



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎: 079-26305065 टेलीफैक्स : 079 - 26305136

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क फाइल संख्या (File No.): V2(31)192 /North/Appeals/ 2018-19 / 10501 to 10505
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-225-18-19
दिनांक (Date): 28/03/2019 जारी करने की तारीख (Date of issue): 13/05/2019
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 03/AC/D/BJM/2018-19 Dated: 19/06/2018
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 Limited

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 an 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 धरा 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।



(D) In case of rebate of duty or 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 है।

(c) 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) 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 रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक क्षेत्र के बैंक का 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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

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

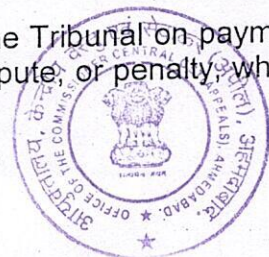
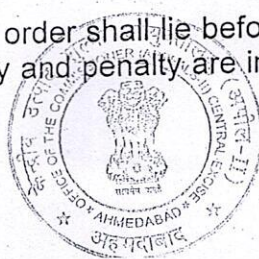
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



mean that such elements are not essential element is not based on any acceptable evidence; that chapter note 6 of chapter 31 provides that the term 'other fertilizer' applies only to products of a kind used as fertilizers and contain essential constituent, at least one of the element nitrogen, phosphorous or potassium. It does not provide as to what extent the essential element should be contained, essential materials are present in our product 'Sikko Fast' ; that the adjudication authority has nowhere mentioned that the product under dispute was not used as soil conditioners; that 'Sikko Fast' is nothing but soil conditioners and soil conditioners are a kind of fertilizer; that the soil conditioner is covered under the definition of fertilizer as given under Fertilizer (Control) Order,2085; that decision of Hon'ble Supreme Court reported at 1997(91)ELT 3(SC) in case of Gujarat Fertilizers Co. v/s CCE supports our case which the adjudication authority has not considered; that when Hon'ble Apex Court has classified soil conditioner as fertilizer, Boards order cannot be interpreted so as to go beyond the scope of said decision; that in view of the case law 2018(362)(ELT/822(Tri Chennai) wherein it is held that disputes arising out of difference in interpretation vis-à-vis the classification of the new product, there cannot be allegation that appellant have evaded duty by way of fraud, misinterpretation or misstatement or suppression of facts and no penalty can be imposed under Section 11AC of the Central Excise Act; In case of CCE Pune-I v/s JCB India Ltd reported at 2014(312) ELT 593(Tri. Mumbai), also it was held that extended period cannot be invoked in case of classification dispute.

4. In the Personal hearing held on 07.03.2019 wherein Shri Vishal Mistry, Account Manager of the appellant firm submitted a letter dated 05.03.2019 mainly stating that incomplete test report cannot be considered for deciding the classification of the product, their product 'Sikko Fast' is being sold as soil conditioner and used by farmers exclusively, etc.

5. I have carefully gone through the facts of the case records and submissions made therein. The issue requiring determination in the case is classification of the product 'Sikko Fast' manufactured and cleared by the appellant whether under Chapter 31 or 38 of the Central Excise Tariff Act, 1985 and whether benefit of Noti. No.01/2011-CE dated 01.03.2011 as amended and Noti. No. 12/2012-CE dated 17.03.2012 (Sr.No.128) are available to it or not. Since the issue involves classification of the product



'Sikko Fast' whether under Chapter S.H.No.38249090 or 31052000, I reproduce below descriptions of goods of said chapters and note 6 of chapter 31 for ease of reference;

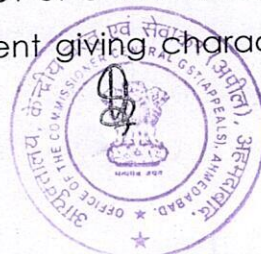
Tariff item	Description of Goods
31052000	Mineral or chemical fertilisers containing three fertilising elements nitrogen, phosphorus and potassium
3824	PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES; CHEMICAL PRODUCTS AND PREPARATIONS OF THE CHEMICAL OR ALLIED INDUSTRIES (INCLUDING THOSE CONSISTING OF MIXTURES OF NATURAL PRODUCTS), NOT ELSEWHERE SPECIFIED OR INCLUDED

5.1 Chapter note 6 of chapter 31 states as under;

6. For the purposes of heading 3105, the term "other fertilisers" applies only to products of a kind used as fertilisers and containing, as an essential constituent, at least one of the fertilising elements nitrogen, phosphorus or potassium.

