


<b>GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.</b>	
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ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2021/10  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/22)

Date:08.03.2021

Name and address of the appellant	:	M/s. Novozymes South Asia Pvt. Ltd., Survey No.56/1, Baska-Rameshwara Road, Vaseti Village Tajpura Post, Halol taluka, Panchmahals, Gujarat-389350.
GSTIN of the appellant	:	24AAACN7030Q1ZA
Advance Ruling No. and Date	:	GUJ/GAAR/R/23/2020 dated 02.07.2020
Date of appeal	:	10.09.2020
Date of Personal Hearing	:	22.01.2021
Present for the appellant	:	Shri Jayaram Hiragange

The appellant M/s. Novozymes South Asia pvt.ltd., Survey No.56/1, Baska-Rameshwara Road, Vaseti Village Tajpura Post, Halol taluka, Panchmahals, Gujarat, is a company incorporated under the Companies Act, 1956 and are registered under the SGST/CGST/IGST Act. They have submitted that they are engaged in supply of bio fertilizers in the State of Gujarat.

**2.** The appellant had filed an application before the Authority on 13.07.2018 seeking ruling on the classification of bio fertilizers namely RhizoMyx and RhizoMyco. They had asked the following question seeking Advance Ruling:

*Whether the bio agricultural products i.e. RhizoMyx and Rhizomyco are classifiable under :*

*Chapter 3101- All goods i.e. animal or vegetable fertilisers or organic fertilisers put up in unit containers and bearing a brand name-Entry No.182 of Schedule-I of rate of GST on Goods comprising of 'List of Goods at 2.5% Rate' or*

*Chapter 3002-Animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; toxins, cultures of micro-organisms (excluding yeasts) and similar products- Entry 61 of Schedule-II of rate of GST on Goods, comprising of 'List of Goods at 6% Rate'*

**3.** The appellant had contended that their products were rightly classifiable under chapter 3101 of the Customs Tariff Act, 1975. The Advance Ruling Authority vide order bearing No.GUJ/GAAR/R/23/2020 dated 02.07.2020 ruled that their products are classifiable under Heading No.3002 of the Customs Tariff Act, 1975 based on the findings as mentioned below:

- (i) From the details submitted by the applicant and comparing the same to the definitions and benefits of biofertilisers described in para-9 of the order, it can be seen that the above products manufactured and supplied by the applicant are biofertilisers.

(ii) In para 9 of the order, the definitions and benefits of biofertilisers were mentioned as under:

(a) *As per dictionary, biofertilisers are defined as a substance which contains living micro-organisms which, when applied to seeds, plant surfaces, or soil, colonize the rhizosphere or the interior of the plant and promotes growth by increasing the supply or availability of primary nutrients to the host plant.*

(b) *Vikaspedia defines biofertilisers as under: In nature, there are a number of useful soil micro organisms which can help plants to absorb nutrients. Their utility can be enhanced with human intervention by selecting efficient organisms, culturing them and adding them to soil directly or through seeds. The cultured micro organisms packed in some carrier material for easy application in the field are called bio-fertilisers. Thus the critical input in Biofertilisers is the microorganisms.*

*As per Vikaspedia, benefits of Bio-fertilisers are as under:*

- (a) *Bio-fertilisers are living microorganisms of bacterial, fungal and algal origin. Their mode of action differs and can be applied alone or in combination.*
- (b) *Biofertilizers fix atmospheric nitrogen in the soil and root nodules of legume crops and make it available to the plant.*
- (c) *They solubilise the insoluble forms of phosphates like tricalcium, iron and aluminium phosphates into available forms.*
- (d) *They scavenge phosphate from soil layers.*
- (e) *They produce hormones and anti metabolites which promote root growth.*
- (f) *They decompose organic matter and help in mineralization in soil.*
- (g) *When applied to seed or soil, biofertilizers increase the availability of nutrients and improve the yield by 10 to 25% without adversely affecting the soil and environment.*

(iii) Animal fertilizers, Organic fertilizers and vegetable matters were defined as under:

(a) Animal fertiliser: Animal fertilizer is manure which is organic matter and is used as organic fertilizer in agriculture. Most manure consists of animal feces; other sources include compost and green manure. Manures contribute to the fertility of soil by adding organic matter and nutrients, such as nitrogen, that are utilized by bacteria, fungi and other organisms in the soil.

(b) Organic fertilizers are fertilizers derived from animal matter, animal excreta (manure), human excreta and vegetable matter (e.g. compost and crop residues). Naturally occurring organic fertilizers include animal wastes from meat processing, peat, manure, slurry, and guano.

(c) Since the definition of vegetable fertilisers is not available anywhere, hence it would have to be construed in generic terms. In generic terms, vegetable fertilisers would be the fertilizers derived from vegetable matter like compost and crop residues.

