

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10081 of 2013- DB

(Arising out of OIO-65-69-COMMR-SURAT-II-2012 dated 10/10/2012 passed by Commissioner of Central Excise-SURAT-II)

P I INDUSTRIES

Plot No. 640, Gidc,
Panoli, Gujarat

.....Appellant

VERSUS

Commissioner of C.E. & S.T.-SURAT-II

NEW C.Ex BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-0395001

.....Respondent

WITH

- (i) **EXCISE Appeal No. 11791 of 2014- DB (P I INDUSTRIES)**
- (ii) **EXCISE Appeal No. 13288 of 2014- DB (P I INDUSTRIES)**
- (iii) **EXCISE Appeal No. 11319 of 2016- DB (P I INDUSTRIES)**
- (iv) **EXCISE Appeal No. 11124 of 2017- DB (P I INDUSTRIES)**
- (v) **EXCISE Appeal No. 11001 of 2019- DB (P I INDUSTRIES)**

[(Arising out of OIO-SUR-EXCUS-002-COM-062-064-13-14 dated 10/01/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II), (Arising out of OIO-SUR-EXCUS-002-COM-013-014-14-15 dated 26/06/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II), (Arising out of OIO-BHR-EXCUS-000-COM-090-091-15-16 dated 31/03/2016 passed by Commissioner of Central Excise-Bharuch), (Arising out of OIO-BHR-EXCUS-000-COM-122-16-17 dated 21/03/2017 passed by Commissioner of Central Excise, Customs and Service Tax-Bharuch), (Arising out of OIA-VAD-EXCUS-002-COM-020-18-19 dated 15/03/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)]

APPEARANCE:

Shri Ashok Dhingra & Ms. Sonia Gupta, Advocate for the Appellant

Shir Mihir G Rayka, Additional Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 13047-13052/2024

DATE OF HEARING: 27.11.2024
DATE OF DECISION: 05.12.2024

RAMESH NAIR

The issue involved in the present case is that whether the final product namely "Siapton 10L and Isabion" manufactured by the appellant is classifiable as fertilizer under Central Excise Tariff Item No. 3101 00 99 of the first schedule of Central Excise Tariff Act, 1985 as declared by the appellant or Plant Growth Regulator falling under Central Excise Tariff Item No. 3808 93 40 as claimed by the Department.

2. Shri Ashok Dhingra , Learned Counsel with Ms. Sonia Gupta, Advocate appearing on behalf of the appellant at the outset submits that in

these appeals the division bench had referred the matter to the larger bench and the larger bench vide Interim Order No. 25-30/2024 dated 02.09.2024 settled the dispute whereby it was held that the product in question merit classification as fertilizer under Central Excise Tariff Item No. 31010099 and not as plant growth regulator under Central Excise Tariff Item No. 38089340. Therefore, the issue is settled and in view of the said larger bench decision in these appeals itself, the appeals deserves to be set aside.

3. Shri M.G Rayka, Learned Additional Commissioner appearing on behalf of the Revenue fairly concedes that now the issue is settled as per the larger bench decision vide order dated 02.09.2024.

4. Considering the submission made by both sides and perusal of record. We find that since the larger bench of this tribunal has finally decided the question in dispute in these appeals vide Interim Order No.25-30/2024 dated 02.09.2024 , these appeals can be disposed of in accordance with the decision given by the larger bench. The relevant order of the larger bench is reproduced below:-

"8. It is for this reason that the Division Bench referred the following issue in P.I. Industries to be decided by a Larger Bench of the Tribunal:

"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 qualifies as plant growth regulator under heading 3808 of Central Excise Tariff Act, 1985"

9. When the appeal filed by Agro Pack came up for hearing before the Division Bench, the following referral order was passed:

"Shri Anand Nainawati, Learned Counsel appearing on behalf of the applicant has filed an ORS application for considering the appeal as a intervener/tagging as the matter involving the same issue is referred in the larger bench in the case of Isagro (India) Agrochemicals Pvt. Ltd. in Appeal no. E/10081/2013 and E/11791/2014 vide Interim Order no. I/71-72/2018 dated 24.10.2018. He submits that the issue involved is identical i.e. Classification of micro nutrients.

