

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

Regional Bench COURT-2

Customs Appeal No. 26443 of 2013

[Arising out of the Order-in-Original No. 01/2013 dated
27.02.2013 passed by the Commissioner of Customs,
Mangalore]

**M/s. Mangalore Chemicals and
Fertilizers Ltd.,**
Panambur, Mangalore
Karnataka - 575010

.....Appellant

VERSUS

**Commissioner of Customs,
Mangalore**
New Custom House, Panambur
Mangalore, Karnataka -575010,

.....Respondent

Appearance:

Ms. Rohan Karia, Advocate for the Appellant
Mr. K.A.Jathin, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20664 of 2024

Date Of Hearing: 18.01.2024

Date Of Decision: 16.07.2024

Per: P.A. Augustian

The issue in the present appeal is whether the goods imported by the Appellant are falling under the category of "Potassium Nitrate" as "Mineral or Chemical Fertilizers containing

2 or 3 of the fertilizing elements nitrogen, phosphorous and potassium” under Customs Tariff Heading (CTH) 3105 9010 as declared or classifiable under CTH 2834 2100 as “separate chemically defined compound”, with the benefit of Notification 21/2002-Cus dated 01.03.2002 at Sl. No. 110 available to goods classifiable under Chapter Heading 31 “potassium nitrates, in a form indicative of its use for manurial purpose”

2. Appellant had imported the goods and filed two Bills of Entry declaring the goods as ‘Potassium Nitrate’ under CTH 3105 90 10 and paid duty claiming the concession rate of Basic Customs Duty (BCD), Counter Veiling Duty (CVD) and Special Additional Duty under Notification Nos. 21/2002-Cus dated 01.03.2002, 4/2006-CE dated 01.03.2006 and 20/2006-Cus dated 01.03.2006. Thereafter, Post Clearance Audit was conducted and it is alleged that the goods imported by the Appellant are classifiable as separate chemically defined compound and thereby liable to pay differential duty of Rs. 90,60,378/- with interest. The allegations were made on the ground that ‘Potassium Nitrite’ is not of fertilizer grade and it is not in a form indicative of its use for manurial purpose. The Adjudication Authority confirmed the demand vide impugned order dated 27.02.2013.

3. Aggrieved by the said order, an appeal was filed before this Tribunal and this Tribunal allowed stay petition on 12.12.2013 observing, *inter alia* that just because in the Bill of Entry the percentage of Nitrogen and Potash was not indicated,

it cannot be concluded that what is imported is not Potassium Nitrate, Fertilizer grade.

4. When the appeal came up for hearing, Learned Counsel for the Appellant drew our attention to the Show Cause Notice, where it is stated that

"The said bills of entry were selected for post clearance audit. During the post clearance audit it is noticed that the concession as per notification 21/2002 Cus dated 01.03.2002(SI No 110) was available only to

- i) The product classifiable under chapter 31 and*
- ii) 'Potassium nitrate, in a form indicative of its use for manurial purpose'*

On verification of the Bills of entry and the documents submitted along with the Bills of entry such as invoices, packing lists, certificate of origin and Bill of landings, it is noticed that the description of the imported item was potassium nitrate only and there is no evidence to show that the imported item was 'mineral or chemical fertiliser'. At the time of import, the importer has not proved with documentary evidence that the imported potassium nitrate was in the form indicative of its use for manurial purpose in order to avail the benefit of the notification no. 21/2002- Cus, SI no. 110."

5. The Learned Counsel also drew our attention to the relevant Paragraph of the Show Cause Notice, where it is stated that from the above it is evident that 'Potassium Nitrite' imported is not of a fertiliser grade and it is not imported in a form indicative of its use for manurial purpose.

6. The Learned Counsel drew our attention to the e-mail communication dated 20.10.2011, where it is specifically

mentioned that the product is Potassium Nitrate imported by the appellant and specification of goods is as per Indian Fertilizer (Control) Order, 1985. The sale order also reflects the details of the product and Learned Counsel also drew our attention to the invoices, quality certificate issued by Overseas Agencies. The Learned Counsel also drew our attention to the analysis report issued by the Regional Fertilizer (Control) Lab, Mumbai and submits that the composition of the material imported by the Appellant clearly matched with the specifications issued by Fertilizer (Control) Order, 1985. The Learned Counsel also drew attention to the description of the CTH 2834 and CTH 3105 of the Custom Tariff Act, HSN Explanatory Notes to chapter 28 and CTH 3105, Sl. No. 110 of Notification No. 21/2002 dated 01.03.2002, the Fertilizer (Control) Order, 1985., etc. The Learned Counsel further submits that the 'Potassium Nitrate' imported by the appellant, containing deliberately added substances, viz Sodium and Chlorine as to enable Potassium Nitrate to be used for the specific end use (Fertilizer). Hence, it cannot be considered as 'specifically defined compound' and to exclude it from chapter 31 by virtue of Note 1(b) to chapter 31.

