

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, Central Excise Building Near Polytechnic Ambavadi, Ahmedabad-380015
☎ 079-26305065		☎ 079 - 26305136

रजिस्टर डाक ए.डी. द्वारा

2123 to 2127

क फाइल संख्या (File No.): V2(31)32 /North/Appeals/ 2017-18
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-391-17-18
 दिनांक (Date): 26-Mar-2018 जारी करने की तारीख (Date of issue): 5/4/2018
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
 मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No 3/AC/D/BJM/2017 Dated: 08/08/2017
 issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Sikko Industries Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India:

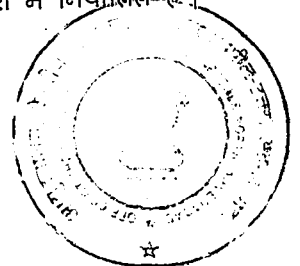
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



- (c) 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 ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

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

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall 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), के प्रति अपील 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।

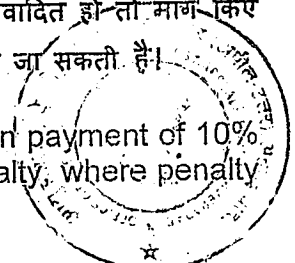
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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.

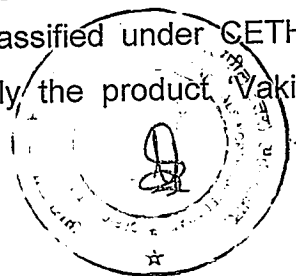
इस सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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

M/s Sikko Industries Ltd., 508, 'Iscon Eligance', Near Jain Temple, Near Prahladnagar Pick-up stand, S.G. Highway, Vejalpur Ahmedabad -380 051 (hereinafter referred to as 'the appellant') has filed the present appeal against **Order-in-original No.3/AC/D/BJM/2017 dated 08/08/2017** (hereinafter referred to as 'the impugned order') passed by Assistant Commissioner, G.S.T., Division-III, Ahmedabad (North) (hereinafter referred to as 'the adjudicating authority'). The appellant is engaged in the manufacture of NPK Fertilizers, Organic Fertilizers and Sea-weed based fertilizers falling under Chapter 31 of the first schedule to the Central Excise Tariff Act, 1985 (CETA, 1985) and Soil Conditioners falling under Chapter 38 of CETA, 1985 at its manufacturing unit situated at Survey No. 192/2 86 193/2, Ambica Estate, At: Ivaya, Taluka: Sanand, Ahmedabad and the manufactured products were cleared under the brand name 'SIKKO'. The appellant was not registered with Central Excise. The appellant had another unit in the name of M/s Sikko Industries Ltd., situated at 55-A & B, Ambica Estate, Sanand – Viramgam Highway at Ivaya, Sanand Taluka, Ahmedabad engaged in the manufacture of Pesticides, Fungicides etc falling under Chapter 38 of CETA, 1985. Acting on intelligence that the unit was clearing excisable product namely Soil Conditioners in the guise of fertilizers and Bio-fertilizer to avail the benefit of Notification No. 01/2011-CE dated 01/03/2011 (till 17/03/2012) and Notification No. 12/2012-CE, as amended dated 17/03/2012, the officers of Central Excise had conducted simultaneous searches on 08/01/2014 at the factory premises and Head office of the appellant as well as at the Godown premises of the appellant's sole distributor i.e. M/s Sikko Trade Link Pvt. Ltd. situated at 95,96,97 86 182, Sahjanand Estate, Near Bhavani Motors, Ahmedabad under Panchnama proceedings. After detailed investigations a case was booked and a Show Cause Notice was issued to the appellant for the period 2011-12 to 2014-15 proposing to deny the benefit of the said Notifications by classifying the products under CETH 38249090 / 38089910 of CETA, 1985 instead of CETAH 31052000 / 31051000 / 31010090 of CETA, 1985 claimed by the appellant and demanding duty, interest and penalty. As the appellant continued to follow the same practice of misclassification of its products during the subsequent period of **April-2015 to January-2016**, the appellant was issued another Show Cause Notice F. No. III/DSC/SIKKO/81/15-16 dated 07/04/2016 (hereinafter 'the SCN') proposing to classify soil conditioner / Plant Growing Media 'Sikko Power', 'Bio Star' and 'Best Agri Product' (BAP) cleared during the period of **April-2015 to January-2016** in the guise of fertilizer under CETH 38249090 of CETA, 1985 instead of CETH 31052000 / 31051000 and deny the benefit of concessional rate of duty under notification No. 01/2011-CE as amended dated 01/03/2012 and Notification no. 12/2012 dated 17/03/2012. In this SCN the product 'Vasool' (in packing of 10Kg or less) cleared during **April-2015 to January-2016** was proposed to be classified under CETH 31051000 instead of CETH 31010099 of CETA, 1985. Similarly, the product 'Vakil 3D' being



