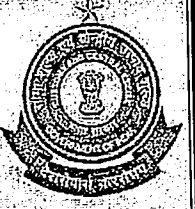

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	 7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065		टेलीफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(31)106 & 107/Ahd-I/2016-17 / 969 to 973
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-056 to 057-2017-18
दिनांक 18.08.2017 जारी करने की तारीख Date of Issue 25/9/17

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Joint Commissioner केन्द्रीय कर, Ahmedabad-I द्वारा जारी मूल आदेश सं 68 & 69/CX-I
Ahmd/JC/MK/2016 दिनांक: 30/11/2016 से सृजित

Arising out of Order-in-Original No. 68 & 69/CX-I Ahmd/JC/MK/2016 दिनांक: 30/11/2016 issued
by Joint Commissioner, 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।



(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 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, 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 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

Two appeals have been filed by M/s. GSP Crop Science Limited (Unit No. 1), 100-103, GVMM, Odhav, Ahmedabad 382 415, [for short – “appellant”] against OIO No. 69&69/CX-I Ahmd/JC/MK/2016 dated 30.11.2016, passed by the Joint Commissioner, Central Excise, of the erstwhile Ahmedabad-I Commissionerate [for short - ‘adjudicating authority’]. The appeal nos. are 106/Ahd-I/2016-17 and 107/Ahd-I/2016-17.

2. Briefly, the facts are that the appellant started manufacturing a new product ‘seaweed granules’ from July 2012, after classifying the goods under chapter sub heading 31010099 of CETA ‘85. The goods were cleared under nil rate of duty. Department however, in the past issued various notices proposing to classify the goods under 38089340 of CETA ‘85. In the present dispute, the department issued two show cause notices dated 20.8.2015 and 2.8.2016, covering the period from September 2014 to December 2015, proposing to classify the goods under chapter sub heading 38089340; demanding central excise duty along with interest and further proposing penalty on the appellant. Vide the impugned OIO, both these show cause notices were adjudicated, wherein the adjudicating authority ordered the disputed product to be classified under chapter sub heading 38089340 of CETA ‘85; confirmed the duty demand along with interest and further proposed penalty under Section 11AC(1)(a) of the Central Excise Act, 1944.

3. Feeling aggrieved, the appellant has filed the aforementioned appeals, raising the following averments:

- (a) that earlier the Additional Commissioner had dropped the proceedings initiated to classify the *seaweed extract* under chapter sub heading no. 38089340; that it was held that the product *seaweed extract* is classifiable under 31010099; that even the Commissioner (Appeals) had upheld the original order of the Additional Commissioner;
- (b) that they had given the details of inputs and ingredients of *seaweed granules* while submitting the manufacturing process;
- (c) that when the seaweed extracts itself is a marine micro algae and plant growth promoter, the seaweed granules prepared from seaweed extract, cannot be considered as plant growth regulator;
- (d) that the Range Superintendent be directed for further testing of sample at CRCL, New Delhi, before finalizing the issue;
- (e) that they wish to rely on the case of Leeds Kim [2001(134) ELT 294]; that seaweed granules are fertilizer which act as plant growth promoter which will only promote growth of the plant and will not inhibit it;
- (f) that a plant growth regulator can inhibit, promote or otherwise alter physiological process in plants;
- (g) that the product in question cannot inhibit or otherwise modify plant processes; that the nutrients present in the product in question promotes growth of the plant as a whole and does not play any restrictive role like a plant growth regulator;
- (i) that penalty is not leviable unless there is suppression of facts with intent to evade payment of duty.

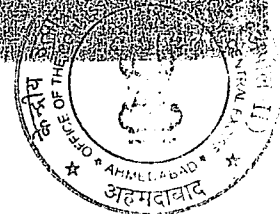
4. Personal hearing in respect of both the appeals was held on 18.8.2017, wherein Shri Mangesh Shah, CA appeared on behalf of the appellant for both the appeals. He reiterated the grounds of appeal and further stated that only sand is added for distribution.



5. I have gone through the facts of the case, the appellant's grounds of appeal, and the oral submissions made during the course of personal hearing. The present dispute as is already pointed out pertains to period from September 2014 to December 2015. I find that the demand/dispute in respect of the earlier period was decided vide OIO No. 15-18/Cx-I Ahmd/ADC/MKR/2015 dated 29.5.2015. On an appeal being filed against the OIO dated 29.5.2015, the matter was decided by me vide OIA No. AHM-EXCUS-01-APP-001 to 004-2016-17 dated 10.5.2016, wherein I had upheld the said OIO.

6. Since the issue is exactly the same, i.e. classification of 'seaweed granules' and in respect of the same appellant, I would like to reproduce the relevant part of my OIA No. AHM-EXCUS-01-APP-001 to 004-2016-17 dated 10.5.2016:

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, is 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/Vegetable). 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, 1956, the Central Government has issued the fertilizer (Control) Order, 1985. In its clause 4, 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 1 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 Regulator' under chapter Heading 38089340 of the First schedule to the Central Excise Tariff Act, 1985 instead of 31010099 of Act.



6
8. The appellant has relied upon the case of M/s. Jai Shree Rasayan (Udyog) Ltd. Vs. CCE Aurangabad (2015(316)ELT 332 (Trib. 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)

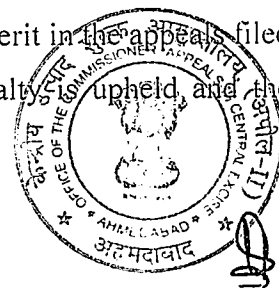
In view of above clear cut finding by the chemical examine's report about absence of essential fertilizing elements i.e. N, P & K (Nitrogen, Phosphorus & Potassium) which is an essential element of fertilizer, it not understood how a product can be called fertilizer? Moreover, I also find from the same test report stated that product 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 of it is plant growth regulator, presence of Hormones have also been confirmed in preparation of it 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 uphold the impugned order passed by the adjudicating authority.

7. Since the issue stands decided, supra, and as the grounds relied upon by the appellant with regard to classification is also the same, I do not find any merit in the appeals filed by the appellant. Consequently, the demand of duty, interest and penalty is upheld and the appeals are rejected.



8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeals filed by the appellant stands disposed of in above terms.


उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date : 18.08.2017

Attested


(Vinod Lukose)
Superintendent,
Central Tax(Appeals),
Ahmedabad.

By RPAD.

To,

M/s. GSP Crop Science Limited (Unit No. 1),
100-103, GVMM,
Odhav, Ahmedabad 382 415

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Deputy/Assistant Commissioner, Central Tax, Division V, Ahmedabad South.
4. The Additional Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.