7. The Learned Counsel also submits that the Appellant had imported the goods and it is used for fertilizer only and the end use declaration was furnished to the Customs Authority to the effect that imported material is used as fertilizer. The Learned Counsel also drew our attention to the End use certificate. The Learned Counsel for the Appellant also drew our attention to the certificate issued by the General Manager Marketing specifying

the details of 'Potassium Nitrate' as fertilizer under Fertilizer (Control) Order 1985.

8. The Learned Counsel further submits that the issue is considered by the Tribunal in the matter of **M/s Assam Company Ltd. Vs. Commr. Of Customs (2001 (133) ELT 110 (Tri-Calcutta)** and it is held that;

6.3. *"We also note that the appellant's enquiry with their foreign supplier was for Potassium Nitrate Agricultural Grade Fertilizer. The proforma invoice describes the goods as Potassium Nitrate Prilled Grade 13-0-45. Certificates produced by Belgian Ministry of Agriculture in respect of the goods in question also show the same to be of Grade 13-0-45 Prilled and to be used as fertilizer. We find that Potassium Nitrate of Grade 13-0-45 Prilled has been mentioned in the Fertilizer (Control) Order. This fact establishes that the goods imported by the appellant are essential fertilizer and not Potassium Nitrate simpliciter, as a separately defined chemical compound. We may here observe that the prime factor required to be decided is as to whether the goods imported by the appellants are Potassium Nitrate in the shape of separate chemically defined compounds or the same, by presence of Sodium and Chlorine, has been converted into a fertilizer. We agree with the submission of the learned JDR that if the Potassium Nitrate, as a separate chemically*

defined compound, has been imported by the appellant, then the fact that the same has been used as fertilizer will not take it away from Chapter 28 and put the same under Chapter 28 inasmuch as Chapter 28 specifically mentions Potassium Nitrate. But as already discussed, the goods imported by the appellants are not Potassium Nitrate as a separate chemically defined compound, but are fertilizer, as evident from the various evidences produced and discussed. Accordingly, we hold that the Potassium Nitrate Grade 13-0-45 Prilled imported by the appellant, is properly classifiable under Chapter 31”.

9. Learned Authorised Representative (AR) for the Revenue submitted that the imported 'Potassium Nitrate' is not of fertilizer grade and is not in a form indicative of its use for manurial purpose. It is a separate chemically defined compound which is excluded from Chapter 31 as per Chapter Notes 2(a), 3(a), 4(a) and 5 of Chapter 31. Further, as per Explanatory Notes to heading 3105, chemically defined compounds such as 'Potassium Nitrate' not specified in headings 31.02 to 31.04 are excluded from heading 31.05. In view of the above, the imported item is classifiable under heading 28.34.

10. Learned Authorised Representative (AR) for the Revenue drew our attention to the following finding in the Impugned Order;

"38. Since Potassium Nitrate is not answering to the descriptions in Note 2(a), 3(a), 4(a) or 5 of Chapter 31, it is not covered by Chapter 31. As the imported goods is not at all covered by Chapter 31, the question of classifying the goods under chapter heading 3105 of the same chapter in terms of Note 6 to Chapter 31 does not arise. Therefore, the plea taken by the importer on the strength of Note 6 to Chapter 31 that Potassium Nitrate merits classification under heading 3105 as "other fertilizer" cannot be considered.