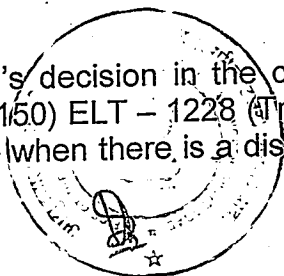
larvacid / Pesticide was proposed to be classified under CETH 38089910 of CETA, 1985 instead of CETH 31010090 of CETA, 1985 claimed by the appellant. A demand of duty amounting to **Rs.4,69,347/-** on clearance of '**Sikko Power**', '**Bio Star**' and '**Best Agri Product**' (BAP) and **Rs.10,047/-** on clearance of '**Vasool**' (in packing of 10Kg or less) and **Vakil-3D** was raised in the SCN under Section 11A(4) of the Central Excise Act, 1944 (CEA, 1944) along with interest under Section 11AA of CEA, 1944 and proposing to impose penalty on the appellant under Section 11AC (1)(c) of CEA, 1944. The proposal for classification and the demand for duty, interest and penalty as raised in the SCN has been confirmed by the adjudicating authority in the impugned order.

2. Aggrieved by the impugned order, the appellant has filed appeal, chiefly, on the following grounds:

- 1) **Best Agri Products (B.A.P.)**, During the period of April-2015 to January-2016, the appellant had classified **B.A.P.**, a manure based soil conditioner fertilizer was under CSH 31.05 of CETA, 1985 and paid Central Excise duty of Rs.29,871/- @ 1% in terms of Notification No.12/2012-CE dated 17/03/2012. The department raised a dispute that this product was classifiable under CH 38.24. Later on receipt of certificate dated 26/09/2014 from Agriculture department certifying the product in question as an organic fertilizer, the appellant claimed classification under CH 31.01 and hence the dispute is regarding classification of the product under CH 31.01 or CH 38.24. A demand of Rs.3,43,514/- for the period April-2015 to January-2016 has been raised on the ground that the Agriculture Department *vide* its letter dated 13/06/2011 did not allow the appellant to sell the product B.A.P. as fertilizer; that HSN CH 31.05 excludes a prepared plant growing media such as potting soils, based on peat or mixtures or peat and sand or of peat or clay (heading 27.03) and mixture of earth, sand, clay etc. (38.24) and HSN CH38.24 includes a prepared plant growing media such as potting soils, consisting of products classifiable under Chapter 25. Relying on the test report of Chemical Examiner, department has held that the test report showing presence of only small quantity of nitrogen, phosphorous and potassium is not classifiable under Chapter 31. The product is soil conditioning fertilizer, being referred to in the invoices as soil conditioner. The Agriculture department had never denied or disputed its status as an organic Fertilizer. Reliance placed by the appellant on the Apex court judgment in the case of Coen Bharat vs CCE – 2007 (217) ELT 165 (SCN) is very much relevant in the present case. The appellant submits that in fact the product B.A.P. Soil conditioner is classifiable under Chapter heading No. 3101 as an Organic Fertilizer and it is not classifiable under CETH 38249090 of CETA, 1985 and the demand of Rs.3,43,514/- is not sustainable in law.
- 2) **Sikko Bio Star**: During the period from April-2015 to Januray-2016, the appellant had classified the product 'Bio-Star' under CH 31.05 of CETA, 1985 as a manure based soil conditioner fertilizer and paid Rs.5,606/- @1% in terms of Notification No. 12/2012-CE dated 17/03/2012. The department disputed this classification and confirmed classification under Ch 38.24 even after receipt of certificate dated 26/09/2014 from the Agriculture department certifying the product Sikko Bio Star to be organic fertilizer. The product 'Sikko Bio Star' is a manure-based organic soil conditioning fertilizer consisting of city compost / cow dung and additives. The Chemical Examiner's report dated 11/08/2014 mentions that such products find use as potting soil, (Plant growing media). The appellant had brought to the notice of the learned Adjudicating Authority that the Agriculture Department, Gujarat State, recognizes the said product 'Sikko Bio Star' as an organic fertilizer as is evident from the certificate dated 26/09/2014. The appellant had explained that the product 'Sikko Bio Star' is organic soil conditioning fertilizer and it is being referred to in the invoices as Soil conditioner.