- (iv) As can be seen from the definitions, animal fertilizers and organic fertilizers are similar in definition whereas vegetable fertilizers are those obtained from vegetable matter like compost and crop residues. Further, these fertilizers are mixed directly in the soil and can improve the soil structure(aggregate) so that the soil holds more nutrients and water, and therefore becomes more fertile. However, biofertiliser consists of living micro-organisms which, when applied to seeds, plant surfaces or soil, colonize the thizosphere or the interior of the plant and promotes growth by increasing the supply or availability of primary nutrients to the host plant. Besides as per Vikaspedia, biofertilizers are produced by culturing of microorganisms and that such cultured micro organisms are packed in some carrier material for easy application in the field. Thus on comparing the definition as well as the uses of Biofertilizers vis-a-vis Animal fertiliser/organic fertilizer/vegetable fertilizer, it can be seen that Biofertilisers are completely distinct in nature and use to these fertilisers. In view of these facts, we come to the conclusion that biofertilisers are not covered under the Sub-heading 3101 of the First Schedule to the Customs Tariff Act, 1975(15 of 1975).
- (v) On going through the column (3) of entry 61 in Schedule-II of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017, the entire portion of the description of goods except 'cultures of micro-organisms (excluding yeasts)' pertains to the medical field. On going through the said Sub-heading 3002, it is seen that 'cultures of micro-organisms (excluding yeasts)' appears at Tariff entry No.30029030 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Further as per Vikaspedia, biofertilizers are produced by culturing of microorganisms and that such cultured micro organisms packed in some carrier material for easy application in the field are called biofertilisers. Thus, it can be seen that bio-fertilizers are produced by culturing of micro-organisms which is covered by the entry 'cultures of micro-organisms(excluding yeast) which falls under Sub-heading No.30029030. In view of the above, looking to the process of manufacture/production of biofertilizers, it can be concluded that the biofertilizers namely Rhyxomyx and Rhyxomyco manufactured and supplied by the applicant are classifiable under Tariff item No.30029030 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975).

**4.** Aggrieved with the aforesaid ruling, the appellant has filed the present appeal on 10.09.2020. The appellant has submitted the grounds of appeal as under:

- (i) The impugned order has not considered the facts in toto. The inert materials like humic acid etc. are manures in general sense. Therefore the products merit classification under chapter 3101.
- (ii) The AAR has concluded that the products in question are Bio Fertiliser. Having concluded the same, the reasoning provided to exclude the products from the classification of 3101 is not correct. The appellant has stated that the grounds taken to arrive at the conclusion has ignored the AAR of Rajasthan. Also,

the ingredients in the products are akin to 'animal fertiliser' as the culture of micro organisms are animal in broader sense. In addition, the other ingredients of the products are of the same nature as that of vegetable fertilizers.

- (iii) The impugned order has not considered the explanatory notes to HSN. The appellant wishes to draw attention of the Hon'ble Appellate Authority that HSN notes clarifies that chapter 3101 inter alia covers compost consisting of rotted waste vegetable and other matter where decay has been accelerated or controlled by treatment with lime, etc. The humic acid which is an ingredient of the product is complex organic acid by decomposition of dead vegetable matter. In common parlance, it can be called as compost. Further mycorrhizza which is an active ingredient contains live animals. Therefore, the Appellant submits that the products in question are classifiable as other fertilisers of heading 3101(Sl.No.182 of Schedule-I to the GST rate schedule).
- (iv) Further in this connection, the appellant wishes to submit that in an Hon'ble Rajasthan Advance Ruling authority vide its order bearing no.RAJ/AAR/2018-19/04 dated 16.06.2018 has dealt with similar product and has given a ruling that Bio fertilizer is a substance which contains living micro-organisms which, when applied to the seed, plant surfaces or soil colonizes the rhizophere or the interior of the plant and promotes growth by increasing the supply or availability of primary nutrients to the host plant. Bio fertilizers add nutrients through the natural processes of nitrogen fixation, solubilising phosphorus, and stimulating plant growth through the synthesis of growth-promoting substances. Further the Authority has held that Bio Fertilizer are covered under chapter 3101 and falls under Sl.No.182 of Schedule-I. The order of the AAR has not considered the aforesaid ruling in reaching the conclusion.
- (v) The impugned order has not considered the submission of the appellant on the decision of the Hon'ble Supreme Court which has upheld the decision of CESTAT in the case of Northern Minerals ltd. v/s. Commissioner reported in 2001(131) ELT. 355(Tri.) in Civil Appeal Nos.4970-72 of 2002 filed by Commissioner of Central Excise against the CEGAT. The Appellate Tribunal in this case had held that 'Dhanzyme' is a biofertiliser being a plant growth promoter only, thus classifiable under sub-heading 3101.00 of Central Excise Tariff Act, 1985.
- (vi) The tariff classification has to be read in line with the understanding of the industry and the relevant regulatory considerations. The appellant submits that the products in question are covered under Fertiliser Control Order and are rightly classifiable under heading 3101.

