

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Excise Appeal No. 86510 of 2015

(Arising out of Order-in-Appeal No.KLH-EXCUS-000-APP-003-007-15-16 dated 01.04.2015 passed by the Commissioner of Central Excise & Customs (Appeals), Pune Appeals II (At Goa))

M/s. Godrej Agrovet Ltd.Appellant
E-24, MIDC Lote Parshuram,
Tal. Khed, Dist Ratnagiri

VERSUS

Commissioner of CGST, KolhapurRespondent
Vasant Plaza, C.S.No. 1079/2,
Bagal Chowk, Kolhapur

With

- 1) E/86511/2015 M/s. Godrej Agrovet Ltd.,
- 2) E/86512/2015 M/s. Godrej Agrovet Ltd.,
- 3) E/86513/2015 M/s. Godrej Agrovet Ltd.,
- 4) E/86514/2015 M/s. Godrej Agrovet Ltd.,
- 5) E/86516/2015 M/s. Godrej Agrovet Ltd. &
- 6) E/86517/2015 M/s. Godrej Agrovet Ltd.

APPEARANCE:

Shri Rajesh Ostwal, Advocate along with Ms. Payal Nahar,
Advocate for the appellant
Shri A.K. Jha, DC(AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER No: A/85661-85667/2023

DATE OF HEARING : 24.01.2023
DATE OF DECISION : 03.05.2023

Per: AJAY SHARMA

These appeals have been filed assailing the orders dated 1.4.2015 passed by Commissioner (Appeals), Pune Appeals II by which the learned Commissioner (Appeals) upheld the demand for the period July, 2011 to January, 2013 alongwith penalty. Since the issue is common in all these appeals therefore we are disposing of them with this common order. For ease of reference, a table is produced hereunder in order to give relevant dates/details of each of the appeals:-

Appeal No.	E/86512 /15	E/86514 /15	E/86516 /15	E/86510 /15	E/86517 /15	E/86511 /15	E/86513/ 15
Product in dispute	Zymegold plus Granules	Zymegold plus Liquid	Zymegold plus Liquid	Zymegold plus Liquid	Zymegold plus Granules	Dripzyme	Dripzyme
OIO	06/ADC/CEx/KPL/2013 dated 26.12.2013	30/ADC/CEx/KPL/2013 dated 26.12.2013	31/ADC/CEx/KPL/2013 dated 26.12.2013	32/ADC/CEx/KPL/2013 dated 26.12.2013	RTN/128A/14 dated 25.10.2014	11/CEX/ADC/KOP/2012 dated 19.03.2013	18/CEX/ADC/KOP/2012 dated 19.03.2013
OIA	KLH-EXCUS-000-APP-003-007-15-16 DATED 1.4.2015					KLH-EXCUS-000-APP-001-002-15-16 dated 1.4.2015	
Period	July 2011 to November 2011	December 2011 to March 2012	April 2012 to July 2012	August 2012 to January 2013	May 2013 to December 2013	September 2012 to January 2013	August 2011 to March 2012
Demand	42,56,457	19,45,179	26,80,917	35,96,473	3,91,750	5,11,426	10,77,175
Penalty	4,25,000	1,90,000	2,68,000	3,60,000	40,000	1,07,000	51,000

2. The issue involved herein is whether the products *Zymegold Plus* and *Dripzyme* are classifiable under CTH 3808 - '*Plant Growth Regulator*' as re-classified by the department or under CTH 3101 - '*Fertilizer*' as claimed by the Appellant?

