

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD**

REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 12250 OF 2018

[Arising out of OIA-BHV-EXCUS-000-APP-038-2018-19 dated 25/04/2018 passed by
Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-KUTCH
(GANDHIDHAM)]

ATUL MANUFACTURERS

Plot No.291/b, GIDC, Industrial Estate, Chitra,
Bhavnagar, Gujarat

Appellant

Vs.

C.C.E. & S.T.-BHAVNAGAR

PLOT NO.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

Respondent

WITH

EXCISE APPEAL NO. 10127 OF 2022

[Arising out of OIA-BHAV-EXCUS-000-APP-090-2019 dated 25/03/2019 passed by
Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR]

ATUL MANUFACTURERS

Plot No. 381/3 Opp. 66 KV Sub Station,
Bhavnagar, Gujarat

Appellant

Vs.

C.C.E. & S.T.-BHAVNAGAR

PLOT NO.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

Respondent

Appearance:

Shri Anand Nainawati & Shri Ishan Bhatt, Advocates for the Appellant Shri R
K Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)**

FINAL ORDER NO. 12903-12904/2024

Date of Hearing/Decision : 19.11.2024

SOMESH ARORA

In the instant case we are concerned with product called 'Zymegold
Plus Granules' which was claimed as 'fertilizer' by the party and considered
classifiable under Central Excise Tariff item 3101.0099 as against this
department considered the same as plant growth regulator under Central
Excise Tariff item 3808.9340. We find that as stated by the learned

advocate, the matter stands covered by the coordinate bench decision in relation to the same product in the matter of M/s. Godhrej Agrovet Limited Vs. Commissioner of CGST Kolhapur as reported in 2023 (5) TMI 299-CESTAT Mumbai wherein the same product i.e. 'Zymegold Plus' was involved and the findings in the referred case are as follows:-

Para "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. Timo 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 comers 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."

Confronted with the situation, learned AR has no serious objection and fairly reiterates the findings as made by the learned Commissioner without the Commissioner benefiting from the referred decision.

In view of the same product having been covered by the above referred decision, we are inclined to accept the appeal in the case by holding that the product is classifiable as claimed by the party under the Central Excise Tariff Item 31010099 and the same is to be treated as a fertilizer has claimed by them.

Appeals are accordingly allowed with consequential relief.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

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