Above chapter note stipulates that Nitrogen or Phosphorous or Potassium must be an essential component for a product to be classified as 'other product' under chapter 3105. In the instant case the test report shows presence of 'Nitrogen'- 1.1% and 'Potassium' as k- 2-1% which is very low level and hence none of them can be considered as an essential constituent. Therefore, finding of the lower authority that neither Nitrogen nor Phosphorous nor Potassium can be said as essential constituent in the product 'Sikko Fast' and it does not merit classification under chapter heading 3105 of CETA,1985 is proper and need not require any interference as the same is based on test report. It is further contested by the appellant that reliance placed by the department on incomplete test report is unjust and unfair. I have gone said through test report dated 08.11.2016 and find that the same is not incomplete in as much as the percentage composition of mentioned therein has been considered by the adjudicating authority for arriving at proper classification of the product.

5.2 The Adjudicating authority has also relied on Circular No.1022/10/2016-CX dated 06.04.2018 wherein it was clarified that sale of micronutrients as 'micronutrient fertilizer' would not lead to classification thereof as fertilizers under chapter 31 of Central Excise Tariff Act,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 other hand, where the essential character of the product is that of mixture of micronutrient/multi-micronutrients having predominately trace element, it shall be classified under CETH 3824 as chemical product not elsewhere specified or included. The appellant has thus failed to substantiate its claim for classification of 'Sikko Fast' under chapter 31 whereas the classification of this product under CETH 3824 by the adjudicating authority is correctly based on Circular No.1022/10/2016-CX dated 06.04.2018 and hence do not require interference. Further, In the present case, the adjudicating authority has relied on the test report showing very low presence of these three elements whereas the appellants has not produced any evidence to the contrary. Therefore, the classification of the product confirmed in the impugned order in respect of 'Sikko Fast' is liable to be upheld.

6. It is contested that 'Sikko Fast' is nothing but soil conditioners, the adjudication authority has no where mentioned that the product under dispute was not used as soil conditioners which is a kind of fertilizer. In this regard, the adjudicating authority at para 12.2 of the impugned order has already observed that *"Also the assessee has not produced any documentary evidence to prove that the product 'SIKKO FAST' has been sold for the nutrient Nitrogen or Phosphorous or Potassium in the market"*. In view of this fact, said plea of the appellant is not acceptable. I also agree with the finding of the adjudicating authority wherein it is observed that *the product was manufactured out of dolomite, bentonite, gypsum, rock phosphate etc and all these raw material falls under chapter 25 of the Central Excise Tariff Act,1985 containing cow dung as filler and not manufactured out from cow dung/city compost only. Since, the product 'Sikko Fast' manufactured and consisting raw material of chapter 25 of the Central Excise Tariff Act,1985, are nothing but plant growing media which is evident from the test report of this product.*

7. Further, the issue of classification of the product i.e. Best Agri Product(BAP),Sikko Bio Star, Sikko Power and Vakil-3D manufactured by the appellant stands decided by me under Order-In-Appeal No.AHM-EXCUSE-002-APP-390-17-18 and AHM-EXCUSE-002-APP-391-17-18 both

26.03.2018 upholding classification said products under chapter 38 of Central Excise Tariff Act,1985. Classification of the products similar in nature to the present one i.e 'Sikko Fast' were classified and upheld under chapter 3824 Central Excise Tariff Act,1985 based on CBEC Circular No. 1022/10/2016-CX dated 06.04.2016. In view of the above, I upheld the impugned order classifying the product 'Sikko Fast' under S.H.No.38249090 of Central Excise Tariff Act, 1985.

8. In view of aforesaid discussions, the appeal is rejected.

9. 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.

आशिम्
(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date



Attested

[Signature]
(D.A.Parmar)
Superintendent, Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Sikko Industries Limited, (Fertilizer Unit)
193/2 & 193/2/2, Ambica Estate,
Sanand-Viramgam Highway, At- lyava,
Tal- Viramgam, Dist-Ahmedabad

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
4. The Asstt./Deputy Commissioner, Central Tax, Division-III, Ahmedabad-North.
5. Guard File.
6. P.A.