**5.** The appellant has stated that they had received the order of the Authority for Advance Ruling(AAR) bearing No.GUJ/GAAR/R/23/2020 on 14.07.2020. They had to prefer the appeal within a period of 30 days

from the date of receipt of the said order. The period within which the appeal was to be filed expired at or around 13.08.2020. Appellant preferred this appeal on 10.09.2020 which raises a delay. They have submitted that CBIC vide Notification No.35/2020 dated 03.04.2020 has extended the time limit for filing appeal till 30.06.2020 and thereafter the time limit has been further extended till 31.08.2020 vide Notification No.55/2020 dated 27.06.2020 in line with the above notifications in view of COVID 19 and there is a delay of 10 days. They have submitted that the delay caused is unintentional and due to the fact that the appellant is working from home and receipt of the order was intimated very late. The authorized signatory was also working from home which has caused delay in filing the appeal. The appellant has requested that the delay be considered in light of the merits of the case since the delay is not intentional. The appellant has placed reliance on Apex Court's decisions in the case of (i)Collector, Land Acquisition vs. Mst.Katiji [1987] 66 STC 228(SC) and (ii)West Bengal Infrastructure Dev. Fin. Corpn.Ltd., reported in 2012(279) ELT 3(SC) wherein it was held that in case of high stake matters the appeals should not be disposed off on ground of delay and there could be cost imposed and delay condoned in the case of revenue appeals.

**6.** The appellant concluded their submission with a request that the Appellate Authority be pleased to hold that the products in question being bio fertilizers are classifiable under heading 3101.

**FINDINGS :-**

**7.** We have considered the submissions made by the appellant in the appeal filed by them, their contentions during the course personal hearing as well as evidences available on record. We have also gone through the Ruling given by the GAAR.

**8.** The Advance Ruling was sought for by the appellant for appropriate classification and applicable rate of Goods and Services Tax for their products namely Rhizomyx and Rhizomyco. GAAR vide Advance Ruling No.GUJ/GAAR/R/23/2020 dated 02.07.2020 ruled that the said products are biofertilisers classifiable under Heading '3002' of the Customs Tariff Act, 1975(51 of 1975) and liable to GST at 12% (6%SGST + 6% CGST). The appellant has challenged the aforementioned order of the Advance Ruling authority. Therefore, the issue involved in this case is the proper classification of the products Rhizomyx and Rhizomyco and the applicable rate of Goods and Services Tax on the said products.

**9.** Further, as per the submission of the appellant, we find that they had received the order of the Authority for Advance Ruling(AAR) bearing No.GUJ/GAAR/R/23/2020 on 14.07.2020 and had to prefer the appeal within a period of 30 days from the date of receipt of the said order i.e. on or before 13.08.2020. Appellant preferred this appeal on 10.09.2020 which raises a delay. The appellant has submitted that CBIC vide Notification No.35/2020 dated 03.04.2020 which was further amended by Notification No.55/2020 dated 27.06.2020 has extended the time limit for filing appeal till 31.08.2020 in view of COVID 19 situation, but still, there is a delay of 10 days. They have submitted that the delay caused is unintentional and due to the fact that the appellant is working from home and receipt of the order was intimated very late. The authorized signatory was also working from home which has caused delay in filing

the appeal. The appellant has requested that the delay be considered in light of the merits of the case since it is not intentional. The appellant has placed reliance on Apex Court's decisions in the case of (i)Collector, Land Acquisition vs. Mst.Katiji [1987] 66 STC 228(SC) and (ii)West Bengal Infrastructure Dev. Fin. Corpn.Ltd., reported in 2012(279) ELT 3(SC) wherein it was held that in case of high stake matters the appeals should not be disposed off on ground of delay and there could be cost imposed and delay condoned in the case of revenue appeals.

**9.1** As per the provisions of Notification No.35/2020-Central Tax dated 03.04.2020 as amended vide Notification No.55/2020 dated 27.06.2020, the time limit in respect of the appeals which were due for filing between 20.03.2020 and 30.08.2020 were extended upto 31.08.2020. The appellant has filed the appeal on 10.09.2020 and therefore there is a delay of 10 days. We take into consideration the fact that the Goods and Services Tax is a new tax regime and there may be *bona-fide* mistake on the part of a registered person. Therefore, the delay in filing of appeal in this case is condoned in exercise of the powers contained in proviso to the sub-section (2) of Section 100 of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017').

