



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015  
GST Bhavan, Ambawadi, Ahmedabad-380015  
Phone: 079-26305065 - Fax: 079-26305136  
E-Mail : [commrappl1-cexamd@nic.in](mailto:commrappl1-cexamd@nic.in)  
Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)

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आज़ादी का  
अमृत महोत्सव

**By Regd. Post**

DIN No.: 20230164SW000050075C

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/54/2022-APPEAL & /7362-66 GAPPL/COM/CEXP/19/2023 [ V2(38)62/AHD-III/2016-17/APPEAL-I ]
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-089 to 090/2022-23 and 13.01.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	16.01.2023
(ङ)	Arising out of Order-In-Original No.AHM-CEX-003-ADC-PMR-003-007-21-22 dated 28.04.2021 passed by the Additional Commissioner, CGST & CE, HQ, Gandhinagar Commissionerate & Final Order No. A/13662/2017 dated 17.11.2017 passed by Hon'ble CESTAT, WZB, Ahmedabad	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s PI Industries Ltd. [Earlier known as M/s Isagro (Asia) Agrochemicals Pvt. Ltd.], Plot No. 339 & 340, B/h Swami Packaging, Village-Zak, Taluka-Dehgam, Gandhinagar, Gujarat-384505

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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.

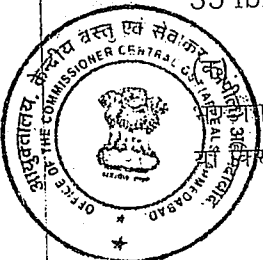
भारत सरकार का पुनरीक्षण आवेदन:-

**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त 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 :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 :-

यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।



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।

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।

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

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-8 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 फ्रीस का भुगतान उपर्युक्त ढंग में किया जाना चाहिए, इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 adjournment authority shall 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

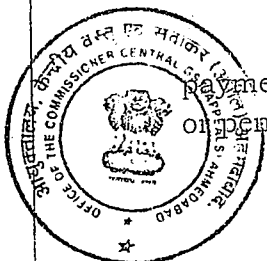
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (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.

(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।

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."



अपीलिय आदेश / ORDER-IN-APPEAL

This Order arises out of an appeal filed by M/s. P I Industries [erstwhile known as M/s Isagro (Asia) Agrochemicals Pvt. Ltd.], Plot No. 339 & 340, B/h Swami Packaging, Village-Zak, Taluka-Dehgam, Gandhinagar- 384505 [hereinafter referred to as the appellant] against Order – In - Original No. AHM-CEX-003-ADC-PMR-003-007-21-22 dated 28.04.2021 [hereinafter referred to as the impugned order] passed by Additional Commissioner, Central GST & Central Excise, Commissionerate: Gandhinagar [hereinafter referred to as the adjudicating authority].

2. Briefly stated, the facts of the case are that the appellant were registered under Central Excise Registration No./ECC No. AAAC18431LXM005 and were engaged in manufacture and clearance of various pesticides and plant growth regulators falling under Chapter 3808 of the Central Excise Tariff Act, 1985 (CETA, 1985). They were availing the facility of Cenvat credit under Cenvat Credit Rules, 2002. They were procuring various Technical grade pesticides as their raw materials and after some processes, these were repacked and cleared to their various depots situated all over India. They were not registered under the Service Tax Rules, within Ahmedabad jurisdiction, however, their H.O at Mumbai were registered with Service Tax and were paying the requisite tax pertaining to the movements from Mumbai to Zak. The H.O was also registered as Input Service Distributor (ISD) and the appellant unit received input service credit under ISD Challans/Invoices issued by their H.O. at Mumbai.

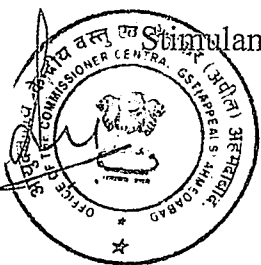
3. During the course of audit of the records of the appellant conducted by the Audit Officers of erstwhile Central Excise, Ahmedabad-III Commissionerate, it was observed that the appellant were manufacturing a product "Rapigro G" and clearing the same in various pack sizes of 8 kg, 4 kg, 10 kg, 40 kg and 48 kg. The packing of the product mentioned as –

*"Rapigro Granules-For use in paddy, wheat, sugarcane, vegetables and fruit trees; A Biologically derived Plant Growth Stimulant- maximises utilization of available soil nutrients, improves crop quality and enhances yield significantly, increases plant resistance/tolerance to pest and diseases, rejuvenates plants exposed to climatic stresses and other injuries, non toxic and safe to use"*.

The chemical composition of the product was mentioned as:

*Organic fraction derived through fermentation process containing growth promoters, organic acids, protein and protein hydrozylates, amino acids, peptides and vitamins-20%, micro nutrients-12.27% and roasted bentonite granules-Qs to 100%.*

The literature of the product described the product as 'Biologically Derived Plant Growth Stimulant'. It is also mentioned that Rapigro granules are a biological plant rejuvenator



that stimulates yield and crop quality by improving the expression of the genetic potential of the crop.

3.1 The Auditors also observed that during the period F.Y.2009-10 to F.Y.2012-13, the appellants had declared/classified their product 'Rapigro G' under Central Excise Tariff Heading (CETH) – 3808 in their Sale Invoices, however, in their respective ER-1 returns (monthly returns), they had declared/classified the product under CETH-3507. During the Financial Year 2013-14, they had declared/classified and cleared the said product 'Rapigro-G' under Chapter 3507, in both, the Invoices and in ER-1 Returns. Query Memo was issued to them on 01.03.2014. The appellants replied vide letter dated 13th March, 2014 wherein they submitted that Rapigro-G solution is manufactured from the raw material – 'Cereal Protein Hydrolysate', which is procured from M/s Sowbhagya Bio Tech (P) Ltd, who declares the product in their Invoices as 'Plant Growth Promoter'. After receiving the Cereal Protein Hydrolysate, DM water is added to it at their unit situated at Panoli, Vadodara and thereafter removed on payment of duty to their unit at Zak. Hence, the product merits classification under CETH-3507 of CETA, 1985. It appeared to the audit officers that the product 'Rapigro-G' is 'Plant Growth Promoter' and appropriately classifiable under the Chapter Heading 3808 of the CETA, 1985, attracting Central Excise duty on MRP basis under Section 4(A) of the Central Excise Act, 1944. However, the appellant had cleared the same under Chapter Heading 3507 wrongly and discharged Central Excise duty liability under Section 4 of the Central Excise Act, 1944. Due to their wrong classification of their product, the appellant had short paid excise duty amounting to Rs. 23,04,924/- during the period F.Y. 2009-10 to F.Y. 2013-14 (upto January, 2014). The auditors had also pointed out wrong availment of Cenvat credit to the tune of Rs. 3,30,060/-. A show cause notice was issued to the appellant on 07.05.2014 for the period April-2009 to Jan-2014, vide which it was proposed to:

- Demand and recover differential central excise duty amount of Rs. 23,04,924 under Section 11A of the Central Excise Act, 1944 along with interest under Section 11 AA of the Central Excise Act, 1944 (CEA, 1944).
- Demand and recover cenvat credit amount of Rs. 3,30,060 under Rule 14 of the Cenvat Credit Rules, 2004 (CCR, 2004) along with interest to be charged and recovered under Rule 14 of CCR, 2004 read with the provision of Section 11 A of the CEA, 1944.
- Penalty was proposed under Rule 25 of CER, 2002 read with Section 11 AC of the CEA, 1944 and under Rule 15 of CER, 2002 read with Section 11 AC of the CEA, 1944.

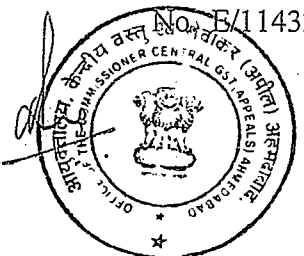


3.2 The appellants were subsequently issued periodical show cause notices under Section 11A (7A) of the Central Excise Act, 1944. The details of all the show cause notices issued to the appellants are as under:

SCN No. and Date	Period of Demand	Demand of Duty (INR)	Demand of Cenvat Credit (INR)
F. No.V.38/15-55/DEM/OA/2014 dated 07.05.2014 (First SCN)	April-2009 to January - 2014	23,04,924	3,30,060
F. No. V.38/15-212/DEM/OA/2014 dated 26.04.2015 (Second SCN)	February, 2014 to December -2014	6,70,481	14,34,778
F. No. V.38/15-112/DEM/OA/15-16 dated 27.01.2016 (Third SCN)	January-2015 to September- 2015	6,50,444	8,36,321
F. No. V/04-05/GNR/Isagro/2016-17 dated 24.10.2016 (Fourth SCN)	October-2015 to September-2016	6,56,597	N/A
F. No. V/04-20/O&A/Isagro/2017-18 dated 28.09.2017 (Fifth SCN)	October-2016 to June-2017	4,04,478	N/A

4. The first SCN dated 07.05.2014 and the second SCN dated 26.04.2015 were adjudicated by the Additional Commissioner, erstwhile Central Excise, Ahmedabad-III vide Order-in-Original No. AHM-CEX-003-ADC-009-010-15-16 dated 11.09.2015 wherein both the demands alongwith interest were confirmed. Further, penalties were also imposed under Rule 25 of the Central Excise Rules, 2002 and Rules 15 of the Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944. Being aggrieved by the OIO dated 11.09.2015, appellants filed appeal before the then Commissioner (Appeals-I), Central Excise, Ahmedabad, who vide Order-in-Appeal No. AHM-EXCUS-003-APP-085-16-17 dated August 10, 2016 remanded the matter back to the Adjudicating Authority for drawal of samples by following procedures stipulated in Chapter 11 of the CBEC's Excise Manual of Supplementary Instructions, 2005 and get it tested in a Government laboratory. It was directed to obtain specific report to arrive at correct classification of 'Rapigro-G'. The demand pertaining to wrong avilment of Cenvat Credit was confirmed alongwith interest and penalty. Being aggrieved, the appellants have filed Appeal No. Excise/11973/2016 against the Order dated 10.08.2016 before the Hon'ble CESTAT, Ahmedabad, where the same is still pending disposal.

4.1 Third SCN dated 27.01.2016 was adjudicated by the Additional Commissioner, erstwhile Central Excise, Ahmedabad-III vide Order-in-Original No. AHM-CEX-003-ADC-MLM-06715-16 dated March 28, 2016 who confirmed the proposals made in the SCN. Aggrieved by the OIO dated 28.03.2016, the appellants filed appeal before the Commissioner (Appeals-I), Central Excise Ahmedabad, who disposed the same vide Order-in-Appeal No. AHM-EXCUS-003-APP-305-16-17 dated 31.03.2017 by remanding the matter back to the adjudicating authority with specific directions. The demand of Cenvat credit was confirmed. Aggrieved by the Order dated 31.03.2017 of the Commissioner (Appeals-I), Ahmedabad, the appellant filed another Appeal No. E/11432/2017 dated 01.07.2017 before the CESTAT, Ahmedabad. The Hon'ble Tribunal



vide Final Order No. A/13662/2017 dated 17.11.2017 remanded the matter to the Commissioner (Appeals).