Organic soil conditioning fertilizer is also one of the species of fertilizer. The Agriculture department had never denied or disputed the status of the product as an Organic Fertilizer and subsequently the Agriculture Department has issued explicit certificate dated 26/09/2014 certifying the product as an Organic Fertilizer. The appellant submits that in view of this, there remains no doubt that the product 'Sikko Bio-Star' is an organic Fertilizer and rightly classifiable under Chapter 31.01. In view of the above, the demand for Rs.64,469/- is not sustainable in law.

- 3) **Sikko Power:** during the period from April-2015 to January-2016, the appellant had classified 'Sikko Power', a soil conditioning Fertilizer under Chapter heading 31.05 of CETA, 1985 and paid duty @ 1% under Notification No.12/2012 dated 17/03/2012. The department disputed this classification and has classified the Sikko Power under Chapter heading 38.24 of CETA, 1985 and issued a demand of 61,364/- for the period April-2015 to January-2016 on the ground that the Agriculture department *vide* letter dated 13/06/2011 did not allow the appellant to sell the product as fertilizer; HSN Chapter heading 31.05 excludes a prepared plant growing media such as potting soils, based on peat or mixture of peat and sand or of peat or clay (heading 27.03) and mixture of earth, sand, clay etc. and that HSN Chapter heading 38.24 includes a prepared plant growing media such as potting soils, consisting of products classifiable under Chapter 25. The product in question is being sold as soil conditioner covered under CETA 3105. Soil conditioning fertilizer is also one of the species of fertilizer. The Hon'ble Supreme Court in the case of Indo International Industries vs CSR – 1981 (8) ELT – 325 (SC) had held that in interpreting items in statutes like Excise Tax Act or Sales Tax Act, where diverse products, articles and substances are classified, resort should be had, not to the scientific and technical meaning of terms and expressions used, but to their popular meaning i.e. meaning attached to them by those dealing with them. CBEC's Circular No. 1022/10/2016-CX dated 06/04/2016, under para 2.1 says that micronutrients are essential nutrients that are required in small quantities for the normal growth and development of plants. As on today, Iron, Manganese, Zinc, Copper, Boron, Molybdenum, Nickel and Chlorine are included in this category. These elements are also minor or trace elements but does not mean that they are less important than micronutrients. The appellant submits that the product 'Sikko Power' is rightly classifiable under Chapter heading 31.05 and not under Chapter heading 38.24 as decided by the learned adjudicating authority. Thus demand of Rs.61,364/ is not sustainable in law.
- 4) As regards **Vakil-3D**, the department has raised demand of Rs.679/- erroneously assuming that the product is a Larvicide / Herbal Pesticide + Fungicide + Bio Stimulant classifiable under CTSH 38089910 of CETA, 1985. The product is basically a fertilizer based on seaweed and other plant extracts but is having some secondary properties also like bio-stimulant, fungicide and pesticide. The appellant places reliance on the case laws in Hindustan Lever vs CCE – 2003 (151)ELT 387 (CEGAT), CCE v Ascu Ltd. – 2006 (2034) ELT -439 (CESTAT), Vicco Laboratories vs CCE – 2007 (218) ELT 129 (CESTAT). In a case involving a similar product named 'Nim Sona', the Hon'ble Tribunal in the case of Commissioner v. Kishan Brothers – 2007 (218) ELT 623 (Tri.-Kolkata) held that a product having a secondary insecticide property in addition to its basic property as fertilizer is to be considered as an organic manure. The product Vakil-3D is a vegetable fertilizer though having some secondary properties like larvicides, fungicides and pesticides. Thus the demand is not sustainable. Hon'ble CESTAT in catena of cases has held that goods cannot be classified on the basis of use claimed by manufacturer in advertisement. Therefore, the usage as per website of the appellant being made the sole basis for classification of Vakil-3D is not correct without the actual composition of the product.
- 5) The appellant places reliance upon Hon'ble Tribunal's decision in the case of CCE, Indore vs. Syncom Formulation (I) Ltd. – 2002 (150) ELT – 1228 (Tri.-Del.) wherein it has been held that penalty is not imposable when there is a dispute in