*2. **Shri J.A. Patel, learned Superintendent** (Authorised Representative) appearing on behalf of the Revenue fairly concedes that the issue involved is identical, i.e. classification of micro nutrients **as involved in the matter pending before larger bench of this Tribunal in the case of Isagro (India) Agrochemicals Pvt. Ltd. in Appeal no. E/10081/2013 and E/11791/2014.***

*3. **Accordingly, we place this matter before the Hon'ble President** to consider for tagging these appeals with the appeals pending before the larger bench in the case of Isagro (India) Agrochemicals Pvt. Ltd. Miscellaneous Application is disposed of in the above terms."*

(emphasis supplied)

10. To examine the aforesaid issue that has been referred to the Larger Bench, it would be necessary to examine the two products.

SIAPTON 10L

11. P.I. Industries claims to be importing Siapton 10L since May 2003 by describing it as a mixture of amino acids, peptones and peptides and classifying it as a "fertilizer" under Chapter Heading 3101 of the Customs Tariff for the purpose of basic customs duty. After bringing the said product in the factory, it carried out activity of re-packing from bulk pack to small packs and also carried out labeling activity. P.I. Industries, thereafter, removed the product from the factory without payment of duty as there is no deeming fiction of "manufacture" in Chapter 31 of the Excise Tariff. The audit party, however, believed that the product was a "plant growth regulator" falling under Chapter Heading 3808 of the Excise Tariff attracting excise duty.

12. The show cause notice dated 16.09.2009 issued to P.I. Industries, contains the following allegations:

"3/- Whereas on going through the said technical documents/papers, it was noticed that the Siapton 10L is defined as a unique product of natural origin having multiple activities as a "plant biostimulant", an anti stress agent, a nutritional equilibrators and enhancer in the improved use of macro and micro elements and as an indirect improver of activity of some enzymatic systems to bring about a tremendous boost in quality and quantity of the product. **But none of the said documents/papers (technical literature) indicate that Siapton 10L is fertilizer**

4/- Whereas the description given in the said technical documents/papers indicated that Siapton 10L is a plant biostimulant, further a plant biostimulant is a plant growth stimulant. Hence, **Siapton 10L appears to be a plant growth regulator which appears to be plant growth regulator** which appears covered under chapter heading 3808. 93 of the Central Excise Tariff Act (Herbicides, anti sprouting products and plant – growth regulators and similar products) and the said product appears to be falling within sub-heading No. 3808 93 90 which attracts Central Excise duty @ 16% advalorem upto February-2008, thereafter 14% advalorem upto 07.12.08, thereafter 10% advalorem upto 24.02.09 and thereafter 8% advalorem from 25.02.09 till July2009. *****"

(emphasis supplied)

13. The Commissioner, after perusal of the technical literature submitted by P.I. Industries as also the article published on bio- stimulant products, and after understanding what constitutes physiological processes in plants, recorded the following finding:

"From plain reading of above extract it is learned that SIAPTON is a Bio-Stimulant. Biostimulants re balance and stimulate metabolic and enzymatic processes of plants. **Thus it is again clear that Bio stimulant affects the physiological processes of plants.** It is very important to note that nowhere in their website M/s. Isagro, Itlay project their product as Fertilizer."

(emphasis supplied)

14. The Commissioner also examined the technical description of Siapton 10L and concluded that bio-stimulant are neither fertilizer nor plant growth promoter but are plant growth regulators. The findings are as follows:

"18.6 From the discussions in foregoing para, it can be safely concluded that the Bio-stimulants are neither fertilizer/plant growth promoters, nutrients nor pesticides; that they are applied in small quantities; that they influence various metabolic/physiological processes in

plants; that they have been equated with "Plant Biochemical Regulators" and "Plant Growth Regulators". I find the PGR can either - inhibit the plant growth

Or

- promote the plant growth.

Or

- otherwise alter physiological processes in plants.

Thus the submission of the assessee that PGR always inhibits the growth of plant and causes phytotoxicity is on wrong footing.

18.8 In the present case as discussed in foregoing paras, it is clear from the product literature produced by assessee and also from above referred various field studies that "SIAPTON 10L"

a) It is a Biostimulant.

b) It constituents mainly organic fraction.

c) It is used directly through leaves i.e. foliar applications.

d) It influences various physiological processes in plants.

e) It increases growth and yield.

I find that "SIAPTON 10L" being a Biostimulant cannot be a Fertilizer/Plant growth Promoter/Nutrient by virtue of my findings in regards to Biostimulants in foregoing paras 18 and 18.1 and also on account that fertilizers are used in soil, while "SIAPTON 10L" is used through foliar application/drip irrigation. "SIAPTON 10L" has also satisfied the three main characteristics of "Plant Growth Regulator" i.e. it constituents mainly organic fraction; it is used directly i.e. foliar application, and It influences various physiological processes/metabolic processes in plants, which further help in increasing growth and yield of plants. Thus I find that the department has rightly alleged that "SIAPTON 10L" is a "Plant Growth Regulator" which merits classification under chapter heading 3808. 93 of the Central Excise Tariff Act, attracting applicable Central Excise duty.