4.2 The litigations in the issue are summed up as per the Table below:

Table

SCN Dated	Relevant OIO details	Relevant OIA (First stage appeal) with gist of Order	CESTAT Order (second stage appeal) with gist of decision.
1	2	3	4
F. No.V.38/15-55/DEM/OA/2014 dated 07.05.2014	No.AHM-CEX-003-ADC-009-010-15-16, dated 11.09.2015	AHM-EXCUS-003-APP-085-16-17 dated 09.08.2016; Classification of Rapigro-G remanded with specific directions. Demand of Cenvat upheld.	Appeal No. Excise/11973/2016 is pending before CESTAT.
F. No. V.38/15-212/DEM/OA/2014 dated 26.02.2015			
F. No. V.38/15-112/DEM/OA/15-16 dated 27.01.2016	No.AHM-CEX-003-ADC-MLM-067-15-16, dated 28.03.2016	AHM-EXCUS-003-APP-305-16-17 dated 31.03.2017; Classification of Rapigro-G as per previous OIA; Demand of Cenvat upheld.	Final Order No. A/13662/2017 dated November 17, 2017; remanded back to Commissioner (Appeals).
F. No. V/04-05/GNR/Isagro/2016-17 dated 24.10.2016	No.AHM-CEX-003-ADC-PMR-003-007-21-22, dated 28.0.2021	Present Appeal	NA
F. No. V/04-20/O&A/Isagro/2017-18 dated 28.09.2017			

4.3 The Hon'ble CESTAT, Ahmedabad vide order dated 17.11.2017 has pronounced that:

2. *...In that circumstances, the impugned order is in violation of the principles of natural justice, therefore, the same is set-aside. As the issue has not been decided on merits, therefore, the matter is remanded back to the Ld Commissioner (Appeals) to decide the issue afresh as well as verification of documents.*

3. *In result, the appeal is disposed by way of remand.*

Accordingly, the appeal dated 11.08.2016 against OIO No. AHM-CEX-003-ADC-MLM-067-15-16, dated 28.03.2016, which has been remanded back by the Hon'ble Tribunal is also taken up for decision alongwith the present appeal.

4.4 However, considering the directives of the Commissioner (Appeals) vide Order-In-Appeal Nos. AHM-EXCUS-003-APP-085-16-17 dated 09.08.2016 as well as No. AHM-EXCUS-003-APP-305-16-17 dated 31.03.2017 and CESTAT Final Order No. A/13662/2017 dated November 17, 2017, the adjudicating authority has decided all the 05 SCN's afresh



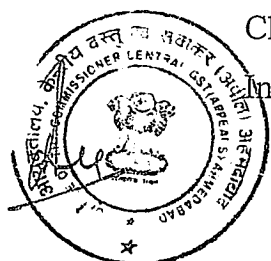
vide the impugned order. The details of demand confirmed alongwith interest and penalty imposed and Cenvat credit denied vide the impugned order are as under:

Sr. No	Demand of Central Excise duty Confirmed (Rs.)	Interest (Rs.)	Penalty imposed (Rs.)	Cenvat Credit denied (Rs.)
1	23,04,924/- u/s 11A of CEA,1944 by invoking extended period.	Confirmed u/s 11AA of CEA,1944	11,52,462/- u/r 25 of CER,2002 r/w Section 11AC of the CEA,1944 1,65,030/- u/r 15 of CCR,2004.	3,30,060/- u/r 14 of CCR,2004
2	6,70,481/- u/s 11A of CEA,1944 by invoking extended period.	Confirmed u/s 11AA of CEA,1944	3,35,241/- u/r 25 of CER,2002 r/w Section 11AC of the CEA,1944 7,17,389/- u/r 15 of CCR,2004.	14,34,778/- u/r 14 of CCR,2004
3	6,50,444/- u/s 11A(1) of CEA,1944 by invoking extended period.	Confirmed u/s 11AA of CEA,1944	6,50,444/- u/r 25 of CER,2002 8,36,321/- u/r 15(1) of CCR,2004.	8,36,321/- u/r 14 of CCR,2004
4	6,56,597/- u/s 11A of CEA,1944 by invoking extended period.	Confirmed u/s 11AA of CEA,1944	6,56,597/- u/r 25 of CER,2002 r/w Section 11AC of the CEA,1944	NA
5	4,04,478 /- u/s 11A of CEA,1944 by invoking extended period.	Confirmed u/s 11AA of CEA,1944	4,04,478/- u/r 25 of CER,2002 r/w Section 11AC of the CEA,1944	NA

Option of reduced penalty was also extended to the appellant.

5. Being aggrieved by the impugned order, the appellant have filed the present appeal on following grounds:

- That their product under dispute i.e. 'Rapigro' is a protein hydrolysate containing amino acids, peptides, vitamins and nitrogen, notified under the Fertilizer Control Order (FCO) as Bio-Stimulant and is registered as such by Jivagro. Various Central Government Laboratories has confirmed that Rapigro does not contain Insecticide.
- Against the findings of the adjudicating authority that "*Plant hormones are one type of plant growth regulator/promoter*" and 'Plant Growth Promoter and Plant Growth Regulator can be used interchangeability', they contended that these findings are incorrect and contrary to principles of classification under the Excise Tariff; chemistry and the Circulars/ clarifications issued by the Ministry of Chemical & Fertilizer and the Department of Agriculture of the Government of India.





- In spite of mentioning the fact that Rapigro is plant growth promoter for which there is no specific tariff entry, the adjudicating authority held the same to be classifiable under Tariff Item 3808 9340 of the Excise Tariff as Plant Growth Regulator without assigning any justification or grounds for the same.
- That the findings of the Adjudicating Authority that Rapigro is classifiable under CETH- 3808 and not under CETH-3507 referring to Harmonised System of Nomenclature ("HSN") is not proper.
- They contended against the confirming of demand, imposition of penalties and disallowing Cenvat credit and relied on the following decisions of various judicial authorities among others :
  - Hon'ble Supreme Court in the case of Northern Minerals Limited Vs. CCE [2001 (131) ELT 355 (Trib.);
  - CCE Vs. Chemcel Bio-Tech Limited [2007 (211) ELT 414 (Tri.)] ;
  - Transpek Industry Limited Vs. CCE, Vadodara [2008 (230) ELT 351 (Tri.)];
  - Decision of the Tribunal in the case of CCE Vs. Aries Agrovvet Industries Limited [2017 (7) GSTL 317 (Tri.)];
  - Decision of the Tribunal in the case of KPR Industries Limited Vs. CCE [2022-TIOL-878-CESTAT-HYD] ;
  - Decision of the Hon'ble Supreme Court in the case of Maharshi Ayurveda Corporation Limited Vs. CCE [2006 (193) ELT 10 (SC)] ;
  - Decision of the Hon'ble Supreme Court in the case of CCE Vs. JOCIL Limited [2011 (263) E.L.T. 9 (SC)];
  - Decision of the CESTAT in the case of ITC Limited Vs CCE [2016 (46) STR 73 (Tri)];
  - Decision of the Hon'ble High Court at Karnataka vide [2021 (50) GSTL 339 (Kar.)]