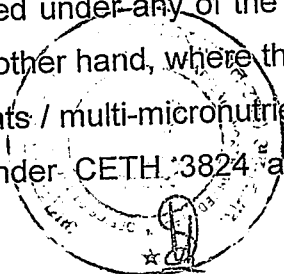


classification matters inasmuch as the difference of opinion may be genuine. The appellant places reliance upon Hon'ble Supreme Court's decision in the case of *Pratibha Processors vs. UOI – 1996 (88) ELT 12 (SC)* wherein it was held that penalty is ordinarily levied for some contumacious conduct or for deliberate violation of law.

3.. Personal hearing was held on 23/01/2018. Shri Madanlal Mandar, Advocate appeared on behalf of the appellant The learned Advocate reiterated the grounds of appeal.

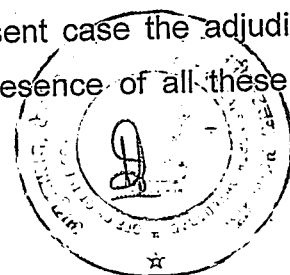
4. I have carefully gone through the contents of the impugned order as well as the grounds of appeal filed by the appellant The appellant has disputed the classification of the products viz. (i) Best Agri Product (B.A.P.); (ii) Sikko Bio Star and (vii) Sikko Power and (iv) Vakil 3D confirmed in the impugned order resulting in the confirmation of demand of Central Excise for the period April-2015 to January-2016 along with interest and the imposition of penalty on the appellant under Section 11AC of CEA, 1944.

5. With regards to **Best Agri Products (B.A.P.)**, the appellant seeks classification under CETHSH 31052000 of CETA, 1985 and claims the benefit of Notification No.12/2012-CE on the basis of certificate of manufacture dated 26/09/2014 issued by Joint Director of Agriculture (Ext.), Ahmedabad Division, Ahmedabad for "ORGANIC FERTILIZER City Compost (1) (B.A.P) (2) BIO STAR". The adjudicating authority has discussed this certificate in paragraph 12 & 13 of the impugned order holding that the product 'City Compost B.A.P.' was different from the product 'B.A.P.' that had been denied permission to be sold as fertilizer. The appellant has not produced any clarification from the Directorate of Agriculture, Gujarat State clarifying that both the products are one and the same. The appellant has not referred to any reason furnished by the Directorate of Agriculture to evidence as to why they had subsequently overturned or revised the decision to deny permission for 'B.A.P.' to be sold as fertilizer. The adjudicating authority has raised a genuine concern that the product 'B.A.P.' denied permission as fertilizer was different from the product 'City compost B.A.P.' for which permission was available to be sold as fertilizer. The onus to prove eligibility always lies with the person who is claiming the benefit of exemption or concessional duty. There is no evidence adduced by the appellant that 'City compost B.A.P.' and 'B.A.P.' are not different but the same product. The adjudicating authority has also relied on Circular No.1022/10/2016-CX. dated 06/04/2016 where it was clarified that sale of micronutrients as 'micronutrient fertilizer' would not lead to classification thereof as fertilizers under Chapter 31 of CETA, 1985 and that where the essential constituent giving character to the mixture is one or more of the three elements namely Nitrogen, Phosphorous or Potassium, the mixture shall be classified under any of the heading of Chapter 31, depending upon its composition and on the other hand, where the essential character of the product is that of mixture of micronutrients / multi-micronutrients having predominantly trace elements, it shall be classified under CETH.3824 as chemical



