CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 11643 OF 2013

(Arising out of OIO-33-COMMR-SURAT-II-2013 Dated-04/03/2013 passed by Commissioner of Central Excise-SURAT-II)

AGRO PACK **Appellant**
Plot No. B/155, GIDC, Ankleshwar,
Bharuch, Gujarat

Vs.

COMMISSIONER OF CENTRAL EXCISE-SURAT-II **Respondent**
New C.Ex Building...Opp. Gandhi Baug, Chowk Bazar,
Surat, Gujarat-395001

WITH

I. **Excise Appeal No. 11644 of 2013 (Parth H Patel)**

II. **Excise Appeal No. 11919 of 2014 (Agro Pack)**

III. **Excise Appeal No. 10605 of 2015 (Agro Pack)**

IV. **Excise Appeal No. 12025 of 2016 (Agro Pack)**

V. **Excise Appeal No. 10774 of 2017 (Agro Pack)**

VI. **Excise Appeal No. 12063 of 2019 (Sayona Crop Care)**

(Arising out of OIO-SUR-EXCUS-002-COM-089-090-13-14 Dated-18/02/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

(Arising out of OIO-BH-EXCUS-BHARUCH-COM-009-14-15 Dated-31/12/2014 passed by Commissioner of Central Excise, Customs and Service Tax-Bharuch)

(Arising out of OIO-BHR-EXCUS-COM-62-2016-17 Dated-29/08/2016 passed by Commissioner of Central Excise and Service Tax-ANAND)

(Arising out of OIO-BHR-EXCUS-000-COM-108-16-17 Dated-31/01/2017 passed by Commissioner of Central Excise, Customs and Service Tax-Bharuch)

(Arising out of OIO-VAD-EXCUS-002-COM-016-18-19 Dated-20/02/2019 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Appearance:
Present for the Appellant : Shri Anand Nainawati & Shri Ishan Bhatt, Advocates
Present for the Respondent: Shri Mihir Rayka, Additional Commissioner (AR)

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

FINAL ORDER NO. 12912-12918/2024

Date of Hearing : 19.11.2024
Date of Decision : 19.11.2024

SOMESH ARORA

Learned advocate appearing for the party states that the reference was made in their appeal bearing no E/11643-11644/2013 to the larger bench about their product 'Isabion' which was claimed by them as a fertilizer under T.H. for animal or vegetable based fertilizer whether or not mixed together or chemically treated falling under tariff heading 31010099 as against that the department considering the item to be falling under tariff heading 38089340 as Plant Growth regulators. A reference was made by this bench of tribunal to the larger bench in their matter as well as other matters of other appellants, the terms of reference being:

> *"6. In view of the above, the issue needs to be referred to a Larger Bench for determination of following question:-*
>
> > *"Is it necessary for a plant growth promoter to be able to simultaneously inhibit growth or otherwise modify (apart from promotion) plant processes, to qualify as plant growth regulator under heading 3808 of Central Excise Tariff Act, 1985.*
> >
> > *OR*
> >
> > *So long as it promotes growth by modifying life processes of a plant it qualities as plant growth regulator under heading 3808 of Central Excise Tariff Act, 1985.*
>
> *7. The registry may place the file before the Hon'ble President to constitute a larger bench to resolve this issue."*

Accordingly the reference was decided by the larger bench vide order no. 25-30/2024 dated 02.09.2024.

> *"52. The reference would, therefore, have to be answered in the following manner:*
>
> > *"(i) A plant growth promoter cannot be equated with a plant growth regulator. A plant growth promoter only promotes the growth of the plant and does not inhibit it. On the other hand, a plant growth regulator inhibits, promotes or otherwise alters the physiological processes in a plant. The view to the contrary taken by the Division Bench in the referral order is not correct; and*
> >
> > *(ii) Siapton 10L and Isabion merit classification as fertilizers under ETI 3101 00 99 and not as a plant growth regulator under ETI 3808 93 40."*

53. The reference is answered, accordingly. The papers may be placed before the Division Bench of the Tribunal to decide the appeals on merits."

2. Since the reference has made has been decided and answered in favour of the party treating the impugned product as falling under tariff heading 31010099 as claimed by the party. Therefore, in accordance with the larger bench decision and after checking from the learned AR that there is no dispute between the department and the advocate on stated facts. This court accepts the decision made by the larger bench and accordingly holds that the impugned product i.e. Isabion is classifiable under 31010099.

3. 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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