6. Personal hearing in the case was held on 31.10.2022. Shri Ashok Dhingra and Ms Sonia Gupta, both Advocates, appeared for hearing as authorized representative of the appellant. They reiterated the submissions made in their appeal memorandum. They also submitted an additional written submission during the hearing and re-iterated the submissions made therein.

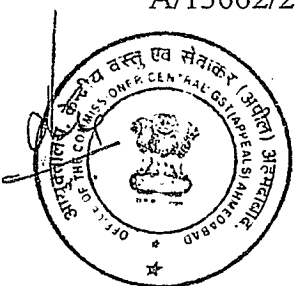
7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, additional written submissions and materials available on records. The issues before me for decision are:



- i) whether the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, confirming the demand of Central Excise duty alongwith interest and penalty, by way of classifying the product 'Rapigro-G' under CETH 3808 of CETA, 1985 is legal and proper or otherwise. The demand pertains to the period April-2009 to June, 2017, covered under 05 show cause notices.
- ii) whether the demand confirmed by way of invocation of extended period of limitation in the first SCN dated 07.05.2014 (for the period April-2009 to January, 2014) is legal and proper or otherwise.
- iii) Whether the Cenvat credit denied and ordered to be recovered alongwith interest and penalty in the three show cause notices dated 07.05.2014, 26.02.2015 and 27.01.2016 are legal and proper or otherwise.

8. It is observed that the Commissioner (Appeals – I), Central Excise, Ahmedabad had vide Order-in-Appeal No. AHM-EXCUS-003-APP-085-16-17 dated 10.08.2016 decided the appeal filed by the appellant against OIO No. AHM-CEX-003-ADC-009-010-15-16 dated 11.09.2015 issued to adjudicate two SCNs dated 07.05.2014 and dated 26.02.2015. He had remanded the matter relating to classification of product 'Rapigro – G' and the confirmation of demand of central excise duty back to the Adjudicating Authority for drawal of samples by following procedures stipulated in Chapter 11 of the CBEC's Excise Manual of Supplementary Instructions, 2005 and get it tested in a Government laboratory. The demand pertaining to wrong availment of Cenvat Credit was upheld alongwith interest and penalty. Being aggrieved with the said OIA, the appellants have filed Appeal No. Excise/11973/2016 before the Hon'ble CESTAT, Ahmedabad, where the same is still pending.

8.1. Further, the Commissioner (Appeals-I), Central Excise Ahmedabad had vide Order-in-Appeal No. AHM-EXCUS-003-APP-305-16-17 dated 31.03.2017 decided the appeal filed by the appellant against OIO No. AHM-CEX-003-ADC-MLM-067-15-16 dated 28.03.2016 issued to adjudicate SCN dated 27.01.2016, by remanding the matter relating to classification of product 'Rapigro-G' and the confirmation of demand back to the adjudicating authority with specific directions. The demand of Cenvat credit was confirmed. Aggrieved by the Order dated 31.03.2017 of the Commissioner (Appeals-I), Ahmedabad, the appellant filed another Appeal No. E/11432/2017 dated 01.07.2017 before the CESTAT, Ahmedabad. The Hon'ble Tribunal vide Final Order No. A/13662/2017, dated 17.11.2017 remanded the matter to the Commissioner (Appeals).



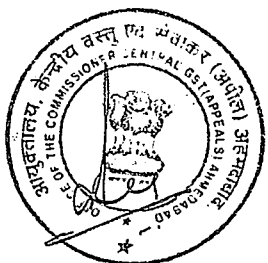
8.2. The fourth SCN dated 24.10.2016 and the fifth SCN dated 28.09.2017 were issued under Section 11A (7A) of the Central Excise Act, 1944 as periodical show cause notices wherein the issue pertaining to classification and consequent recovery of central excise duty was raised. These SCNs did not raise the issue of denial of Cenvat credit.

8.3. It is observed that the adjudicating authority has vide the impugned order decided both the issues i.e. classification of product 'Rapigro G' and confirmation of demand of central excise duty as well as of recovery of cenvat credit. I find that the adjudicating authority has committed an error in deciding the issue pertaining to denial of cenvat credit again, which was not a subject matter pending before him for decision. It is apparent from the records that the matter relating to only classification and confirmation of demand in the three SCNs were remanded to him and the matter of denial of Cenvat was already decided by the Commissioner (A) against which the appellant have preferred appeals before the Hon'ble Tribunal. Hence, I am in agreement with the appellant that the impugned order passed by the adjudicating authority with respect of denial of cenvat credit covered in the three SCNs are not legal and proper being passed without jurisdiction and is required to be set aside.

8.4. Hence, the adjudicating authority was required to decide only the issue relating to classification of the product 'Rapigro G' covered in the three SCNs dated 07.05.2014, 26.02.2015 and 27.01.2016 as per the directions of the Commissioner (Appeals) in the remand proceedings as well as in two periodical SCNs under fresh proceedings.

9. I find that the first issue required to be decided is regarding the classification of the product 'Rapigro-G'- whether it should be classified under CETH—3808 or CETH – 3507 of the Central Excise Tariff Act, 1985 (CETA, 1985). It is observed that this issue was discussed in length by the Commissioner (Appeals-I), Central Excise, Ahmedabad vide Order-In-Appeal No. AHM-EXCUS-003-APP-085-16-17 dated 09.08.2016. Para-16.1 of the said order reads as under:

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



to be done in the prescribed manner.

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

Further, the Commissioner (Appeals), Ahmedabad vide Order-In-Appeal No. AHM-EXCUS-003-APP-305-16-17 dated 31.03.2017 agreed with the above findings.