products not elsewhere specified or included. The appellant has thus failed to substantiate its claim for classification of **Best Agri Products (B.A.P.)** under Chapter 31 whereas the classification of this product under CETH 3824 by the adjudicating is correctly based on C.B.E.C. Circular No.1022/10/2016-CX dated 06/04/2016 Therefore, I uphold the confirmation of demand of duty and interest in the impugned order in respect of the product **B.A.P.**

6. **Sikko Bio Star** : The classification claimed by the appellant for this product under CETSH 31052000 of CETA, 1985 for availing benefit of Notification No.12/2012-CE has been denied by the adjudicating authority, who has confirmed classification of this product under CETSH 38249090 of CETA, 1985. The adjudicating authority has relied on the letter dated 13/06/2011 issued by the Directorate of Agriculture, Gujarat State wherein Sikko Bio Star (Soil Conditioner) containing N:1.5% to 2.5%, K₂O:1.9% to 2.5% and P₂O₅: 1.5% to 2% was rejected permission to be sold as Fertilizer. The appellant authority has also relied on the test report issued by Chemical Examiner holding that based on its constituents, 'Sikko Bio Star' find use as potting soil (Plant growing media). The adjudicating authority has also relied on the unretracted statement of the Managing Director dated 15/03/2014 endorsing the technical detail, inter alia, that the application and method or use of the said product in terms of agriculture field application is as SOIL CONDITIONER FOR SOIL APPLICATION. The appellant has challenged the classification confirmed in the impugned order and has contended that 'Sikko Bio Star' is a manure based organic soil conditioning fertilizer, which is one of the species of fertilizers. However, the appellant has not produced any evidence to challenge the test report that clearly states that the test for Nitrogen, Sulphur and Potassium shows negative presence. The Directorate of Agriculture, Gujarat State had clearly rejected permission for the said product to be sold as fertilizer in its letter dated 13/06/2011. However, the appellant relies on another letter of the same Agency dated 25/09/2017 granting permission for manufacture of physical organic fertilizer 'City Compost Bio Star'. The appellant has not produced any evidence to show that 'Sikko Bio Star' was the same as 'City Compost Bio Star'. Even in the grounds of appeal the appellant has not adduced any evidence to question the veracity of the test report. The argument that City Compost / Cow Dung used in the product would make it organic manure based soil conditioner would not grant the product the status of fertilizer for the purpose of classification under CETA, 1985, especially in view of the unretracted statement of the Managing Director dated 15/03/2016 relied upon in the impugned order stating that City compost / cow dung was being used as fillers. The clarification under C.B.E.C. Circular No.1022/10/2016-CX dated 06/04/2016 clearly specifies that the essential constituent giving character to the product should be a mixture of one or more of the three elements namely Nitrogen, Phosphorous or Potassium to merits its classification under Chapter 31 of CETA, 1985. In the present case the adjudicating authority has relied on the test report showing negative presence of all these three

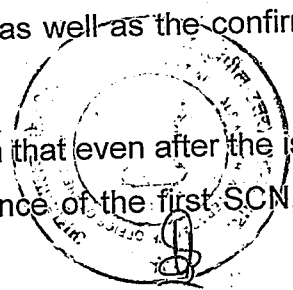


elements whereas the appellant has not produced any evidence to the contrary. Therefore, the classification of the product confirmed in the impugned order along with confirmation of duty and interest, in respect of **Sikko Bio Star** is liable to be upheld.

