



• आयुक्तालय (अपील-1) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटैकनिक के पास, आमबाबाडि,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(31)/59 to 62/Ahd-I/2015-16
Stay Appl.No. NA/2015-16
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-001 to 004-2016-17
दिनांक Date : 10-05-2016 जारी करने की तारीख Date of Issue 15/05/16
- श्री उमा शंकर आयुक्त (अपील-1) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)
- ग Addl. Commissioner, केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं As per Order
दिनांक: As per Order, से सृजित

Arising out of Order-in-Original No. As per Order दिनांक: As per Order issued by Addl. Commissioner, Central Excise, Ahmedabad-I

- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s GSP Crop Science Pvt Ltd
Ahmedabad

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

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

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

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

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

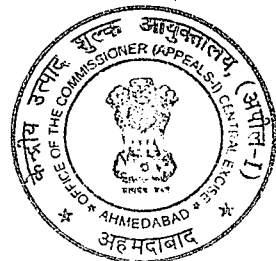
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) 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।

... 2 ...



(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।

(b) 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।

(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.

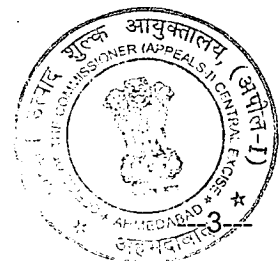
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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.



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 अनुसूचि-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।

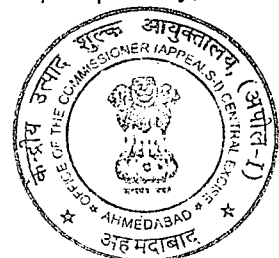
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

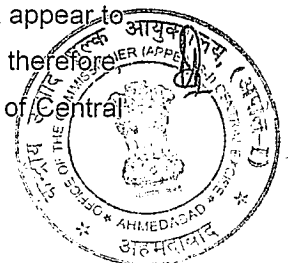
This order arises out of four appeals filed by M/s. GSP Crop Science Pvt. Ltd, Unit-I, 100-103, GVMM, Odhav, Ahmedabad-382415 (hereinafter referred to as the appellant) following Order-in-Original Nos. passed by the Additional Commissioner, Central Excise, Ahmedabad-I. (hereinafter referred to as "the impugned order") The appellant is engaged in the manufacturing of excisable goods viz. Pesticides falling under chapter 31 of the First Schedule to the Central Excise Tariff Act, 1985 and registered with Central Excise Registration No. AAACG7984QXM001. The appellant is availing the facility of Cenvat Credit as per Cenvat Credit Rules, 2004.

Sr. No	O. I. O. No.	Date	Appeal No.
1	15 to18 /CX-I Ahmd /ADC / MKR/2015.	04.06.2015	V2(31)59/Ahd-I/ 2015-16
2	15 to18 /CX-I Ahmd /ADC / MKR/2015.	04.06.2015	V2(31)60/Ahd-I/ 2015-16
3	15 to18 /CX-I Ahmd /ADC / MKR/2015.	04.06.2015	V2(31)61/Ahd-I/ 2015-16
4	15 to18 /CX-I Ahmd /ADC / MKR/2015.	04.06.2015	V2(31)62/Ahd-I/ 2015-16

2. It was noticed that the appellant has started manufacturing of a new product " Seaweed Granules" with trade name gold coin (Seaweed Granules) from July 2012 and cleared the same for home consumption by claiming its classification under chapter Heading No. 31010099 of the Act, which attracts "NIL" Tariff rate of Duty. The description of CH 31010099 reads as under:-

Tariff Item	Description of goods	Unit	Rate of duty
3101	ANIMAL OR VEGETABLE FERTILISERS, WHETHER OR NOT MIXED TOGETHER OR CHEMICALLY TREATED; FERTILISERS PRODUCED BY THE MIXING OR CHEMICAL TREATMENT OF ANIMAL OR VEGETABLE PRODUCTS		
3101 00	Animal or vegetable fertilisers, whether or not mixed together or chemically treated; fertilisers produced by the mixing or chemical treatment of animal or vegetable products :		
3101 00 10	Guano	kg.	NIL
	Other		
3101 00 91	Animal dung	kg.	NIL
3101 00 92	Animal excreta	kg.	NIL
3101 00 99	Other	kg.	NIL

3. Whereas, as per the test report, claim of the appellant regarding its classification under Chapter heading 31010099 of Act as fertilizer does not appear to be correct and the products appears to be chemical product. It should, therefore, be classified as 'Plant Growth Regulator' under Chapter Heading 3808 93 40 of Central Excise Tariff Act, 1985 reads as under.