3. One fact which is relevant to these appeals is that *M/s. Goldmuhor Agrochem & Feeds Ltd.* has merged/amalgamated with the appellants by virtue of the order dated 20.9.2013 (with appointed date as 1.10.2013) of the Hon'ble High Court of Judicature at Bombay and now it's known as *Godrej Agrovet Ltd.* w.e.f. 1.10.2013 for all purposes. Initially *M/s. Goldmuhor*

Agrochem & Feeds Ltd. was known as *Bahar Agrochem & Feeds Ltd.*

4. The facts leading to the filing of the appeals are stated in brief as follows. The appellants are engaged in the manufacture and clearance of 'Zymegold Plus granules' and also 'Zymegold Plus liquid' as *Organic Fertilizer* by classifying the same under CSH 31010099 without payment of any Cenvat duty and also of Dripzyme w.e.f. August, 2011 as Organic Fertilizer under the same heading. Admittedly Organic Fertilizer attracts Nil rate of duty. CSH 31010099 covers only *animal and vegetable fertilizers whether or not mixed or chemically treated*. The department, being not satisfied with the classification made by the appellants, issued different show cause notices to the appellants from time to time for the period July, 2011 to December, 2013 as detailed in the table above which culminated in seven Adjudication Orders decided against the appellant and the products viz. 'Zymegold Plus granules', 'Zymegold Plus liquid' and *Dripzyme* were classified under Chapter Sub-Heading No. 38089340 and demand of Excise duty was upheld alongwith interest and penalty. All the seven appeals filed by the Appellants against the Adjudication Orders/Orders-in-Original were disposed of by maintaining the duty demand and modifying the amount of penalty under section 25(1) of the Central Excise Rules, 2002.

5. Learned counsel submits that the products in issue are *fertilizer* and *not a plant growth* regulator. It contains one or the other fertilizing elements like N/P/K (*i.e. Nitrogen or phosphorus or potassium*) and even as per CBEC circular No.392/25/98-CX, dated 19.5.1998 it is outside the purview of plant grown regulator and that the authorities below failed to appreciate the trade parlance evidence and expert opinion produced by them. According to learned counsel, for the earlier period also i.e. the period earlier than the period in issue herein, this issue arose mainly for the reason that the appellants were using ingredients

6-BA & 4-CPA in their product composition which are plant growth regulator, which, later the appellants have stopped using w.e.f. 3.7.2010 and informed the same to the department also, but despite that the department re-classified the products. Learned counsel further submits that inspite of using the aforesaid two ingredients in their product, this Tribunal on the identical issue concerning *Zymegold Plus* for the period November, 2006 to June, 2011 *vide its Final Order No. A/85667-85668/2022 dated 29.7.2022 in Appellants' own case in the matter of M/s. Goldmuhor Agrochem & Feeds Ltd. vs. CCE, Kolhapur* has decided the same in favour of the appellants by allowing the appeals filed by the appellants and held that the impugned product cannot be treated as *Plant Growth Regulator* and is classifiable as *Fertilizer* under CSH 3101. He also submits that *Zymegold Plus* contains 15% Seaweed Extract Powder that gives essential character to the products in issue, which is also classifiable under CSH 3101. According to learned counsel Nutrients cannot be considered as plant growth regulators. In support of his submissions, learned counsel placed reliance on the following decisions:-

- (i) *Northern Minerals Ltd. vs. CCE; 2001(131) ELT 355(T)*
- (ii) *Leeds Kem vs. CCE; 2001(134) ELT 294(T)*
- (iii) *CCE vs. Chemcel Bio-Tech Ltd.; 2007(211) ELT 414 (T)*
- (iv) *CCE vs. Karnataka Agro Chemicals; 2008(227) ELT 12(SC)*
- (v) *Jai Shree Rasayan Udyog Ltd. vs. CCE; 2015(316)ELT 338(T)*
- (vi) *CCE vs. Aries Agrovvet Industries Ltd.; 2017-TIOL-2635-CESTAT*
- (vii) *CCE vs. Aries Agro-Vet Industries Ltd.; 2018(6)TMI 1070-CESTAT*
- (viii) *Order No. A/87962/2018 dated 6.11.2018 of the Tribunal in Appeal No. E/873/2009; CCE, Kolhapur vs. Bahar Agrochem & Feeds Ltd.*