**10.** On going through the submission given by the appellant, they have contended that the products manufactured by them are rightly classifiable under Heading 3101. However, we find that the appellant has not submitted any supporting documents to support their claim. We therefore proceed to decide the issue of classification of the products of the appellant viz. Rhizomyx and Rhyzomyco based on the evidences available on records. Before deciding the classification of the above products, we need to find out whether the products of the appellant i.e. Rhyzomyx and Rhyzomyco are biofertilisers as stated by the appellant. For that we are required to find out the definition of biofertilisers:

- *As per Wikipedia, biofertilisers are defined as a substance which contains living micro-organisms which, when applied to seeds, plant surfaces, or soil, colonize the rhizosphere or the interior of the plant and promotes growth by increasing the supply or availability of primary nutrients to the host plant.*
- *Vikaspedia defines biofertilisers as under: In nature, there are a number of useful soil micro organisms which can help plants to absorb nutrients. Their utility can be enhanced with human intervention by selecting efficient organisms, culturing them and adding them to soil directly or through seeds. The cultured micro organisms packed in some carrier material for easy application in the field are called bio-fertilisers. Thus the critical input in Biofertilisers is the microorganisms.*

*As per Vikaspedia, benefits/uses of Bio-fertilisers are as under:*

*Bio-fertilisers are living microorganisms of bacterial, fungal and algal origin. Their mode of action differs and can be applied alone or in combination.*

- *Biofertilizers fix atmospheric nitrogen in the soil and root nodules of legume crops and make it available to the plant.*
- *They solubilise the insoluble forms of phosphates like tricalcium, iron and aluminium phosphates into available forms.*
- *They scavenge phosphate from soil layers.*
- *They produce hormones and anti metabolites which promote root growth.*

- They decompose organic matter and help in mineralization in soil.
- When applied to seed or soil, biofertilizers increase the availability of nutrients and improve the yield by 10 to 25% without adversely affecting the soil and environment.

**11.** The appellant has contended that that chapter 3101 inter alia covers compost consisting of rotted waste vegetable and other matter where decay has been accelerated or controlled by treatment with lime, etc. The humic acid which is an ingredient of the product is complex organic acid by decomposition of dead vegetable matter. In common parlance, it can be called as compost. Further mycorrhizza which is an active ingredient contains live animals. Therefore, the Appellant submits that the products in question are classifiable as other fertilisers of heading 3101(Sl.No.182 of Schedule-I to the GST rate schedule).

As per Wikipedia, definitions of mycorrhiza and Endomycorrhiza are as under:

(a)Mycorrhiza: A mycorrhiza is a mutual symbiotic association between a fungus and a plant. The term mycorrhiza refers to the role of the fungus in the plant's rhizosphere, its root system. Mycorrhizae play important roles in plant nutrition, soil biology and soil chemistry.

(b)Humic acid:A group of molecules that bind to, and help plant roots receive, water and nutrients. High humic acid levels can dramatically increase yields. Humic acid deficiency can prevent farmers and gardeners from growing crops with optimum nutrition.

Further, brief of the details as per the brochures of Rhizomyco and Rhizomyx , is as under:

(a) **Rhizomyco**: Rhizomyco is uniquely formulated with Novozymes proprietary blend of microbes and growth promoting substances containing eighteen species of endo and ectomycorrhizae in a soluble/injectable form to provide broad spectrum application for increased nutrient uptake and enhances root systems. It increases nutrient and water absorption, improves plant disease resistance, greatly extends the root system and improves stress tolerance. The said product is applied on Direct sown crops, transplanted crops and horticultural/tree crops as detailed below:

(i) **Application on Direct sown crops(oilseeds, cotton, melons, cucumber etc):**

First application-seed treatment:

- 5 to 10 grams per kilogram of seed.
- Apply dry product to seed followed by light wetting, proper mixing, and drying before sowing.

Second application:drenching spray, soil drenching, fertigation

- Apply approximately 15 days after sowing or first application.
- 250 grams per hectare.

(ii) **Application on Transplanted crops(rice, chilly, capsicum, onion, tomato etc.):**

First application: seeding dip.

- 10 grams per litre of water

- Dip the seeding in solution for 5 minutes before transplanting.

Second application:drenching spray, soil drenching, fertigation

- Apply approximately 15 days after sowing or first application.
- 250 grams per hectare.

**(iii) Application on Horticultural/Tree crops(fruit crops, plantation crops etc.)**

First application: soil drenching or fertigation.

- At the time of fertilizer application.
- 250 grams per hectare: 0 to 6 year old crop.
- 500 grams per hectare>6 year old crop.

Second application: soil drenching or fertigation

- 40 to 45 days after first application.
- 250 grams per hectare: 0 to 6 year old crop.
- 500 grams per hectare>6 year old crop.