Tariff Item	Description of goods	Unit	Rate of duty
3808	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 93	Herbicides, anti-sprouting products and plant-growth regulators :		
3808 93 40	Plant growth regulators	kg.	12.5 %

4. The adjudicating authority has decided the S.C.Ns. as under:-

- Order that the product "Seaweed" Granules" in question shall be classified under CH 38089340 of the First Schedule to the Central Excise Tariff Act, 1985 instead of 31010099 of the Act ibid as claimed by the appellant.
- Confirm the demand of Central Excise Duty (including Cess) raised by the SCNS and recover the same.
- Confirm the demand of interest raised and order to recover it at the applicable rate under Section 11AA of the Central Excise Act, 1944.
- Impose penalty on the appellant under Rule 25 of the Central Excise Rules, 2002.

5. Being aggrieved with the impugned orders appellant preferred the present appeal on the following grounds.

- 5.1 The appellant submitted that the seaweed extract, which is the main ingredient of the seaweed granule, is being imported from China and has been assessed by Customs Department under HSN 31010099 of the Customs Tariff Act, 1975.
- 5.2 The Additional Commissioner has dropped the proceeding initiated by SCN proposing to classify the seaweed Extract under HSN 38089340 and Vide OIA No.202/2013(Ahd-II)CE/AK/Commr(A)/ Ahd dated 25.10.2013 confirm the classification of the product "Seaweed Extract" under Chapter Heading No. 31010099.
- 5.3 In the instant case the preparation of Seaweed Granules is being prepared from the Seaweed Extracts only which itself is from vegetable origin. The chemical examiner has also mentioned that the sample is preparation based on Seaweed Extract.
- 5.4 It was alleged in the SCNs that neither the appellant has disclosed composition of the said products nor the chemical examiner could name inorganic and organic matters in it. In view of this, SCN has alleged that the product Seaweed Granules is classifiable as plant growth regular under HSN 38089340

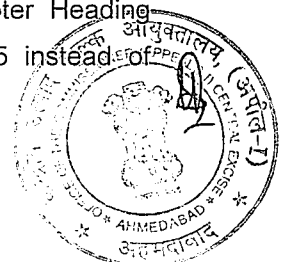


5.5 Appellant submits that when the seaweed extract itself a marine micro algae and plant growth promoter, the preparation of the seaweed granules prepared from seaweed extract which is plant growth promoter cannot be considered as plant growth regulator as confirmed in impugned order. Appellant further submits that the seaweed Granules are being prepared from the seaweed extracts which is not disputed even in SCN as well as impugned order.

6. Personal hearing in the matter was held on 06/04/2016 wherein Shri Anil Chauhan, Advocate and Shri Mukesh Patel, Manager, appeared on behalf of the appellant and reiterated the submissions made in their memorandum of appeal and they relied on the following case laws.

- (1) 2015(316) E.L.T. 338 (Tri. Del.) in the case of Jai Shree Rasayan Udyog Ltd Vs. Commissioner of C.Ex. Rohtak.
- (2) 2001(134) E.L.T 294 (Tri. Del.) in the case of Leeds Kem Vs Commissioner of C.Ex. Aurangabad.