According to learned counsel, the ingredients required for making batch of 'Dripzyme-100 kgs.' is as under:-

Sl.No.	Raw Material	Qty. (Kg)	%
1	Seaweed Extract Powder	2.5	9.3
2	Soya Protein	1.0	3.7
3	Casein Powder	1.0	3.7
4	Ammonium Sulphate (NH ₄) ₂ SO ₄	3.0	11.2
5	Ammonium chloride (NH ₄) ₂ Cl	3.0	11.2
6	Potassium dihydrogen orthophosphate (KH ₂ PO ₄)	1.0	3.7
7	Magnesium Sulphate MgSO ₄ ·7H ₂ O	9.0	33.5
8	FeEDTA	1.0	3.7
9	Zinc Sulphate ZnSO ₄	2.0	7.5
10	Borax	0.5	1.9
11	Copper Sulphate	0.075	0.3
12	Manganese Sulphate	0.15	0.6
13	Sodium Molybdate	0.0125	0.04
14	Mythyl Paraben	0.1	0.4
15	Methanol	0.5	1.9
16	Polysorbate 20	2.0	7.5
	Total	26.8375	100

The balance i.e. $100 - 26.8375 = 73.1625$ kg. is water.

6. Per contra learned Authorised Representative appearing on behalf of revenue reiterated the findings recorded in the impugned order and prayed for the dismissal of the Appeals.

7. We have heard learned counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions and case laws filed before us. There is a difference between fertilizer and plant growth regulator. A fertilizer will promote growth of the plant by providing nutritional support and will not inhibit it, whereas a Plant Growth Regulator stimulates plant growth without providing any nutrition to the plants. It's like a tonic which promotes/inhibits the growth by affecting the structure at the

physiological level. Whereas fertilizers provide the life giving nutrients without which the plant cannot grow. Fertilizer is a material organic or inorganic, natural or synthetic which supplies one or more of the chemical elements required for plant development. Each of the essential nutritional elements (viz. macro nutrient element like nitrogen, secondary nutrient element like sulfur and micro nutrient element like zinc) has a definite and specific function to perform in the growth and the development of plants. Deficiency of any of these essential nutrients cause abnormal condition and upsets the development in plants. In fact plants cannot survive without essential nutrient elements supplied from fertilizers or from organic and inorganic chemical in the soil. On the other hand, plant growth regulator is an organic component other than nutrients which in small amount promotes, inhibits or qualitatively modifies plant growth. In other words, it acts like a tonic which helps plants in making efficient use of the nutrients for their growth. Fertilisers provide the life giving nutrients which cannot be manufactured by plants. Plants cannot survive and develop without nutrient elements but can develop without external supply of plant growth regulator. Undisputedly for an item to be classified as *fertilizer* under Chapter 31, presence of any one or more of the N,P,K (*i.e. Nitrogen, phosphorus and potassium*) as essential constituent is a *sine qua non*. According to learned Commissioner *Zymegold plus* is having nutrients of seaweed extracts which is having plant grown hormones and micronutrients are also added and therefore as per the Explanatory Notes to Chapter 31 the same is excluded from this chapter despite the presence of any one or more of the three *fertilizing elements* i.e. N,P,K (*i.e. Nitrogen, phosphorus and potassium*). He also recorded that Seaweed and micronutrient together create a unique mixture that provides essential character to *Zymegold plus* which makes it a plant grown regulator and therefore the correct classification is CETSH 38089340 i.e. *Plant Growth Regulator* as specific entry shall prevail over the generic entry. We have also noticed that in the

impugned order, the learned commissioner has taken support from the Order-in-Appeal of his predecessor in appellant's own case for the earlier period i.e. the period prior to the period in issue in the present appeals. So far as Dripzyme is concerned, according to learned Counsel it contains 20% of soluble like seaweed extracts, proteins, carbohydrates, inorganic salts and other inherent nutrients contained in the products of vegetable origin and 80% adjuvant and aqueous diluents.

8. In appellant's own case for the earlier period this Tribunal vide its order dated 29.7.2022 has allowed the Appeal filed by them for the period November, 2006 to June, 2011 on the issue whether the product *Zymegold Plus* is a plant growth regulator or a fertilizer. It has been specifically recorded in the said order that although the enzymes like 6-BA and 4-CPA are present which help in plant growth regulation but they are only in small traces i.e. 0.26% and 0.53% prior to 3.7.2010 and for the period after 3.7.2010 even the traces are absent. Therefore the impugned goods cannot be classified as plant growth regulator just because the traces of 6-BA and 4-CPA are present. The relevant paragraphs of the aforesaid order (supra) are reproduced hereunder:-

"6. The goods are to be classified as per their description and the general description should not be preferred before the specific description. Moreover, in terms of Rule 3(b), mixture consisting of different materials is to be classified with reference to the major component which gives it the essential character. We find that in the case of impugned product, the major constituent is seaweed powder extract. The learned adjudicating authority has not appreciated the provisions of Rule 3(a) and (b) correctly and has jumped directly to Rule 3(c) of the General Interpretation Rules, which is not correct to our understanding. The classification of the goods should be done by the reference of the heading and chapter note. If needed, the help of Explanation Notes of HSN needs

to be taken. HSN Notes of heading 3101 refers to animal or vegetable fertilizers, whether or not mixed together or chemically treated, fertilizers produced by the mixing or chemical treatment of animal or vegetable products. It is also stated that the heading covers animal or vegetable products converted into fertilizers by mixing together or chemical treatment (other than Superphosphates of Heading 3103). It is pertinent to note the Explanation given in Chapter 12.12 of HSN, seaweed and other algae and it says that this Heading covers all seaweeds and other algae whether or not edible, they may be fresh, chilled, frozen, dried or ground. Seaweeds and other algae are used for various purposes (e.g. pharmaceutical products, cosmetics, human consumption, animal feeding, and fertilizers) and other that should be as such that this heading excludes Fertilizers of Heading 31.01 or 31.05. A plain reading of this note indicates that seaweed and other algae should also be used as fertilizer and when done so, they fall under Heading 3101 or 3105 and even otherwise by referring to Note 3(b) of General Interpretation Rules, the product in dispute falls under CETH 3101.

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8. We find that it was held by the Tribunal in the case of Safex Chemical Industries Ltd. (supra) that though the chemical examination report indicates the presence of ingredients like, Auxin and Cytokinins are known to find use as Plant Growth Regulator, percentage compositions of these ingredients have not been ascertained. It cannot be ruled out that these ingredients can be present in the small traces in the sample; the same can be called as fertilizer also.

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10. We also find that the appellants have submitted some Rulings issued by US Customs considering the products which have seaweed based fall under 3101.00. Though it can be argued that the said rulings are not relevant for the classification of goods manufactured and cleared in India, we find that the rulings will have persuasive value as to how the said

commodity is traded and classified internationally, particularly in the context of universal standardization of classification. For this reason also, we find that impugned product cannot be treated as plant growth regulator."

In view of the aforesaid decision, the issue so far as *Zymegold plus* is concerned, is no longer *res integra*. Rather the appeals in hand are on a better footing as w.e.f. 3.7.2010 i.e. for the periods in issue before us, the appellants have stopped using 6-BA & 4-CPA in their products.