19. I have also gone through the test report of "SIAPTON 10L" issued by the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara, relevant extract of which is reproduced verbatim below:

"Test Report – The sample is in the form of brown coloured viscous liquid,

i) N = 12.9%

ii) K₂O = 0.003%

iii) P₂O₅ = 0.2%

iv) N.V.R.=75.5%

v) pH = 6.8%

The sample is other than Mineral, Chemical and Organic fertilizer [Animal/Vegetable]. It is not labeled as fertilizer. This type of product does not find mentioned under Fertilizer Control Order No. 1985 as fertilizers. **The sample is a mixture of proteins and Amino Acids which regulates the plant growth. The sample u/r can be considered as plant growth regulator."**

19.1. Thus I find that the Chemical Examiner w.r.t SIAPTON 10L observed that:-

a) The sample is other than Mineral, Chemical and Organic fertilizer [Animal/Vegetable].

b) It is not labeled as fertilizer.

c) This type of product does not find mentioned under Fertilizer Control Order No. 1985 as fertilizers.

d) The sample is a mixture of proteins and Amino Acids which regulates the plant growth.

e) The sample u/r can be considered as plant growth regulator.
In view of above report also, I find that the product "SIAPTON 10L" is not a fertilizer but it is a growth regulator."
(emphasis supplied)
15. In paragraph 13 of the Appeal Memo, P.I. Industries has described Siapton 10L in the following manner:
"***** the product of the present appellants has Amino-acids and Amino-acids alone. 54% of the product is pure amino-acids whereas the remaining ingredients are what are called peptides and micronutrients. Peptides are nothing else but short chain amino acids. In other words, almost 86% of the product is amino-acids of one form or the other *****"
16. P.I. Industries has placed the test report dated 01.03.2011 submitted by Doctors' Analytical Laboratories Pvt. Ltd., Pune. It reports that Siapton 10L is not a plant growth regulator. The report is reproduced below:
Doctors' Analytical Laboratories Pvt. Ltd., Pune

TEST REPORT				
Date: 01/Mar./2011				
Customer Name & Address		Isagro Asia Agrochemicals Pvt. Ltd., Plot No. 640, GIDC, Panoli-394116, Dist. Bharuch, Gujarat, India		
Supplier/Exporter Name & Address		Isagro Asia Agrochemicals Pvt. Ltd., Plot No. 640, GIDC, Panoli-394116, Dist. Bharuch, Gujarat, India		
Lab Code And Date Of Sample Received		711010088 05/Jan./2011		
Sample Name		SIAPTON 10L (B.No. 15A-372 mfg.20.12.2010 & Exp. 19.12.2012)		
Condition of Sample		Packed in Plastic Bottle		
Test Performance Date		10/Jan./2011 To 01/Mar./2011		
Sr. No.	Name of Test	Result	Method of Analysis	Equipment Used
Plant Growth Regulators				
1	Indol Acetic Acid	Not Detected	SOP No. QP/DALPL/098	HPLC
2	Gibberellic Acid	Not Detected	SOP No. QP/DALPL/098	HPLC
3	1-Naphthyl Acetic Acid(NAA)	Not Detected	SOP No. QP/DALPL/098	HPLC
4	6-Benzyladenine	Not Detected	SOP No. QP/DALPL/098	HPLC
5	Hydrogen Cynamide	Not Detected	SOP No. QP/DALPL/214	LCMS/MS
6	Ethephon	Not Detected	SOP No. QP/DALPL/214	LCMS/MS
7	Florchlorfenuron	Not Detected	SOP No. QP/DALPL/214	LCMS/MS
8	Mepiquate Chloride	Not Detected	SOP No. QP/DALPL/214	LCMS/MS
9	Paclobutrazole	Not Detected	SOP No. QP/DALPL/214	LCMS/MS
10	Triacontanol	Not Detected	SOP No. QP/DALPL/214	GCMS/MS

11	Chlormequat Chloride	Not Detected	SOP No. QP/DALPL/214	LCMS/MS
----	----------------------	--------------	----------------------	---------

17. P.I. Industries has also placed on record the opinion dated 08.01.2013 submitted by Dr. R. Uma Shankar of the University of Agricultural Sciences, Department of Crop Physiology, Bangalore confirming that amino acid and peptides can be regarded as bio-stimulants and should be treated as organic nutrients or organic fertilizers and not as classical plant growth regulators or hormones.

18. P.I. Industries has also placed on record the analysis report submitted by Isagro SPA, Italy which supplied the product and the relevant portion of the report is as follows:

"It came to our attention that doubts are raised in India over the definition as "fertiliser" concerning the product "SIAPTON 10L", manufactured by ISAGRO SPA and distributed in India by ISAGRO (ASIA) AGROCHEMICALS PVT LTD.

With this letter, we reaffirm that, SIAPTON 10L is truly considered as "fertiliser" on the basis of its intrinsic characteristics and also as per numerous legislations worldwide. We also inform herewith, that SIAPTION 10L is not considered, recognised and/or registered as PGR or Plant Protection Product (PPP) in any of the countries where it is distributed by ISAGRO, its affiliates and/or local distributors.

SIAPTON 10L (or anyway its formulation under further trade names) is always classified as fertiliser.

WHAT SIAPTON 10L is:

SIAPTON 10L is a product based on organic nitrogenous compounds (amino acids and peptides) derived from animal by-products. So, also according to the above mentioned definitions, it must be considered as a nitrogen based fertiliser with nitrogen in organic form only, incorporated in amino acids and peptides.

WHAT SIAPTON 10L IS NOT A PPP NOR PLANT GROWTH REGULATOR

SIAPTON 10L is not a PPP because it does not control any disease of any kind.

As far as a PGR action is concerned, there is no doubt that the actions of SIAPTON 10L (and of the amino acids and peptides from animal by-product) are various; the product acts on improving growth and overcoming stress situations. It improves for example nitrogen assimilation. **NOTABLY, THESE ACTIONS ARE TYPICAL OF FERTILISERS; IN NO WAY SIAPTON 10L CAN BE INCLUDED IN THE GROUP OF PRODUCTS UNIVERSALLY RECOGNISED AS "PLANT GROWTH REGULATOR"**

In fact, a "PGR is defined as an organic compound, either natural or synthetic, that modifies or controls one or more specific physiological processes within a plant".

A further definition is : "plant growth regulators (also known as growth regulators or plant naturally produced by plants, substances that control normal plant functions, such as root growth, used to alter the growth of a plant or plant part. Hormones are substances naturally produced by plants, substance that control normal plant functions, such as root growth, fruit set and drop, growth and other development processes.

SIAPTON 10L does not modify, or control or alter any physiological process; it just provides Nitrogen (in an organic form for an improved up-take and utilization) **and does what nitrogen does: improved crop growth and yield.** SIAPTON 10L instead of providing the element alone, provides

Nitrogen in an organic form (amino acids and peptides) so it provides the building blocks for an improved growth.

We conclude that the classification of SIAPTON 10L as PGR is not appropriate, being the classification as "FERTILISER" the most and only appropriate in consideration of the product characteristics. It is, indeed, the classification universally accepted as demonstrated above."

(emphasis supplied)

ISABION

19. Agro Pack claims that Syngenta India Ltd. **[Syngenta]** imported Isabion in bulk and cleared it for home consumption under Customs Tariff Heading 3101 and after receiving such bulk quantity from Syngenta, Agro Pack undertook re-packing of the product into retail packs after classifying such goods under ETI 3101 00 99 as fertilizers, which did not attract central excise duty.

20. The show cause notice dated 17.08.2012 issued to Agro Pack contains the following allegations:

"4. During the course of audit, it was observed that the assessee has been classifying "ISABION" as "Bio-stimulant" under Chapter 31 of the CET Act, 1985 (Sub - heading No. 31010099 – as 'Fertilizer') and clearing the said goods without payment of Central Excise duty at "NIL" rate of duty (upto 31.03.2011 and later @ 1 % as per Noti. 1/2011 dt. 01.03.2011). On being asked the following documents/papers were produced / submitted by the assessee:

(i) Label of ISABION (1 liter)

(ii) Central Excise Invoices under which Product ISABION cleared

(iii) Technical Literature etc.

7. Whereas the description given in the said technical documents/papers indicated that ISABION is a plant biostimulant, which is nothing but a plant growth stimulant. Hence, ISABION appears to be a plant growth regulator which is appropriately covered under chapter heading 3808 93 40 of the Central Excise Tariff Act, 1985 (Herbicides, anti sprouting products and plant – growth regulators and similar products). The said product appears to fall under the sub-heading No.3808 93 40 and the valuation is to be done as per Section 4A of Central Excise Act, 1944 i.e. Central Excise duty is payable on MRP/RSP basis (as applicable at the relevant period) allowing for such abatement as given under Third Schedule of CETA. The details of month wise manufacture and clearance and duty payment details for ISABION for the period from 2009-10, 2010- 11 & 2011-12 are shown in the Annexure-'A' attached to this show cause notice."

(emphasis supplied)

21. The relevant portion of the order dated 04.03.2013 passed by the Commissioner is reproduced below:

"32.4. I have gone through the description of "Isabion", as discussed in forgoing paras and the facts that emerged are

- It mainly constituent organic fraction.

- It is used directly through leaves.

- It is used as organic bio-stimulant of roots, leaves, flowers and fruits on every kind of crops and recommended during the active growth phases of the production cycle i.e. they alter the physiology of various parts of plants.

- It helps in mitigating the damage done by hail, phyto-toxicity, parasites and diseases, drought, etc.

I find that "Isabion" being a Biostimulant cannot be a Fertilizer/Plant growth Promoter/Nutrient by virtue of my findings in regards to Biostimulants in foregoing paras and also on account that fertilizers are used in soil, while "Isabion" is used also through foliar application. I find that Biostimulant, Plant Biochemical Regulators and Plant Growth Regulators are treated on equal footing and "Isabion" has also satisfied the three main characteristics of "Plant Growth Regulator" i.e. its constituents mainly organic fraction; It is used directly i.e. foliar application, and It influences various physiological processes/metabolic processes in plants. Thus I find that the department has rightly alleged that "Isabion" is a "Plant Growth Regulator" which merits classification under chapter heading 3808 93 of the Central Excise Tariff Act, attracting applicable Central Excise duty."

(emphasis supplied)

22. According to Agro Pack, Isabion is an organic plant fertilizer, which is also referred to as a bio-stimulant, and consists of a mixture of amino acids and peptides (hydrolyzed protein). Agro Pack also claims that the product is a water-soluble bio-stimulant that provides nutrition to the plant by way of soil or foliar application. For such application, Isabion is mixed with water in specific proportion and then sprayed on the plants. Agro Pack also claims that Isabion is extracted after a detailed manufacturing process on the leather shaving (tannery waste).

23. SICIT, a company which supplied Isabion to Syngenta in bulk, also in its communication dated 28.08.2012 stated:

"The ISABION is recommended as an organic biostimulant of roots, leaves, flowers and fruits on every kind of crops viz., fruits, vegetables, field crops, flowers and ornamentals, etc.

ISABION contains a well balanced and optimal ratio between short chain peptides, long chain peptides and free amino acids. ISABION is immediately and completely taken up by the plant, both in application by foliar spray or soil irrigation. We export ISABION to Syngenta India Limited as finished product in bulk."

24. The product label of Isabion mentions the following important facts:

"ISABION is the world's purest and the most concentrated product based on proteins of natural origin.

ISABION contains a well balanced and optimal ratio between short chain peptides, long chain peptides and free amino acids.

ISABION is immediately and completely taken up by the plant, both in application by foliar spray or by soil irrigation.

ISABION is recommended as an organic bio-stimulant of roots, leaves, flowers and fruits on every kind of crops: Fruit trees- Citrus trees, Grape Vines, Mango & other Fruits, Vegetables- Tomato, Brinjal, Cole crops, Potato, Chilli, Cucurbits, Onion, All Leafy Vegetables. Field Crops- Cereals, Pulses, Oilseeds, Cotton, SugarBeet, Flowers and Ornamental crops.

ISABION is recommended during the active growth phases of the production cycle, in nurseries and in young plantations. ISABION helps the crops in mitigating the damage done by hail, phyto- toxicity, parasites and diseases, drought, etc.

Dosage rates and use:

ISABION has a flexibility of usages as foliar spray, soil application or fertigation. The number of applications & timing depends on the crop, however application at the time of transplantation, flowering, fruit-setting, ripening are the most important.

Foliar spray:

200-300 ml/100 L of water (For more details on application refer attached Isabion Booklet).

Chemical Composition:

Organic fraction derived from amino acids, peptides mixture	62.5% w/w
Inorganic faction and aqua	37.5% w/w
Total	100% w/w”

25. During the audit, a sample of Isabion was drawn and forwarded to the Chemical Examiner, Central Excise & Customs Laboratory at Vadodara. As per the said report, Isabion contains nitrogen, potassium and phosphorus. Syngenta also obtained analytical test report on chemical analysis of Isabion and the said report dated 10.07.2018 concludes that Isabion contains 58% free amino acid with nitrogen, phosphorus and potassium content as 11.024%, 00.37% and 0.041%, respectively.

26. Agro Pack has also placed on record the Fertilizer (Organic, Inorganic and Mixed) (Control) Amendment Order, 2021 which introduced “bio-stimulant” under the broad category of “fertilizers”. Bio-stimulant have been described as:

“(ab) “**biostimulant**” means a substance or microorganism or a combination of both whose primary function when applied to plants, seeds or rhizosphere is to stimulate physiological processes in plants and to enhance its nutrient uptake, growth, yield, nutrition efficiency, crop quality and tolerance to stress, regardless of its nutrient content, but does not include pesticides or plant growth regulators which are regulated under the Insecticide Act, 1968 (46 of 1968)”

27. Thereafter Syngenta obtained Certificate of Provisional Registration to manufacture or import Isabion (Liquid) from the Department of Agriculture and Farmers Welfare, Ministry of Agriculture and Farmers Welfare.

TARIFF ENTRIES

28. Having examined the aforesaid two products Siapton 10L and Isabion, it would be appropriate to now refer to the relevant tariff entries contained in Chapter 31 of the First Schedule to the Excise Tariff dealing with “fertilizers” and the relevant entries are:

Tariff Item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
3101	Animal or vegetable fertilizers, whether or not mixed together or chemically treated; fertilizers produced by the mixing or chemical treatment of animal or vegetable		
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	Kg.	Nil
	- Other		
3101 00 91	- Animal dung	Kg.	Nil
	-		
	-		
	-		

3101 00 92	- - - -	Animal excreta	Kg.	Nil
3101 00 99	- - - -	Other	Kg.	Nil

29. Chapter 38 of the First Schedule to the Excise Tariff deals with Miscellaneous Chemical Products, including "plant growth regulators" and the relevant entries are:

Tariff Item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
3808	Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plantgrowth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur- treated bands, wicks and candles, and fly-papers)		
3808 93	- Herbicides, anti-sprouting products and plant-growth regulators -		
3808 93 10	- Chloromethyl phenozy acetic acid (M.C.P.A.) - -	Kg.	8%
3808 93 20	- 2:4 Dichloro phenozy acetic acid and its Esters - -	Kg.	8%
3808 93 30	- Gibberellic acid - -	Kg.	8%
3808 93 40	- Plant growth regulators - -	Kg.	8%

30. It would be seen that the description of goods under ETH 3101 is "animal or vegetable fertilizers" while the description of goods under ETH 3808 are insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products. Plant growth regulators are described under ETI 3808 93 40.

31. It is in the light of the aforesaid that the submissions that have been advanced by the learned counsel appearing for P.I. Industries and Agro Pack and the learned authorized representative appearing for the department have to be considered.

32. The Division Bench, while referring the matter to the Larger Bench, noticed that the decision of the Tribunal in Northern Minerals would not help the appellant for the reason that in that case the product was applied to soil while in the appeals that were being heard by the Division Bench the product was directly sprayed on plants/trees.

33. The issue, therefore, that would arise for consideration is whether the mode of usage of the product through soil or foliar application is a determinative test for classifying the goods under ETI 3101 00 99 or ETI 3808 93 43.

34. ETI 3101 00 99 and ETI 3808 93 40, when read with the relevant section and Chapter Notes and the HSN Explanatory Notes, do not provide a distinction based on the mode of usage of such elements. It needs to be noted that water-soluble fertilizers are used for soil and foliar applications.

35. In this connection, it would be pertinent to refer to Unit 5: Plant Nutrition and Irrigation of the book "Floriculturist (Open Cultivation)" prescribed for NCERT Class XI. It provides that the fertilizers can be applied in solid form (broadcasting basal application and top dressing) and liquid form (foliar application and fertigation). The relevant portions from the book is reproduced below:

"Application of fertilisers in solid form"

It includes the following methods:

Broadcasting Basal application

Depending on the crop, broadcasting of fertiliser is carried out prior to sowing and planting just before the last ploughing is incorporated in the field.

Top dressing

When fertilisers are broadcast in the standing crop, it is known as top dressing. In this method, usually, nitrogenous fertilisers and micronutrients are applied in dense sown flower crop. [...]

Application of fertilisers in liquid form

Foliar application

It can be used with fertiliser nutrients readily soluble in water. It is also used when there is a soil fixation problem. In this method, it is difficult to apply sufficient amount of major elements. Nutrient concentration of 1% to 2% can be applied without injury to foliage. Foliar application, therefore, is commonly used only to apply minor elements or to supplement the major elements.