(b) **Rhizomyx:** Rhizomyx consists of endomycorrhiza. Before use, water is to be added to the said product, agitated thoroughly, diluted product is to be passed through a 40 mesh (420 microns) screen and the product is to be used within 24 hours for best results. The said product is applied on Direct sown crops, transplanted crops and tree crops as under:

**(i) Application on Direct sown crops(oilseeds, cotton, melons, cucumber etc):**

First application-seed treatment:

- 1 to 2 grams per kilogram of seed.
- Apply dry product to seed followed by light wetting, proper mixing, and drying before sowing.

Second application:drenching spray, soil drenching, fertigation

- Apply approximately 15 days after sowing or first application(coinciding with flowering).
- 250 grams per hectare.

**(ii) Application on Transplanted crops(rice, chilly, capsicum, onion, tomato etc.):**

First application: seeding dip.

- 10 grams per litre of water
- Dip the seeding in solution for 5 minutes before transplanting.

Second application:drenching spray, soil drenching, fertigation

- Apply approximately 15 days after sowing or first application.
- 250 grams per hectare.

**(iii) Application on Tree crops(fruit crops, plantation crops etc.)**

First application: soil drenching or fertigation.



- At the time of fertilizer application.
  - 250 grams per hectare: 0 to 6 year old crop.
  - 500 grams per hectare>6 year old crop.
- Second application: soil drenching or fertigation
- 40 to 45 days after first application.
  - 250 grams per hectare: 0 to 6 year old crop.
  - 500 grams per hectare>6 year old crop.

From the above details and comparing the same to the definitions and benefits/uses of biofertilisers described in para 10 above and also taking into consideration the fact that no chemicals are contained in the aforementioned products and there is the presence of endomycorrhiza and ectomycorrhiza (which are microorganisms), it can be seen that the said products manufactured and supplied by the appellant are biofertilisers.

**12.** In order to determine the classification and tax liability on the supply of the products RhizoMyx and Rhizomyco by the appellant and to decide as to whether these products are correctly classifiable under Sub-heading no.3101 or otherwise, we will be required to refer to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 containing the headings, sub-headings as well as the rates of Central Tax GST applicable to various goods which are covered under 6 schedules. Further, Explanation (iii) and (iv) of the said Notification reads as under:

*(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).*

*(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.*

**13.** Since the appellant has contended that their products fall under Heading 3101, we will be referring to Heading 3101 of the Customs Tariff Act, 1975(51 of 1975), which reads as under:

**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*

*---- Other :*

*3101 00 91 --- Animal dung*

*3101 00 92 --- Animal excreta*

*3101 00 99 --- Other*

**13.1** Explanatory notes to HSN in respect of Heading 3101 reads as under:

This heading covers:

- (a) Animal or vegetable fertilizers, whether or not mixed together or chemically treated;
- (b) Animal or vegetable products converted into fertilizers by mixing together or chemical treatment (other than bone superphosphates of heading 31.03).

However, these products fall in heading 31.05 when put up in the forms or packages described in the Heading.

The heading includes, inter alia:

- (1) Guano, which is an accumulation of the excreta and remains of sea birds, found in large quantities on certain islands and coasts. It is both nitrogenous and phosphatic, and is usually a yellowish powder with a strong ammoniacal odour.
- (2) Excreta, dung, soiled fleece waste and manure, unsuitable for use other than as fertilizers.
- (3) Rotted vegetable products, unsuitable for use other than as fertilizers.
- (4) Disintegrated guano.
- (5) Products resulting from the treatment of leather with sulphuric acid.
- (6) Compost consisting of rotted waste vegetable and other matter where decay has been accelerated or controlled by treatment with lime, etc.
- (7) Wool scouring residues.
- (8) Mixtures of dried blood and bone meal.
- (9) Stabilised sewage sludge from urban effluent treatment plants. Stabilised sewage sludge is obtained by screening the sewage effluent to remove large objects and settling out grit and heavy non-biological constituents; the remaining sludge is then allowed to air dry or is filtered. The stabilized sludge so obtained contains a high proportion of organic matter and also contains some fertilizing elements ( e.g., phosphorus and nitrogen). However, such sludge containing other materials (e.g. heavy metals) at a high concentration, which make the stabilized sludge unfit for use as fertilizers, is excluded (heading 38.25).

The heading also excludes:

- (a) Animal blood, whether liquid or dried (heading 05.11)
- (b) Powdered bone, horn or hoof, or fish waste(Chapter 5).
- (c) Flours, meals and pellets of meat or meat offal of fish or of crustaceans, mollusks or other aquatic invertebrates, unfit for human consumption(heading 23.01), and other products covered by Chapter 23(oil cakes, brewing or distilling drugs, etc.)
- (d) Ash from bone, wood, peat or coal(heading 26.21).
- (e) Mixtures of the natural fertilizers of this heading with chemical fertilizing substances(heading 31.05).
- (f) Mixtures of stabilized sewage sludge with potassium or ammonium nitrate(heading 31.05).
- (g) Parings and other waste of leather, leather dust, powder and flour(heading 41.15).

**14.** On going through the entry of the above product in the Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(hereinafter referred to as the said notification), we find that the same appears at entry No.182 of Schedule-I (on which the effective of GST is 5%(2.5% SGST + 2.5% CGST) which reads as under:

S.No.	Chapter/Heading/ Subheading / Tariff item	Description of goods
182	3101	All goods i.e. animal or vegetable fertilisers or organic fertilisers put up in unit containers and bearing a brand name

Thus as per Notification No.01/2017-Central Tax (Rate) dated 28.06.2017, the above sub-heading covers animal fertilisers or vegetable fertilisers or organic fertilisers. For the purpose of clarity, we will have to refer to the definitions of animal fertilisers, organic fertilisers and vegetable fertilisers. As per Wikipedia, Animal fertilisers and organic fertilisers are defined as under:

- (vi) Animal fertiliser: Animal fertilizer is manure which is organic matter and is used as organic fertilizer in agriculture. Most manure consists of animal feces; other sources include compost and green manure. Manures contribute to the fertility of soil by adding organic matter and nutrients, such as nitrogen, that are utilized by bacteria, fungi and other organisms in the soil.
- (vii) Organic fertilizers are fertilizers derived from animal matter, animal excreta (manure), human excreta and vegetable matter (e.g. compost and crop residues). Naturally occurring organic fertilizers include animal wastes from meat processing, peat, manure, slurry, and guano.

Since the definition of vegetable fertilisers is not available anywhere, hence it would have to be construed in generic terms. In generic terms, vegetable fertilisers would be the fertilizers derived from vegetable matter like compost and crop residues.

As per the submission of the appellant, their products are biofertilisers. The definition of biofertilisers is as under:

Biofertiliser: A biofertiliser is a substance which contains living micro-organisms which, when applied to seeds, plant surfaces, or soil, colonize the rhizosphere or the interior of the plant and promotes growth by increasing the supply or availability of primary nutrients to the host plant.

**14.1** Vikaspedia defines biofertilisers as under: In nature, there are a number of useful soil micro organisms which can help plants to absorb nutrients. Their utility can be enhanced with human intervention by selecting efficient organisms, culturing them and adding them to soil directly or through seeds. The cultured micro organisms packed in some carrier material for easy application in the field are called bio-fertilisers. Thus the critical input in Biofertilisers is the microorganisms.

**14.2** As can be seen from the above definitions, animal fertilizers and organic fertilizers are similar in definition whereas vegetable fertilizers are those obtained from vegetable matter like compost and crop residues. Further, these fertilizers are mixed directly in the soil and can improve the soil structure (aggregation) so that the soil holds more nutrients and water, and therefore becomes more fertile. However, biofertiliser consists of living micro-organisms which, when applied to seeds, plant surfaces, or soil, colonize the rhizosphere or the interior of the plant and promotes growth by increasing the supply or availability of primary nutrients to the host plant. Besides, as per Vikaspedia, biofertilizers are produced by culturing of microorganisms and that such cultured micro organisms are packed in some carrier material for easy application in the field. Thus on comparing the definition as well as the uses of Biofertilizers vis-a-vis

Animal fertilizer/organic fertilizer/vegetable fertilizer, it can be seen that Biofertilisers are completely distinct in nature and use to these fertilisers. In view of these facts, we conclude that biofertilisers are not covered under the Sub-heading 3101 of the First Schedule to the Customs Tariff Act, 1975(15 of 1975).

**15.** Now, since biofertilizers are not covered under Sub-heading 3101 and the Advance Ruling Authority had ruled that it is classified under Heading 3002 of the Customs Tariff Act, 1975(51 of 1975), we need to refer to Heading 3002 also. Heading 3002 reads as under:

**3002 HUMAN BLOOD; ANIMAL BLOOD PREPARED FOR THERAPEUTIC,PROPHYLACTIC OR DIAGNOSTIC USES;ANTISERA, OTHER BLOOD FRACTIONS AND IMMUNOLOGICAL PRODUCTS,WHETHER OR NOT MODIFIED OR OBTAINED BY MEANS OFBIOTECHNOLOGICAL PROCESSES;VACCINES,TOXINS, CULTURES OFMICRO-ORGANISMS (EXCLUDINGYEASTS) AND SIMILAR PRODUCTS ;**

*3002 10 - Antisera, other blood fractions and immunological products, whether or not modified*

*or obtained by means of biotechnological processes:*

*--- Antisera;*

*3002 10 11 --- For diphtheria*

*3002 10 12 --- For tetanus*

*3002 10 13 --- For rabies*

*3002 10 14 --- For snake venom*

*3002 10 19 --- Other*

*3002 10 20 --- Hemoglobin blood globulins and serum globulins*

*--- Other :*

*3002 10 91 --- Of human origin*

*3002 10 99 --- Other*

*3002 20 - Vaccines for human medicine :*

*--- Single vaccines :*

*3002 20 11 --- For cholera and typhoid.*

*3002 20 12 --- For hepatitis.*

*3002 20 13 --- For tetanus.*

*3002 20 14 --- For polio.*

*3002 20 15 --- For tuberculosis.*

*3002 20 16 --- For rabies.*

*3002 20 17 --- For Japanese encephalitis.*

*3002 20 18 --- For whooping cough (pertusis).*

*3002 20 19 --- Other*

*--- Mixed vaccines :*

*3002 20 21 --- For diphtheria, pertusis and tetanus (DPT).*

*3002 20 22 --- For diphtheria and tetanus (DT).*

*3002 20 23 --- For measles, mumps and rubella (MMR).*

*3002 20 24 --- For typhoid-paratyphoid (TAB) or typhoid paratyphoid-cholera (TABC)*

*3002 20 29 --- Other.*

*3002 30 00 - Vaccines for veterinary medicine.*

*3002 90 - Other :*

*3002 90 10 --- Human blood.*

*3002 90 20 --- Animal blood prepared for therapeutic,prophylactic or diagnostic uses*

**3002 90 30 --- Cultures of micro-organisms (excluding yeast).**

3002 90 40 --- Toxins.

3002 90 90 --- Other

Relevant portion of Explanatory notes to HSN of Heading 3002 above reads as under:

*This heading covers:*

(A) Human blood.

(B) Animal blood prepared for therapeutic, prophylactic or diagnostic uses.

(C) Antisera and other blood-----

(D) Vaccines, toxins, cultures of microorganisms(excluding yeasts) and similar products.

*These products include:*

(1) Vaccines: ---

(2) Toxins: ----

(3) Cultures of micro-organisms(excluding yeasts). These include ferments such as lactic ferments used in the preparation of milk derivatives (kephir, yogurt, lactic acid) and acetic ferments for making vinegar; moulds for the manufacture of penicillin and other antibiotics; **and cultures of micro-organisms for technical purposes (e.g., for aiding plant growth).**

**16.** On going through the entry of the above product in the Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(hereinafter referred to as the said notification), we find that the same appears at entry No.61 of Schedule-II(on which the effective of GST is 12%(6% SGST + 6% CGST) which reads as under:

S.No.	Chapter/Heading/ Subheading/ Tariff item	Description of goods
61	3002	Animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; toxins, <b>cultures of micro-organisms (excluding yeasts)</b> and similar products

On going through the column (3) of above entry, the entire portion of the description of goods except '**cultures of micro-organisms (excluding yeasts)**' pertains to the medical field. On going through the said Sub-heading 3002, it is seen that '**cultures of micro-organisms (excluding yeasts)**' appears at Tariff entry No.30029030 of the First Schedule of the Customs Tariff Act, 1975 (51 of 1975). Further as per Vikaspedia, biofertilizers are produced by culturing of microorganisms and that such cultured micro organisms packed in some carrier material for easy application in the field are called biofertilisers. Thus, it can be seen that bio-fertilizers are produced by culturing of micro-organisms which is covered by the entry 'cultures of micro-organisms(excluding yeast) which falls under Sub-heading No.30029030. It is also seen that the explanatory notes to HSN for Heading 3002 specifically mentions '**cultures of micro-organisms for technical purposes (e.g., for aiding plant growth)**'. Further, the products of the appellant are a culture of microorganisms i.e. ecto mycorrhiza and endomycorrhiza. Also, as can be seen from the uses of biofertilisers as mentioned in para-12 above(as per Vikaspedia), it promotes/aids plant growth, directly or indirectly as it

fixes atmospheric nitrogen in the soil and root nodules of legume crops and make it available to the plant, scavenges phosphate from soil layers, produces hormones and anti metabolites which promote root growth, decompose organic matter and help in mineralization in soil and when applied to seed or soil, biofertilizers increases the availability of nutrients and improved the yield by 10 to 25% without adversely affecting the soil and environment. Similarly, the products of the appellant helps/aids plant growth as it provides increased nutrient update and enhances root systems, increases nutrient and water absorption, improves plant disease resistance, greatly extends the root system and improves stress tolerance. In view of the above, looking to the process of manufacture/production of biofertilizers, their uses, the specific sub-headings covered under the above heading as well as the explanatory notes to HSN of the above heading, it can be concluded that the biofertilizers namely Rhyxomyx and Rhyxomyco manufactured and supplied by the appellant are classifiable under Tariff item No.30029030 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975), is covered under Sr.no.61 of Schedule-II of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time ) and is liable to GST at 12% (6%SGST + 6% CGST).