39. Another contention of the importer is that Potassium Nitrate imported by them is sold and used as fertilizer only and that end use declaration was furnished to the Customs authorities to the effect that the imported material is to be used as fertilizers. In this regard, I refer to General Explanatory Notes to Harmonised Commodity Description & Coding System for the Chapter Heading 3105, wherein chemically defined compounds such as Potassium Nitrate are specifically excluded from the heading 3105 even if they could be used as fertilizers. As regards this, the importer contests that the said exclusion applies only to chemically defined compound and not to the goods imported by them which is a fertilizer containing 45.38% Potash and 13.08% Nitrogen. But this submission is not acceptable in view of my findings that imported Potassium Nitrate is a separate chemically defined compound. Therefore, end-use of the goods as fertilizer claimed by the importer and also their claim that Potassium Nitrate is most widely used salt in agriculture is not relevant in view of the said Explanatory Notes and so imported goods can be classified only under CTH 2834 and not under CTH 3105.

40. Another submission of the importer is that they are prohibited under Fertilizer (Control) order, 1985 (FCO) from selling imported Potassium Nitrate for purposes other than for use as fertilizer and that the authorities under FCO have not initiated any action against them for violation of the provisions of FCO and this in itself proves that the imported goods are used as fertilizer.

41. As regards this submission to the effect that there is no evidence to show that the goods have been diverted for purposes other than for use as fertilizer, the same is not relevant in view of the position that imported Potassium Nitrate being a chemically defined compound is classifiable under CTH 28342100 irrespective of its use as fertilizer."

11. Learned Authorised Representative (AR) submitted that the Appellant is not eligible for the benefit as claimed at the time of import and the finding given by the Adjudication Authority is sustainable.

12. Heard both sides and perused the records. The goods are imported with sufficient supporting documents and the objections were raised regarding the classification only at post Audit stage without any supporting documentary evidence regarding change of classification. Appellant had imported the goods and they are used as fertilizer only and the end use declaration was furnished to the Customs Authority to the effect that imported material is used as fertilizer. There is no finding to doubt the credibility of the said certificate to reject the declared classification. We also find as per the sales order placed by M/s. Mangalore Chemicals and Fertilizers on the supplier the item is

When dispute is raised, appellant produced certificate issued by the General Manager Marketing specifying the details of Potassium Nitrate as fertilizer under Fertilizer (Control) Order 1985. The issue is also covered by the decision of the Tribunal in the matter of **M/s Assam Company Ltd. Vs. Commr. Of Customs (Supra)**. The appellant has submitted the following comparison chart indicating the percentage composition of various constituents as per FCO specifications, in Assam Company Ltd., case and the impugned imported goods:

	TEST	FCO SPECIFICATIO N	SPECIFICTION S OF THE GOODS IN ASSAM COMPANY CASE	BILL OF ENTRY DATED 26.11.201 1	BILL OF ENTRY DATED 30.12.201 1
1	Total Nitroge n (all in nitrate form)	13.0% min.	13%	13.42%	13.42%
2	Water Soluble potash (as K20)	45.0% min.	37%	45.56%	45.56%
3	Sodium (as Na)	1.0% max.	0.5%	0.12%	0.12%
4	Total chloride (as CI)	1.5% max.	0.5%	0.09%	0.09%

13. We find that the composition of various constituents in the impugned goods are within the percentages as per the FCO and the Assam company Case. On appeal by the Revenue against the Order of the Tribunal, Hon’ble Apex Court has dismissed the appeal reported as Commissioner Vs. Assam Company Ltd. -

2002(146) ELT A218. Further, the case of the Assam Company Ltd was referred by the Tribunal in the following cases:

1. **Mahafeed Speciality Fertilizers (I) Pvt. Ltd. 2009 (237) E.L.T. 627 (Commr. Appl.)**
2. **Vardhaman Fertilizers & Seeds Pvt. Ltd. Vs. Commissioner Of Cus., Pune 2017 (345) E.L.T. 560 (Tri. - Mumbai)**
3. **C.C. (Import), Nhava Sheva Vs. Solufeed Plant Product & Services P. Ltd. 2018 (364) E.L.T. 999 (Tri. - Mumbai)**

14. Hence, the goods imported by the appellant are classifiable under Customs Tariff Heading (CTH) 31059010 and are eligible for concessional rate of duty under Notification Nos. 21/2002-Cus dated 01.03.2002, 4/2006-CE dated 01.03.2006 and 20/2006-Cus dated 01.03.2006.

15. In view of the above discussion and the considering the decisions of the Hon'ble Apex Court and Tribunals the appeal is allowed with consequential relief, if any in accordance with law.

(Order pronounced in open court on 16.07.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar