

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

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

Central Excise Appeal No.2073 of 2010-DB

*(Arising out of Order-in-Original No.6/2010-Commr.
Dated 21.04.2010 passed by the Commissioner of
Central Excise, Belgaum.)*

**M/s. RIDDHI SIDDHI GLUCO
BIOLS LIMITED**

Unit-II,
Gokak Falls Road,
GOKAK – 591 307.

Appellant(s)

Versus

**The Commissioner of Central
Excise and Customs**

No.71, Club Road,
Belgaum – 590 001.

Respondent(s)

Appearance:

Mr. Nagaraja. N, Consultant

For the Appellant

Mr. K. A. Jathin,
Dy. Com. (AR)

For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No.20584/2023

Date of Hearing: 19/06/2023

Date of Decision: 19/06/2023

Per : Dr. D.M. MISRA

This appeal is filed against Order-in-Original No.6/2010-Commr. Passed by the Commissioner of Central Excise and Customs, Belgaum.

2. Briefly stated the facts of the case are that the appellants have been issued periodical show-cause notices commencing from 1.4.1998 onwards and the present appeal relates to the period March 2009 to October 2009, alleging classification of the goods viz., Maize Starch Powder [MSP] (Thin Boiled Starch), MSP (Very Thin Boiled Starch), MSP (Regular Textiles) and MSP (Regular Pharma) under Chapter Tariff Heading (CTH) 35051090, whereas the assessee claims its classification under CTH 11081200 of the Central Excise Tariff Act, 1985. The demand notices have been periodically confirmed. Aggrieved by the same, the appellant preferred appeals before this Tribunal. This Tribunal has decided the issue in favour of the appellant recording the reason in its first Order dated 5.4.2011. This Tribunal in paragraph 7.6 has observed as follows:

***“7.6** We find that native starch of Chapter Heading 11 and modified starch of Chapter Heading 3505 are different in its physical and chemical properties as reflected in the explanatory notes to HSN, the encyclopedia relied on and the expert opinions. As the Commissioner had relied on the opinion of the departmental expert, it was necessary that he also critically examined the expert opinions furnished by the assessee to support its case. It was open to the Commissioner to examine the experts before he arrived at a finding against the assessee and relying only on a similar opinion of the Chemical Examiner who also had not studied the actual process of manufacture followed by the assessee or determined the properties of the impugned goods by testing samples. In our considered opinion, the impugned order is not sustainable, for the reason that the important conclusion on the classification was solely based on the personal knowledge and opinion of a departmental expert not supported by empirical test of the relevant values/properties that would justify classification of the products in dispute under CH 3505 as modified starch. We note that the Commissioner held “that it is not necessary to allow any cross-examination of the so-called experts and authorities of the numerous institutions being referred to by the assessee”. We hold that it was necessary and appropriate that the Commissioner examined experts himself before deciding the classification*

based on the opinion of the Chemical Examiner. Though the results of tests conducted by the Chemical Examiner could be preferred over results of such tests conducted by private agencies, personal opinion of the Chemical Examiner without studying the process of manufacture followed or carrying out chemical test as prescribed cannot form safe and reliable basis for deciding classification. In the circumstances, we find that the Commissioner's conclusions are not substantiated with evidence or proper reasoning. In these circumstances, we set aside the impugned orders and allow these appeals."

3. The said order has been successively followed later by this Tribunal and the last order was passed on 17.02.2022; while passing the order, the Tribunal took note of the fact that the first order of this Tribunal was challenged by the Department and is pending before the Hon'ble Supreme Court.

4. We find that while deciding the classification this Tribunal recorded detailed reason in arriving at the conclusion and we do not see any reason to deviate from the said findings.

5. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law. Appeal is allowed.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)