9. Although argument has been made before us that the products in issue have been reclassified under the category of plant growth regulator as they are based on seaweed extract but we are afraid that the aforesaid decision has considered that aspect also and held that when seaweed and other algae are used for various purposes like pharmaceutical products, cosmetics, human consumption, animal feeding and fertilizers and when they are used as fertilizers they should fall under heading 3101. In yet another decision in the matter of *M/s. Northern Minerals Ltd. vs. CCE, Delhi; 2001(131) ELT 355 (Tri.-Del.)* it has been held that products based on seaweeds which are basically growth enhancer with micronutrients, cannot be classified under CTH 3808 as plant growth regulator. Otherwise also seaweed extract powder are fertilizer in nature and classifiable under Tariff Item 31010099 of the Central Excise Tariff Act, 1985 and are excluded from the Tariff Heading 12.12 by virtue of HSN explanatory notes as they were procured by the appellants in powder form and not in natural form. As per the tables produced in earlier paragraphs showing the composition of ingredients, it has been noted that *seaweed Extract* contains the major portion of the raw material which is 15% in *Zymegold Plus*. It is the specific case of the appellants that the products in issue are plant origin based products and provide nutrient for growing the plants in a healthy and productive manner and as department has failed to produce any evidence to the contrary

nor they produced any evidence on record to show that the products in issue are promoting or inhibiting growth by affecting the structure at the physiological level which is an essential characteristic of the plant growth regulator, therefore appellant's submission merit acceptance. A plant growth regulator excludes nutrients. They are defined as organic compounds other than nutrients what affect the physiological process of growth and development in plants when applied in low concentration. They are also different from nutrients, be it macronutrient or micronutrient.

10. The table produced in earlier paragraphs clearly establish the concentration of one or more of the nutrients like Nitrogen, phosphorus or potassium and also seaweed extract in sufficient quantity in *Dripzyme*, on the basis of which the same can also be safely classified as fertilizer. The Board has also issued a circular dated 6.4.2016 mainly discussing as to what is *plant growth regulator*. The relevant extract of the same is reproduced hereunder:-

"3.1 Plant Growth Regulators are defined as organic compounds other than nutrients that affect the physiological processes of growth and development in plants when applied in low concentration. Plant growth regulators are active at low concentrations in promoting, inhibiting or modifying growth and development. They are either natural or synthetic compounds that are applied directly to a target plant to alter its life processes and its structure to improve quality, increase yields, or facilitate harvesting etc. These are in the nature of plant hormones and classical of them are auxins, cytokinins, gibberellins (all three promoters) and abscisic acid, ethylene (both inhibitors). PGRs in the list are not exhaustive and more growth substances are being discovered in this category. PGRs are naturally produced by plants and they act by controlling or modifying, plant growth processes such as formation of leaves and flowers, elongation of stems, development and ripening of fruits etc. Synthetic organic chemicals are also used

as PGRs and are industrially produced and marketed. A list of some of the PGRs industrially produced in India is enclosed with the reply of IARI.

3.2 It would thus be noted that PGRs are different from nutrients, be it macronutrient or micronutrient . The difference between PGR and micronutrient has been clearly brought out in the reply from ICAR. PGR as a substance is specifically covered under CETH 3808. More specifically , Gibberellic acid and Plant Growth regulators are respectively covered under tariff item 3808 9330 and 3808 9340.

11. Presence of micronutrients in the products in issue has been taken against the appellants by the learned commissioner. It is interesting to note that plant growth regulators are grouped under CETH 38.08 alongwith other insecticides, fungicides, herbicides and disinfectants, all of which are intended to destroy pathogenic germs, insects, mosses and moulds, weeds, pests to achieve their results. They even considered as pesticides in some parts of the world whereas micronutrients are promoting only growth and health of the plant. A co-ordinate Bench of the Tribunal in the matter of *CCE vs. M/s. Aries Agrovvet Industries Ltd.; 2017-TIOL-2635-CESTAT-HYD*, while taking note of the job etc. of micronutrients has come to the conclusion that micronutrients cannot modify inhibit retard the growth of plants like plant growth regulators and they only promote normal growth. Therefore, in our opinion, the presence of micronutrients in the products in issue before us does not make them plant growth regulator. We also find support on this from the decision of this Tribunal vide *Order No.A/86615/ 2018 dated 31.5.2018 in the matter of CCE, Mumbai vs. Aries Agro-Vet Industries Ltd.* in which it has been held that 'micronutrients' and 'macronutrients' are required for agriculture as fertilizers and 'micronutrients' are not plant growth regulators.

