qualify as the characteristic of products of being "Fertilizer" mentioned under the said entry and is aligning with the description of micronutrients mentioned under the entry at Sr.No.109A of the Notification No.12/2012-CE and therefore the exemption claimed by them in terms of entry at Sr.No.89 of the Notification ibid was 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 product during the period from April, 2016 to June, 2017 .

2.2 Accordingly, a Show Cause Notice dated 28.06.2018 was issued to the respondent demanding central excise duty amounting to Rs.33,61,859/- which was quantified taking into consideration the home clearance quantity and value of the product under dispute declared by the respondent in the Quarterly ER-3 returns filed by them for the period from April 2016 to June 2017. 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 Manganese Sulphate by observing that Manganese Sulphate manufactured and cleared by the respondent in the case is appropriately covered under Entry No.89 of the Notification No.12/2012-CE dated 17.03.2012 which attracted Nil rate of duty and he had confirmed the demand of excise duty on 'Gypsum' along with interest as the respondent had admitted the allegation leveled against them and have also paid duty of Rs.12,306/- and interest amount of Rs.15,150/- and imposed penalty equivalent to duty involved.

3. Being aggrieved with the impugned order for dropping demand of excise duty on Manganese Sulphate, 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 '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 product 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 exemption as provided in the Sl.No.89 to the Notification No.12/2012 dated 17.03.2016 after the insertion of Sl.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 element Manganese as provided in the detailed explanation of ICAR appended with the Board's above Circular, it is without any doubt that it is a micronutrient. Further, Manganese Sulphate is 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 exemption as provided in the Sl.No.89 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 exemption under Sr.No.89 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' 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. Personal hearing in the matter was granted on 25.11.2020, 15.12.2020, 19.01.2021 and 17.02.2021. No one attended the hearing from either side viz. the appellant's side or the respondent's side. Hence, I proceed to decide the case on the basis of facts and evidences available on records.

5. I have carefully gone through the facts of the case and submissions made in the appeal memorandum of the department. 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 product, Manganese Sulphate, manufactured and cleared by the respondent, is eligible for exemption in terms of entry at Sr.No.89 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 product, Manganese Sulphate, is used as micronutrient, 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 of the Notification where the characteristic of products being 'Fertilizer'. The demand pertains to the period from April, 2016 to June, 2017.

6. Before proceeding to merits of the issue, the relevant entries viz. Sr.No.89 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	Condition 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	Condition 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%	-

7. On examining the entry at Sr.No.89 above, it can be seen 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.

7.1 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' 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 a separate exemption was made 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.

7.2 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.

7.3 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 exemption under Sr.No.89 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. This contention appears to be fallacious as the entry at Sr.No.89 of the Notification does not cover in its ambit all micronutrients but Manganese Sulphate. It is

pertinent to note that there appear to be 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 is eligible for exemption in excess of 6% is accepted, then the exemption envisaged vide Sr.No.89 of the Notification for Manganese Sulphate would definitely become redundant as it was covered therein by virtue of its nature and use as micronutrient.

7.4 Further, I am not in agreement with the argument that once the Board has issued clarification and inserted exemption entry for micronutrients, the product automatically falls 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.No89 has continued to exist without any modification/amendment and the product Manganese Sulphate was covered under the said entry because of its 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 product Manganese Sulphate was in fact getting the exemption prior to and after the insertion of new entry for its characteristics of being used as micronutrient. As such, the new exemption entry for micronutrients does not override the exemption available to the said product vide entry at Sr.No.89 ibid. In fact, in the instant case, the product Manganese Sulphate for being used as micronutrient clearly falls under the ambit of both the entries at Sr.No.89 as well as Sr.No.109A. Entry at Sr.No.89 is more specific in nature for it covers Manganese Sulphate specifically by its name whereas the entry Sr.No.109A covers the product generally under micronutrients. Therefore, the specific entry would prevail over the general one and for Manganese Sulphate used as micronutrient, the more specific entry is Sr.No.89 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 fora 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.

7.5 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 of the Notification to the product, Manganese Sulphate, in the case and the department contention in this regard deserves to be rejected, being devoid of any merit .

7.6 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 product vide entry at Sr.No.89 of the Notification would no longer be available. Accordingly, the same are rejected.

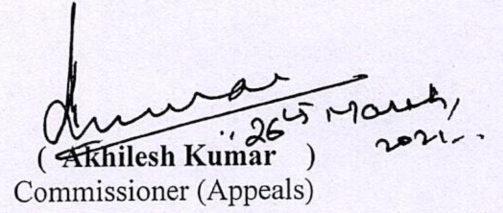
8. Further, it is observed that the adjudicating authority has not appreciated the facts of the dispute in it's right perspective. He seems to have approached the issue on the premise that the product Manganese Sulphate is having two distinct roles as fertilizer and as micronutrient for the purpose of 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 has 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 product, Manganese Sulphate, even in its role as contended by the department, does not go out of the ambit of entry at Sr.No.89 of the Notification. When that being the case, the findings by the adjudicating authority that there is no allegation of the said product being not used as fertilizer and there is no evidence in the form of any chemical test report substantiate enough to place Manganese Sulphate 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 that wouldn't vitiate the eligibility of the exemption of Manganese Sulphate under entry at Sr.No.89 of the Notification as even as micronutrient it remained eligible for exemption vide the said entry as discussed above.

9. 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.

10. 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.



(Akhilesh Kumar)
Commissioner (Appeals)

Date: 26.03.2021.

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 Sahaj Agro Industries, Plot No.3486, Phase-IV, G.I.D.C Chhatral, Taluka-Kalol, District Gandhinagar. — 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 Assistant Commissioner, (Systems), Central GST & C.Ex., Hq., Gandhinagar.
5. Guard file.
6. P.A file.