Fertigation

This application of fertilisers is through the irrigation water. Nitrogen is the principle nutrient commonly used for this purpose. Potassium and highly soluble forms of zinc and iron can also be readily applied this way. When an element forms precipitate with another substance commonly found in the irrigation water, it is not advisable to use this method. Phosphorus and anhydrous ammonia may form a precipitate in water with high calcium and magnesium content. So they are not used in fertigation. Normally, this system is used through drip irrigation, and liquid fertilisers containing all three major nutrients are normally used."

36. When plant nutrients are applied by foliar application, smaller quantities of fertilizer materials are required when compared to application through the soil. Upon foliar application of the macronutrient fertilizer, the nutrients enter the leaves through the stomata, correct the disorders, and improve the yield and quality of the produce. Urea is generally suitable for foliar application owing to its high solubility, ease, and quick absorption by the plant tissue.

37. It is an undisputed fact that plants absorb nutrients through their roots or foliage. Generally, in situations where soil conditions are not favorable, it is desirable to make foliar applications of the plant nutrients.

38. It is also important to notice that plant growth regulators are also used for soil and foliar applications. The EU Explanatory Note to ETI 3808 93 90 makes it aptly clear that the plant growth regulators can be applied to the whole plant or parts of the plant or to the soil.

39. Thus, the test based on mode of application would not be a correct test.

40. It now needs to be examined whether the two products, namely, Siapton 10L and Isabion are fertilizers or plant growth regulators.

41. P.I. Industries has stated that the product Siapton 10L has amino acids alone. It has clarified that 54% of the product is pure amino acids and the remaining ingredients are peptides and micronutrients, which are short chain

amino acids. Dr. R. Uma Shankar in his opinion dated 08.01.2013 has confirmed that amino acids and peptides can be regarded as bio-stimulants and should be treated as organic nutrients or organic fertilizers and not as classical plant growth regulators. Isagro SPA, Italy which supplied the product to P.I. Industries has specifically stated that Siapton 10L is a product based on organic nitrogenous compounds (amino acids and peptides) and so should be considered as nitrogen based fertilizer with nitrogen in organic form only, incorporated in amino acids and peptides. It has also stated that Siapton 10L is not a plant growth regulator as it does not modify or control or alter any physiological process.

42. According to Agro Pack, Isabion is an organic plant fertilizer, which is also referred to as a bio-stimulant, and consists of a mixture of amino acids and peptides (hydrolyzed protein). SICIT, the company which supplied Isabion to Syngenta in bulk, has also in its communication dated 28.08.2012 stated that Isabion is an organic bio-stimulant and contains a well balanced and optimal ratio between short chain peptides, long chain peptides and free amino acids. The product label of Isabion also mentions that Isabion contains a well balanced and optimal ratio between short chain peptides, long chain peptides and free amino acids.

43. According to Agro Pack, the Chemical Examiner of Central Excise and Customs Laboratory reported that Isabion contains nitrogen, potassium and phosphorous, which according to Agro Pack provide nutrient to the recipient plant. An analytical report submitted by Syngenta concludes that Isabion contains 58% free amino acid with nitrogen, phosphorus and potassium content as 11.24%, 00.37% and 0.041%, respectively. These two reports demonstrate the presence of macro-nutrients.

44. It cannot be doubted that both Siapton 10L and Isabion are biostimulants, and indeed the Commissioner has also found as a fact that both these products are bio-stimulants.

45. Bio-stimulants are fertilizers which influence the growth, yield and quality of plants by providing essential nutrients. The Ministry of Agriculture also considers "bio-stimulants" as "fertilizer", and hence, requires compliance of the Fertiliser (Inorganic, Organic or Mixed) (Control) Order, 1985. In this connection, it needs to be noted that "bio-stimulants", being a fertilizer, was brought under this Control Order by Order dated 23.02.2021 issued by Ministry of Agriculture and Farmers Welfare. The definition of "bio-stimulants" contained in the aforesaid Order excludes plant growth regulator, which have been stated to be regulated under the Insecticides Act, 1968. It is true that the aforesaid definition of "bio-stimulants" was included in the Fertilizer Order by Order dated 23.02.2021 of the Ministry, but as the Ministry has clearly expressed that bio-stimulants would exclude plant growth regulators, the definition would certainly provide guidance.