12. Evidences have also been produced by the appellants in support of their submissions that the product manufactured and

sold by them are commercially/commonly known and marketed as fertilizers. Time and again Hon'ble Supreme Court has laid down that in such a situation resort should be had to popular meaning and understanding attached to such products by those using the product and not to be had to the scientific and technical meaning of the terms and expressions used as has been laid down by the Hon'ble Supreme Court in the matter of *CCE, Nagpur vs. Shree Baidyanath Ayurved Bhawan Ltd.*; 2009(237) ELT 225 (SC), relevant extract of which is reproduced hereunder:-

"38. We endorse the view that in order to determine whether a product is covered by 'cosmetics' or 'medicaments' or in other words whether a product falls under Chapter 30 or Chapter 33 : twin test noticed in Puma Ayurvedic Herbal (P) Ltd., continue to be relevant. The primary object of the Excise Act is to raise revenue for which various products are differently classified in New Tariff Act. Resort should, in the circumstances, be had to popular meaning and understanding attached to such products by those using the product and not to be had to the scientific and technical meaning of the terms and expressions used. The approach of the consumer or user towards the product, thus, assumes significance. What is important to be seen is how the consumer looks at a product and what is his perception in respect of such product. The user's understanding is a strong factor in determination of classification of the products."

13. A strong reason which wade into the mind of learned commissioner while passing the impugned order is the order passed by his predecessor in appellant's own cases on identical issue for the earlier period but we are afraid that it cannot be accepted, as the Tribunal in appellant's own case for the earlier period vide its order dated 29.7.2022 has allowed the Appeals filed by them for the period November, 2006 to June, 2011 and held that the product *Zymegold Plus* is a fertilizer and we see no reason to differ with the same as the department has failed to produce any document to show that the same has been

challenged in appeal anywhere by the department or that any stay of the said order has been obtained by the department. The reasoning given by the Tribunal for *Zymegold Plus* is equally applicable for *Dripzyme* also as it also contains seaweed extract based product alongwith various other nutrients. It contains soluble like seaweed extracts, proteins, carbohydrates, inorganic salts and other inherent nutrients contained in the product of vegetable origin along with substantial portion of adjuvant and aqueous diluents. The appellant had also placed on record the test report on analysis of sample of Dripzyme issued by SGS India Pvt. Ltd.- a laboratory which also supports the claim of the appellant that it supplies nutrients whereas the department has failed to produce any test report to the contrary.

14. In yet another decision dated 6.11.2018 in the matter of *Bahar Agrochem & Feeds Ltd.(supra)* also the Tribunal has held that since the product *Zymegold* contains nitrogen and chlorine therefore is suffice to characterize the product as *fertilizer*. In arriving at the conclusion therein the Tribunal also relied upon its order dated 31.5.2018 in the matter of *Aries Agri-vet Industries Ltd. (supra)*. We have also noticed that the department has taken resort to the definition of '*fertilizer*' as provided in *Fertilizer Control Order, 1985* for changing the classification which, according to us, could not have been done as the definition provided in other statutes, totally unrelated to statute in issue, cannot be made the basis for changing the classification. If the appellants are not complying with or are in violation of any provision of the said order, then it is for the authority mentioned therein to take necessary steps but on that basis the classification cannot be changed at all as the Excise Act is a complete code in itself and the authorities herein have to act within the four corners of the said statute.

15. In view of the discussions made in the preceding paragraphs and particularly the decision of the Tribunal in

appellant's own case, we are of the considered view that the impugned order is liable to be set aside as the products in issue are *fertilizers* and therefore the appellants have rightly classified their products. The appeals are accordingly allowed with consequential relief, if any, as per law.

(Pronounced in open Court on 03.05.2023)

(Anil G. Shakkwar)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

//SR