7. I have gone through the fact of the case, grounds of appeal, and the submissions made by the appellant at the time of personal hearing. As the issues involved in all these four appeals are common, I proceed to decide the cases on merits by a common order. I find that in the present cases, the issue to be decided is whether the Product "Seaweed Granules" cleared under Chapter Heading No. 31 as fertilizers or under Chapter Heading No. 38 as plant growth regulator. I find that chemical Examiner's report clarified that *The sample is other than mineral, chemical & Organic fertilizer (Animal/ Vegitable). It is not labelled as fertilizer. This type of product does not find mentioned under Fertilizer (Control) Order, 1985 as fertilizer. The sample is mixture of natural & synthetic organic materials*" I find that the report of chemical Examiner discussed that this type of product does not find mentioned under Fertilizer (Control) order, 1985 as fertilizer. In exercise of the powers conferred under Section 3 of the Essential Commodities Act, 1955, the Central Government has issued the fertilizer(Control) Order, 1985. In its clause 'h', it is defined that "Fertilizers means any substance used or intended to be used as a fertilizer of the soil and/ or crop and specified in Part A of Schedule I and includes a mixture of fertilizer and special mixture of fertilizers". Under the provisions of the Fertilizers (Control) Order, 1985, Government regulates and authorise the manufacturing, pricing and sale of fertilizers in India. The appellant does not have any such authorisation meaning thereby they are not manufacturing Mineral or chemical fertilizer also, I also find that the benefits of products declared by the appellant in their literature to the effect that it **"Improves crop quality, compatible with pesticides and fertilizers. Non toxic safe to use. Strengthens tolerance to diseases and climatic stress"**, and resorting to the provisions of, clause 4 of the General Rules for interpretation, the product is a chemical product. Therefore, I am of view that the product be most appropriately classified as "plant Growth Regular" under chapter Heading 38089340 of the First Schedule to the Central Excise Tariff Act, 1985 instead of 31010099 of Act.



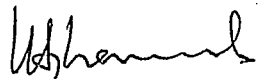
8. The appellant has relied upon the case of M/s. Jai shree Rasayan Udoyog Ltd. Leeds Kim Vs CCE Aurangabad (2015(316) ELT 338 (Tri. Del.). In this regard, I find that in this case in para 5, it very clearly mentioned that "Forwarded literature have no mention about presence of essential fertilizing elements i.e. N, P, & K (Nitrogen, Phosphorus & Potassium)."

In view of above clear cut finding by the chemical examiner's report *about absence of essential fertilizing elements i.e. "N, P, & K (Nitrogen, Phosphorus & Potassium)"* which is an essential element of "fertilizer", it not understood how a product can be called fertilizer? Moreover, I also find from the same test report stated that "*product u/r may contain Cytokinins, Auxin, Betaines, Amino acids, and Proteins. Cytokinin, Auxin are known Plant Hormones or Plant Growth Regulators. This sea weed is also reported to contain Cytokinin and Auxin then the preparation u/r is plant growth regulator, presence of Hormones have also been confirmed in preparation u/r in Para 3 of the forwarded literature.*"

It very clearly shows that the product under dispute contained the elements which had plant growth regulator at the same time it was completely absent of elements which made it fertilizer. Therefore, respectfully, I beg to differ with the order cited above.

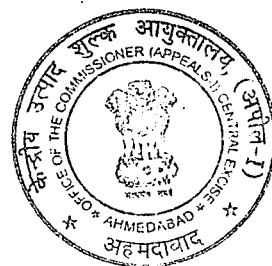
9. In view of above discussions, it is evident that the appellant regarding classification of their product under the chapter sub heading No. 31010099 of the First Schedule to the Central Excise Tariff Act, 1985 as fertilizer product is not correct and the said product merits actual classification under the chapter sub heading No.38089340 of the First Schedule to the Central Excise Tariff Act, 1985 as plant growth regulator and chargeable to central Excise duty on MRP base. As regards penalty, I find that the appellant have wrongly classified their products under Chapter Heading 31010099 of CETA, 1985 and wrongly cleared the same at NIL rate of duty in contravention to the provisions of Central Excise Rules, 2004. Hence, act of the appellant certainly liable for imposition of penalty.

10. In view of above discussion, I reject all the four appeals filed by the appellant and upheld the impugned order passed by the adjudicating authority.


(UMA SHANKER)
COMMISSIONER (APPEAL-I)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

(N. V. Solanki)
SUPERINTENDENT (APPEAL-I),
CENTRAL EXCISE,
AHMEDABAD.



BY R.P.A.D.

Date :

To,
M/s. GSP Crop Science Pvt. Ltd,
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Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmadabad.
2. The Commissioner, Central Excise, Ahmadabad.
3. The Deputy Commissioner, Central Excise, Division-III, Abad.
4. The Assistant Commissioner, System-Ahmadabad
5. Guard File.
6. P.A. File.
7. Appeal File.