9.1. It is also observed that the adjudicating authority has recorded at Para-18 of the impugned order that the jurisdictional authorities have drawn samples of the product - 'Rapigro-G' and forwarded to 07 (seven) different Government Laboratories for testing. However, no conclusive Test Report was received. These facts of drawal of samples and their testing is not disputed by the appellant, hence, it can be concluded that the directives of the Commissioner (Appeals-I), Ahmedabad in the OIA dated 09.08.2016 was followed. However, since the results of sample testing were inconclusive, the issue has to be decided on the basis of the facts and circumstances of the case and materials available on record.

10. In order to address the issue of classification of the product 'Rapigro G', it would be relevant to refer to the classification as per Harmonised System of Nomenclature (HSN) prevalent internationally and which forms the actual basis of CETA, 1985. The relevant extracts of Chapter-38 and Sub-heading - 38.08 of HSN covering the Chapter Notes and explanations are reproduced below:

*Chapter 38 :-*

*Miscellaneous chemical products*

*Notes. - -*

*This Chapter does not cover :*

*(a) Separate chemically defined elements or compounds with the exception of the following :*

*(1) Artificial graphite (heading 38.01);*

*(2) Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and Plant-growth regulators, disinfectants and similar products, put up as described in Reading 38.08;*

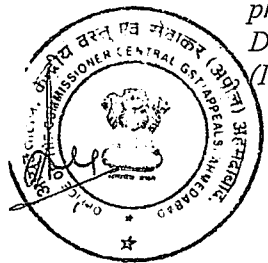
*(3) Products put up as charges for fire-extinguishers or put up in fire-extinguishing grenades (heading 38.13);*

*(4) Certified reference materials specified in Note 2 below;*

...

*Subheading Notes.*

*1.- Subheading 3808.50 covers only goods of heading 38.08, containing one or more of the following substances : aldrin (ISO); binapacryl (ISO); camphechlor (ISO) (toxaphene); captafol (ISO); chlordane (ISO); chlordimeform (ISO); chlorobenzilate (ISO); DDT (ISO) (clofenotane (INN), 1,1,1-trichloro-2,2-bis(p-chlorophenyl)ethane); dieldrin (I 0, INN); 4,6-dinitro-o-cresol (DNOC (ISO)) or its salts; dinoseb (ISO), its salts or its*



esters; ... tributyltin compounds. - Subheading 3808.50 also covers dustable powder formulations containing a mixture of benomyl (ISO), carbofuran (ISO) and thiram (ISO).

GENERAL

This Chapter covers a large number of chemical and related products. It does not cover separate chemically defined elements or compounds (usually classified in Chapter 28 or 29), with the exception of the following :

- (1) Artificial graphite (heading 38.01).
- (2) Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and Plant-growth regulators, disinfectants and similar products, put up as described in heading 38.08.
- (3) Products up as charges for fire-extinguishers or put up in fire-extinguishing grenades (heading 38.13)

38.08- 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)(+).

3808.50 - Goods specified in Subheading Note 1 to this Chapter

- Other :

3808.91 -- Insecticides

3808.92 -- Fungicides

3808.93 - Herbicides, anti-sprouting products and plant-growth regulators

3808.94 -- Disinfectants

3808.99 -- Other

This heading covers a range of products (other than those having the character of medicaments, including veterinary medicaments - heading 30.03 or 30.04) intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches, etc.), mosses and moulds, weeds, rodents, wild birds, etc. Products intended to repel pests or used for disinfecting seeds are also classified here. These insecticides, disinfectants, herbicides, fungicides, etc., are applied by spraying, dusting, sprinkling, coating, impregnating, etc., or may necessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc. The heading further covers anti-sprouting products and plant-growth regulators intended to inhibit or promote physiological processes in plants. Their modes of application vary and their effects range from destruction of the plant to enhanced growth-vigour and improved crop-yield.

The products of heading 38.08 can be divided into the following groups :

(I) Insecticides

(III) Herbicides, anti-sprouting products, plant-growth regulators

Herbicides are chemicals which are used to control or destroy unwanted plants. Some herbicides are applied to dormant plant parts or seeds, while other herbicides are applied to the whole foliage. They can provide control which is selective (herbicides which affect specific plants) or non-selective (herbicides which result in the complete eradication of vegetation) . . .

The group also includes defoliant, which are chemicals intended to cause the leaves or foliage of plants to drop prematurely.

Anti-sprouting products can be applied to seeds, bulbs, tubers or soils to inhibit or delay germination or sprouting.

Plant-growth regulators are applied to alter the life processes 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 (e.g., gibberellic acid). Synthetic organic chemicals are also used as plant-growth regulators.

I find that the specific wordings of Chapter Note – (a) (2) and General Note (2) i.e. "This Chapter does not cover (a) Separate chemically defined elements or compounds with the exception of the following : .. (2) Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and Plant-growth regulators, disinfectants and similar products, put up as described in heading 38.08; clearly state that the said CETH – 38.08 specifically covers 'Plant-growth regulators'.



10.1. Relevant extracts of Chapter-35 and Sub-heading 35.07 of HSN covering the Chapter Notes and explanations of each chapter are reproduced below:

*Chapter 35*

*Albuminoidal substances; modified starches; glues; enzymes*

Notes. :

1 This Chapter does not cover :

- (a) Yeasts (heading 2 1.02);
- (b) Blood fractions (other than blood albumin not prepared for therapeutic or prophylactic uses), medicaments or other products of Chapter 30;
- (c) Enzymatic preparations for pre-tanning (heading 32.02);
- (d) Enzymatic soaking or washing preparations or other products of Chapter 34;
- (e) Hardened proteins (heading 39.13); or
- (Gelatin products of the printing industry (Chapter 49).

2.- For the purposes of heading 35.05, the term "dextrins" means starch degradation products with a reducing sugar content, expressed as dextrose on the dry substance, not exceeding 10 %. Such products with a reducing sugar content exceeding 10 % fall in heading 17.02

...