46. Fertilizers and plant growth regulators are both used in agriculture but serve different purposes. Fertilizers are substances added to the soil or plants to provide essential nutrients like nitrogen, phosphorus, and potassium that plants need to grow. They enhance soil fertility and promote plant growth by providing the necessary elements for healthy development. On the other hand, plant growth regulators are chemicals that influence plant growth and development by affecting physiological processes like cell division, elongation, and differentiation. They can regulate plant growth by promoting or inhibiting certain functions such as flowering, fruit setting, and root development. In a nutshell, fertilizers provide essential nutrients for plant growth, while plant growth regulators control specific aspects of plant growth and development.

44. Fertilizers are categorized based on the primary nutrients they provide:

(a) **Macronutrients:** These are required in large quantities by plants and include nitrogen, phosphorus, and potassium. They are essential for plant growth, photosynthesis, and overall health.

(b) **Micronutrients:** These are needed in smaller amounts but are equally crucial for plant growth. Examples include iron, zinc, copper, and manganese.

45. Fertilizers can be organic (derived from natural sources) or inorganic (manufactured chemically). They come in different forms like granular or liquid, catering to specific plant needs.

46. Plant growth regulators, on the other hand, are chemicals that control plant growth processes. They are classified into different groups:

(i) **Auxins:** These promote cell elongation, root development, and apical dominance.

(ii) **Cytokinins:** They stimulate cell division and promote lateral bud growth.

(iii) **Gibberellins:** These regulate stem elongation, seed germination, and flowering.

(iv) **Abscisic Acid:** It influences seed dormancy, drought tolerance, and stomatal closure.

(v) **Ethylene:** It affects fruit ripening, flowering, and response to stress.

47. Plant growth regulators are used in specific concentrations to manipulate plant growth responses, such as controlling fruit ripening, promoting flowering, or preventing premature shedding of fruits.

48. It can, therefore, be said that fertilizers provide essential nutrients for plant growth and health, while plant growth regulators are chemicals that influence specific aspects of plant growth and development by regulating physiological processes. Both are vital tools in modern agriculture to optimize plant growth and maximize crop yields.

49. The following four aspects would demonstrate the distinction between fertilizers and plant growth regulators.

Purpose

(i) Fertilizers primarily provide essential nutrients to plants, aiding in their growth, development, and overall health. They ensure that plants have an adequate supply of nutrients for optimal performance.

(ii) Plant growth regulators, on the other hand, influence and control specific physiological processes within plants, such as growth patterns, flowering, fruit development, and response to environmental stimuli.

Mode of Action

(i) Fertilizers work by supplying nutrients directly to the soil or plants, which are then absorbed by the roots and utilized for various metabolic processes within the plant.

(ii) Plant growth regulators function by interacting with plant hormones and signaling pathways, altering gene expression, and ultimately modifying plant growth patterns and responses.

Application

(i) Fertilizers are applied to ensure a consistent supply of nutrients throughout the growing season. They can be applied before planting, during growth stages, or as a foliar spray.

(ii) Plant growth regulators are applied in specific concentrations and at precise timings to elicit desired responses in plants. They are used to manipulate plant growth processes at critical stages of development.

Effects

(i) Fertilizers enhance overall plant growth, increase crop yield, improve nutrient uptake, and support healthy plant development.

(ii) Plant growth regulators can induce specific responses in plants, such as promoting flowering, delaying senescence, improving fruit quality, or enhancing stress tolerance.

50. The two products, namely, Siapton 10L and Isabion merely provide nutrients to the plant. They do not alter the physiological processes in a desired direction. In other words, the amino acids and the nitrogen present help in cell building exercise, and thereby, help the plant grow using the nutrients (nitrogen, phosphorus and potassium). Therefore, the two products Siapton 10L and Isabion are in the nature of fertilizers (bio-stimulants) and not plant growth regulators.

51. The aforesaid discussion leads to the inevitable conclusion that the Division Bench, while referring the matter to the Larger Bench, was not justified in distinguishing the earlier decision of the Tribunal in Northern Minerals. The two products, namely, Siapton 10L and Isabion deserves classification as fertilizers under ETI 3101 00 99 and not as plant growth regulators under ETI 3808 93 40.

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."

In view of the above larger bench judgment in these very cases the goods in question namely "Siapton 10L and Isabion" are correctly classifiable under Central Excise Tariff Item No. 31010099 and the same is not falling under Central Excise Tariff Item No. 38089340. As per above settled legal position in the present case, the impugned orders are not sustainable.

5. Accordingly, the impugned orders are set aside. Appeals are allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 05.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)