7. The appellant had cleared **Sikko Power** during the impugned period in the instant appeal under CETSH 31052000, thereby claiming the benefit of Notification No. 12/2012-CE (NT). In the impugned order the classification of the product has been confirmed under CETSH 38249090 of CETA, 1985 on the ground that the Directorate of Agriculture, Gujarat State, *vide* letter dated 13/06/2011 had denied permission to 'Sikko Power' (soil conditioner) containing Gypsum (granules) to be sold as fertilizer. The adjudicating authority has also relied on the test report given by the Chemical Examiner to the effect that "*the sample was in the form of brown coloured granules composed of Sulphates and Carbonate of calcium along with Siliceous Matter loss on ignition = 25.7%*" and held that 'Other fertilizer' falling under CH 3105 applies only to products of a kind used as fertilizers and containing, as an essential constituent, at least one of the fertilizing elements viz. Nitrogen, Phosphorous or Potassium, whereas the product **Sikko Power** was nothing but plant growing media. The appellant has not produced any evidence in the form of any alternate test report or certificate from competent authority to show that the test report was not correct or that the product was actually a fertilizer. Instead, the appellant has simply asserted that 'Sikko Power' is a soil conditioning fertilizer. The classification of 'Sikko Power' as well as the duty and interest on this product confirmed in the impugned order is correct and is accordingly upheld.

8. On considering the product **Vakil-3D** it is seen that the adjudicating authority has confirmed the classification of this product under CETH 3808 of CETA, 1985 holding that as per the description of the product appearing the website of the appellant, the primary function was that of larvicides for controlling various types of diseases and stimulate growth of plant and flower. The argument of the appellant is that the product is basically a vegetable fertilizer classifiable under Chapter CSH 31010099 of CETA, 1985 attracting Nil rate of duty and is having secondary properties like bio-stimulant, fungicide, pesticide etc. The appellant has relied on the decision of Tribunal in the case of Commissioner v. Kishan Brothers – 2007 (218) E.L.T. 623 (Tri.Kolkata). However, on studying this case law it is seen that Hon'ble Tribunal has clearly relied on the fact that the Department of Plant protection, Quarantine and Storage, Ministry of Agriculture had refused to register the product in that case as insecticide considering it as organic manure. In the present case, there is no such evidence produced by the appellant to prove that the product **Vakil-3D** was basically organic manure. Therefore, I find no reason to interfere with the classification of this product as well as the duty and interest confirmed in the impugned order. The classification as well as the confirmation of duty and interest with regards to **Vakil-3D** is upheld.

9. As regards the imposition of penalty, it is seen that even after the issuance of the case being booked against the appellant and issuance of the first SCN, the appellant



continued misclassifying the products and availing wrong benefit of concessional rate of duty in contravention of various provisions of the CEA, 1944 and Rules made thereunder. Therefore, the imposition of penalty on the appellant under Section 11AC of CEA, 1944 is correct and justified in the present case. On the basis of the above discussions, the appeal is rejected.

10. अपीलकर्ता द्वारा दर्ज की गई आपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(Handwritten signature)

(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: 26 / 03 / 2018

Attested

(Handwritten signature)
(K.P. Jacob)
Superintendent,
Central Tax (Appeals),
Ahmedabad.

By R.P.A.D.

To

1. M/s Sikko Industries Ltd.,
508, "Iscon Elegance", Near Jain Temple,
Near Prahlad Nagar Pick Up Stand,
S.G. Highway, Vejalpur,
Ahmedabad – 380 051.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: III, Ahmedabad (North).
5. Guard File.
6. P.A.