35.07 - Enzymes; prepared enzymes not elsewhere specified or included.

3507.10 - Rennet and concentrates thereof

3507.90 - Other Enzymes are organic substances produced by living cells; they have the property of causing and regulating specific chemical reactions inside or outside living cells, without themselves undergoing any change in their chemical structure.

Enzymes may be referred to as follows :

(I) According to their chemical constitution, e.g. :

(a) Enzymes in which the molecule consists solely of a protein (e.g., pepsin, trypsin, urease).

(b) Enzymes in which the molecule consists of a protein combined with a non-protein compound of low molecular weight, acting as a cofactor. The cofactor may be either a metal ion (e.g., copper in ascorbate oxidase, zinc in human placental alkaline phosphatase) or a complex organic molecule called a coenzyme (e.g., thiamine diphosphate in pyruvate decarboxylase, pyridoxal phosphate in glutamate-oxalo-acid aminotransferase). Sometimes both are required.

(II) According to :

- (a) their chemical activity as oxidoreductases, transferases, hydrolases, lyases, isomerases, ligases; or . .
- (b) their biological activity as amylases, lipases, proteases, etc.

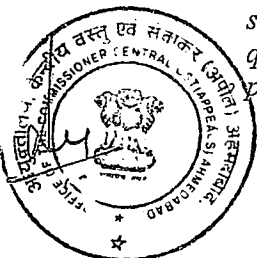
This heading includes :

(A) "Pure" (isolated) enzymes.

These are generally in crystalline form, and are mainly intended -for use in medicine or in scientific research. They are not as important in international trade as enzymatic concentrates and prepared enzymes.

(B) Enzymatic concentrates.

These concentrates are generally obtained from either aqueous or solvent extracts of animal organs, of plants, of micro-organisms or of culture- 1 froths (the latter derived from bacteria, moulds, etc.). These products, which may contain several enzymes in various proportions, can be standardised or stabilised. It should be noted that certain standardising or stabilising agents may already exist in the concentrates in variable quantities, deriving either from the fermentation liquor or from the clarifying or precipitating processes. The concentrates can be obtained, for example, in powder form



by precipitation or freeze drying or in granular form by using granulating agents or inert supports or carriers.

(C) Prepared enzymes not elsewhere specified or included.

Prepared enzymes are obtained by further dilution of the concentrates mentioned in Part (B) above or by intermixing isolated enzymes or enzymatic concentrates. Preparations with substances added, which render them suitable for specific purposes, are also included in this heading, provided they are not covered by a more specific heading in the Nomenclature.

This group includes, inter alia :

(i) Enzymatic preparations for tenderising meat, such as those consisting of a proteolytic enzyme (e.g., papain) with added dextrose or other foodstuffs.

(ii) Enzymatic preparations for clarifying beer, wine or fruit juice (e.g., pectic enzymes containing added gelatin, bentonite, etc.).

(iii) Enzymatic preparations for desizing textiles such as those with a basis of bacterial  $\alpha$ -amylases or proteases.

This heading excludes, inter alia, the following preparations

(a) Medicaments (heading 30.03 or 30.04).

(b) Enzymatic preparations for pre-tanning (heading 32.02).

(c) Enzymatic soaking or washing preparations and other products of Chapter 34.

...

Upon going through the above, it is observed that the word/letters 'Biostimulant' is not categorically specified under any heading, subheading or as exception in the Chapter notes etc. Hence, as claimed by the appellant branding/naming their product as 'Biostimulant' and classifying it under CETH 3507 is not supported by the entries in Chapter 35 of the HSN.

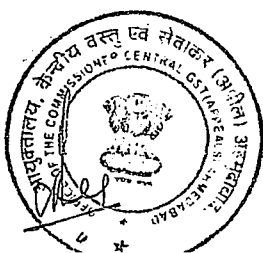
10.2. It is further observed that, as discussed supra, the Commissioner (Appeals-I), Ahmedabad vide Order-In-Appeal dated 09.08.2016 had found that "... a prima facie view can be formed that the product in dispute – **Rapigro G** is a plant growth regulator...". The above view is found to be in line with the Chapter Note and Tariff Classification as per the HSN discussed supra.

10.3. The Hon'ble Tribunal, New Delhi in the case of Commissioner Cen. Ex., Meerut Vs. Unique Formaid P. Ltd. in Appeal Nos. E/1274/97-C & E/1379/97-C – [1999 (112) E.L.T. 92 (Tribunal)] had held that :

... the common issue involved is whether the product "FLORAMIN" is classifiable under sub-heading No. 3808.90 of the schedule to the Central Excise Tariff Act, as claimed by the Revenue or under sub-heading 3101.00 as decided by the Commissioner (Appeals) in the impugned orders.

...

5. ... We also do not find any substance in ld. Counsel's submission that the product cannot be classified as plant growth regulator as it is not covered under the Insecticides Act, 1968 as it is not the case of the Revenue that the impugned product is an insecticide; further the product is not designed to control insect life that is harmful to man, either directly or indirectly as destroyers of crops, food products, or textile fabrics. The



*provisions of Insecticides Act applies only to Insecticides and therefore, non application of the said Act to the impugned product is not relevant for its classification under the Central Excise Tariff Act. ... We, therefore, held that the impugned product is classifiable under sub-heading 3808.90 of the Schedule to the Central Excise Tariff Act as Plant growth regulator. ... However, we agree that no penalty is imposable as this was a case of interpretation of the Heading/sub-heading of CETA, 1985 for the purpose of classification and accordingly the penalty of .. is set aside. ....*

From the above, it is clear that the claim of the appellant in the appeal memorandum that their product is excluded from the 'Insecticides Act, 1968', do not fetch merit in the instant case as the contrary was never a claim by the department and provisions of the 'Insecticides Act, 1968' do not apply to the facts and circumstances of this case. Further, the Hon'ble Tribunal has also held that the disputed product fetches appropriate classification under CETH 3808.90 as 'Plant Growth regulators' and not under any other heading as claimed by the respondents.