**17.** The appellant has relied upon the decision of Supreme Court which has upheld the decision of CESTAT in the case of Northern Minerals ltd. v/s. Commissioner reported in 2001(131)ELT.355(Tri.) in Civil Appeal Nos.4970-72 of 2002 filed by Commissioner of Central Excise against the CESTAT to support their contention. We find that the Appellate Tribunal in this case had held that 'Dhanzyme' is a biofertiliser being a plant growth promoter only, thus classifiable under sub-heading 3101.00 of Central Excise Tariff Act, 1985. On going through the aforementioned order of CESTAT, we find that the product 'Dhanzyme' of M/s. Northern Minerals ltd. is not a product manufactured by them, but is obtained in bulk from other companies, repacked and sold in smaller packages under their Brand name 'Dhanzyme' Also, the issue in the aforementioned matter was whether the product 'Dhanzyme' as a biofertiliser warrants classification under Heading 3101 or under Heading 3808 as Plant growth regulator whereas the issue in the present case is whether the products of the appellant merit classification under Heading 3101 or 3002 of the Customs Tariff Act, 1975(51 of 1975). Also the alternate classification available for biofertilisers under Heading 3002 has not been discussed in the said order. Therefore, the said judgement cannot be made applicable to the present case, in toto. However, in view of the fact that the appellant, based on the aforesaid judgement, states that their products are classifiable under Heading 3101 which contradicts our point of view, we find it prudent to refer to the General Rules for interpretation of the First Schedule to the Customs Tariff Act to sort out the matter. Rule 3 of the General Rules for the interpretation of Customs Tariff reads as under:

*"3. When by application of Rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

- (a) **The heading which provides the most specific description shall be preferred to headings providing a more general description.** However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one*

*of them gives a more complete or precise description of the goods.*

*(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as the criterion is applicable.*

*(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”*

**17.1** As per Rule 3(a) above, we find that where goods are, prima facie, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. The appellant has not given any specific grounds other than the reference to the aforementioned judgement to support their contention that their products are classifiable under Heading 3101. However, we find that Sub-heading 3002 provides the most specific description to the biofertilisers manufactured and supplied by the appellant, for the following reasons:

- (1) Biofertilisers are defined under Vikaspedia as ‘cultured micro organisms packed in some carrier material for easy application in the field’. The products manufactured by the appellant are ‘culture of microorganisms’.
- (2) Sub-heading 30029030 specifically mentions ‘Cultures of micro-organisms (excluding yeast)’.
- (3) As per explanatory notes to HSN for heading 3002, it covers cultures of micro-organisms for technical purposes (e.g., for aiding plant growth).
- (4) As per Vikaspedia, Biofertilisers help in promoting/aiding plant growth, directly or indirectly as it fixes atmospheric nitrogen in the soil and root nodules of legume crops and make it available to the plant, scavenges phosphate from soil layers, produces hormones and anti metabolites which promote root growth, decompose organic matter and help in mineralization in soil and when applied to seed or soil, biofertilizers increases the availability of nutrients and improved the yield by 10 to 25% without adversely affecting the soil and environment. Similarly, the products of the appellant provide increased nutrient uptake and enhances root systems, increases nutrient and water absorption, improves plant disease resistance, greatly extends the root system and improves stress tolerance.

**18.** We also find that the appellant has relied on the order bearing no.RAJ/AAR/2018-19/04 dated 16.06.2018 of the Rajasthan Advance Ruling Authority. In this regard, we have to emphasize here that decisions of Advance Ruling Authorities cannot be relied upon by the appellant, since, as per the provisions of Section 103 of the CGST Act, 2017, the Advance Ruling pronounced by the Advance Ruling Authority or the Appellate Authority shall be binding only on the applicant who had sought it in respect of any matter referred to in sub-section(2) of Section 97 for Advance Ruling and the concerned officer or the jurisdictional officer in respect of the applicant.

**19.** In view of foregoing, we confirm the Advance Ruling No. GUJ/GAAR/R/23/2020 dated 02.07.2020 to the extent it has been appealed before us and hold that –

*The products 'Rhyzomyx' and 'Rhyzomyco' manufactured and supplied by M/s. Novozymes South Asia Pvt.Ltd., are classifiable under Tariff item No.30029030 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975), is covered under Sr.no.61 of Schedule-II of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time ) and is liable to GST at 12%(6%SGST + 6%CGST).for the reasons discussed hereinabove.*

**20.** The appeal filed by M/s. Novozymes South Asia Pvt.Ltd., Survey No.56/1, Baska-Rameshwara Road, Vaseti Village Tajpura Post, Halol taluka, Panchmahals, Gujarat-389350, is rejected.

**(J. P. Gupta)**  
Member

**(Seema Arora)**  
Member

Place : Ahmedabad  
Date : 08.03.2021.