10.4. The appellants have submitted Test Report dated 19.11.2014 of the Indian Agricultural Research Institute vide their additional submission, however it is observed that the said report is scientifically worded and in-conclusive for aiding the issue of Classification of the product in terms of CETA, 1985. Therefore, on the basis of the above discussions, I am of the considered opinion that the product 'Rapigro G' merits classification under CETH-3808 of CETA, 1985. Therefore, the classification of the product 'Rapigro-G' concluded by the impugned order is upheld.

11. Regarding the issue of invocation of extended period of limitation by the adjudicating authority in confirming the demands raised vide 05 SCNs dated 07.05.2014, dated 26.02.2015; dated 27.01.2016; dated 24.10.2016 and 28.09.2017, I find that the first SCN dated 07.05.2014 was issued for the period April-2009 to Jan-2014 and the subsequent 04 show cause notices were issued as periodic demand notices under Section 11A (7A) of the Central Excise Act, 1944.

11.1 It is an undisputed fact that the appellant had classified and cleared the said product under CETH-3808 of CETA, 1985 in their Sale Invoices during the period F.Y. 2009-10 to F.Y.2012-13. Once they had classified their product under CETH-3808 in the Sale invoices, they were bound to follow the assessment of those Sale Invoices in terms of Notification No.49/2008-CE(NT) dated 24.12.2008. Relevant portion of the said notification is reproduced as under:

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)  
Notification No. 49/2008-Central Excise (N.T.)  
New Delhi, the 24 th December, 2008 3 PAUSA, 1930 (SAKA)

G.S.R. (E)-In exercise of the powers conferred by sub-sections (1) and (2) of section 4A of the Central Excise Act, 1944 (1 of 1944) the Central Government, in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.14/2008-Central Excise (N.T.), dated the 1 st March, 2008, published in the





Gazette of India Extraordinary, vide number G.S.R.147(E) of the same date, except as respects things done or omitted to be done before such supersession, hereby specifies the goods mentioned in Column (3) of the Table below and falling under Chapter or heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) mentioned in the corresponding entry in column (2) of the said Table, as the goods to which the provisions of sub-section (2) of said section 4A shall apply, and allows as abatement the percentage of retail sale price mentioned in the corresponding entry in column (4) of the said Table.

Table

S. No	Chapter, heading, sub-heading or tariff item	Description of goods	Abatement as a percentage of retail sale price
(1)	(2)	(3)	(4)
...	...	...	...
47	3808 93 40	Plant growth regulator	25

...  
*Explanation.* - For the purposes of this notification, except for S.No.30, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

( )  
 Under Secretary to the Government of India  
 [F.No.334/8/2008-TRU]

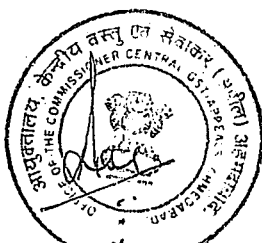
However, it was observed during the audit that the appellants had failed to follow the assessment for these Invoices issued during the period F.Y.2009-10 to F.Y.2012-13 under Section 4A of CEA, 1944 and instead, they had assessed the product in terms of Section 4 of the CEA, 1944 in their respective ER-1 returns by classifying the product under CETH 3507. Hence, there was an apparent contradiction in the approach of the appellant in classifying their products in the statutory documents, which had a bearing on the valuation and consequent discharge of duty liability. These acts on part of the appellant are covered in the parameters of fraud, collusion, omission and misstatement with an intention to avoid payment of Central Excise duty. Hence, confirming the demand of Central Excise duty amounting to Rs. 23,04,924/- alongwith interest and penalty, raised vide SCN dated 07.05.2014 by invocation of extended period of limitation by the adjudicating authority vide the impugned order is legally sustainable.

11.2. However, in case of the Show Cause Notices dated 26.02.2015; 27.01.2016; 24.10.2016 and 28.09.2017, it is observed that all these SCN's were issued under Section 11A (7A) of the Central Excise Act, 1944, the relevant portion of which is as under :

*Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. -*

(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,-

...  
 (7A) Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (4) 5 [\*\*\*], the Central Excise Officer may, serve, subsequent to any notice or notices served under any of those sub-sections, as the case may be, a statement, containing the details of duty of central excise not levied or paid or short-levied or short-

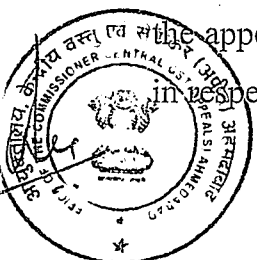


*paid or erroneously refunded for the subsequent period, or the person chargeable to duty of central excise, then, service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1) or sub-section (3) or sub-section (4) or sub-section (5), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice or notices.]*

All the four SCN's detailed above are issued as periodical demands for subsequent periods and duty was demanded under Section 11A (1) of the CEA, 1944.

11.3. In view of the above, it is observed that in respect of the demand, interest and penalty proposed vide Show Cause Notices dated 26.02.2015; 27.01.2016; 24.10.2016 and 28.09.2017, the extended period of limitation cannot be invoked and penalty amount equivalent to duty cannot be imposed. It is also observed that these SCNs were issued under normal period of limitation under Section 11A (7A) of the Central Excise Act, 1944 read with Section 11A (1) of the Act and hence they are not hit by bar of limitation. I also find that, vide the impugned order, the adjudicating authority has imposed equivalent penalties in respect of demands raised vide show cause notices dated 26.02.2015; 27.01.2016; 24.10.2016 and 28.09.2017 under Rule 25 of the Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1994. It has already been discussed above that these four SCNs were issued as periodical demands under Section 11A (7A) of the Central Excise Act, 1944 and hence aspect of suppression etc. with an intention to evade payment of duty is absent in these notices. Then the applicable penalty under Section 11 AC of the Central Excise Act, 1944 would be under clause 1 (a) of this section and the maximum amount of penalty that can be levied is 10% of the duty so determined or rupees five thousand, whichever is higher. Hence, the impugned order passed by the adjudicating authority in respect of the four SCN's dated 26.02.2015; 27.01.2016; 24.10.2016 and 28.09.2017, confirming the demand invoking extended period of limitation and imposing equivalent penalty is not legally sustainable and deserves to be set aside. However, the demand for normal period and consequent penalty under Section 11 AC 1(a) of the Central Excise Act, 1994 is upheld.

12. As regards the issue of availment of Cenvat Credit, it is observed that the demand of Cenvat Credit alongwith interest was raised in case of first three show cause notices dated 07.05.2014, 26.02.2015 and 27.01.2016. The issue covered under the SCNs dated 07.05.2014 as well as dated 26.02.2015 was decided by the Commissioner (Appeals-I), Central Excise, Ahmedabad vide OIA dated 09.08.2016 and decided the issue against the appellant on merits. The appellant has preferred appeal against the said OIA before the Tribunal, Ahmedabad where it is pending for decision. The matter covered under the SCN dated 27.01.2016 was decided by the Commissioner (Appeals), Ahmedabad vide Order-In-Appeal dated 31.03.2017, wherein the Commissioner (Appeals) has held that the appellant had not submitted any proof to substantiate their averment that the credit is in respect of C&F Agents service and not CHA service and that the credit was distributed



by the head office in respect of common services and has not been distributed in relation to the services which are exclusively for the unit other than the appellant's unit. He has, accordingly, confirmed the demand against the appellant. The appellant has carried the matter in appeal before the Hon'ble Tribunal, Ahmedabad who has vide Order dated 17.11.2017 remanded the matter back to the Commissioner (A) to decide the issue on merit after verification of documents.

12.1. It is observed in this regard that the appellant have not produced any new documents in support of their contention regarding the Cenvat credit availed being from the C&F Agents in their appeal memorandum or in the additional submission made by them. Hence, I do not find any reason to interfere with the decisions arrived at by my predecessors and, therefore, the demand in respect of wrongly availed Cenvat credit in the SCN dated 27.01.2016 alongwith interest is upheld. As regards imposition of penalty, it is observed from the SCN that the penalty has been proposed under Rule 15 (1) of the Cenvat Credit Rules, 2004, which has been confirmed by the adjudicating authority in the impugned order. However, it is also observed that there is no proposal made in the SCN for confiscation of any goods hence the SCN has invoked wrong provision for imposition of penalty. Further, the adjudicating authority has also erred in imposing penalty equal to the amount of Cenvat credit confirmed. It is also observed that the SCN dated 27.01.2016 is a periodical SCN issued under Section 11A (7A) of the Central Excise Act, 1944. In the principal SCN dated 07.05.2014 as well as in the SCN dated 26.02.2015, the penalty has been proposed under Rule 15 of the Cenvat Credit Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944. Hence, the penalty in this case should also be with reference to Section 11 AC of the Central Excise Act, 1944 and accordingly, the maximum amount of penalty that can be imposed in this case is 10% of the duty so determined or rupees five thousand, whichever is higher, under Section 11 AC 1(a) of the Central Excise Act, 1994.

13. In view of the discussions made above, I pass the order as per the details given below:

(i) The impugned order is upheld to the extent of confirmation of the demand of Central Excise duty totally amounting to Rs. 46,86,924/- under Section 11A of the Central Excise Act, 1944 alongwith interest under Section 11 AA of the Central Excise Act, 1944. The penalty amount of Rs. 11,52,462/- imposed under Rule 25 of the Central Excise Rules, 2002 read with Section 11 AC of the CEA, 1944 in respect of SCN dated 07.05.2014 is also upheld.

(ii) Penalty amount of Rs. 3,35,241/-, Rs. 6,50,444/-, Rs. 6,56,597/- and Rs. 4,04,478/- imposed under Rule 25 of the Central Excise Rules, 2002 read with



Section 11 AC of the CEA, 1944 are set aside. The matter is remanded back to the adjudicating authority to impose penalty under Section 11 AC 1(a) of the Central Excise Act, 1994 in respect of SCN dated 26.02.2015; 27.01.2016; 24.10.2016 and 28.09.2017.

(iii) The impugned order confirming demand of Cenvat credit amounting to Rs. 3,30,060/-, Rs. 14,34,778/- and Rs. 8,36,321/- in respect of SCN dated 07.05.2014, 26.02.2015 and 27.01.2016 is set aside along with interest and penalty, being passed without jurisdiction. The demand in respect of these SCNs were already confirmed by the Commissioner (Appeals - I), Central Excise, Ahmedabad. The matter pertaining SCN dated 07.05.2014 and 26.02.2015 is pending before the Hon'ble CESTAT, Ahmedabad. Further, the matter related to SCN dated 27.01.2016 has been remanded to the Commissioner (Appeals), as discussed in Para 12 above.

(iv) The demand of Cenvat credit amounting to Rs. 8,36,321/- in respect of SCN dated 27.01.2016 is confirmed under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the CEA, 1944 alongwith interest under Section 11 AA. As regards imposition of penalty, the matter is remanded back to the adjudicating authority to impose penalty under Rule 15 of the Cenvat Credit Rules, 2002 read with Section 11 AC (1) (a) of the Central Excise Act, 1944.

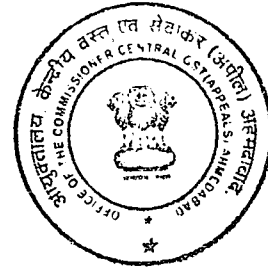
14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

*Akhil Kumar*  
13<sup>th</sup> January, 2023.  
(AKHILESH KUMAR)  
Commissioner (Appeals)  
Dated: 13<sup>th</sup> January, 2023

Attested:

*(Somnath Chaudhary)*  
(Somnath Chaudhary)  
Superintendent (Appeals),  
CGST, Ahmedabad.



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2. The Commissioner, CGST, Gandhinagar.
3. The Additional/Joint Commissioner, CGST, Commissionerate: Gandhinagar
4. The Dy/Assistant Commissioner (Systems), CGST Appeals, Ahmedabad.  
(for uploading the OIA)
5. Guard File.
6. P.A. File.



