CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

BANGALORE

Regional Bench COURT-2.

Excise Appeal No. 1179 of 2010

[Arising out of the Order-in-Appeal No. 115/2010 dated 09.03.2010 passed by the Commissioner of Central Excise (Appeals-II) Bangalore.]

Multiplex Fertilizers Pvt., Ltd.
No. 180, 1st Main Road, Mahalakshmi Layout,
Bangalore, Karnataka – 560086 **.......Appellant**

VERSUS

Commissioner of Customs, Central Excise
P. B. No. 5400, Queens Road,
C. R. Building, Bangalore
Karnataka-560001 **..... Respondent**

WITH

(i) Excise Appeal No. 23457 of 2014

(Multiplex Fertilizers Pvt Ltd)

[Arising out of Order-in-Appeal No. 468/2014 dated 30.07.2014 passed by the Commissioner of Central Excise (Appeals-II) Bangalore]

(ii) Excise Appeal No. 23458 of 2014
(Mahesh Shetty Director)

[Arising out of Order-in-Appeal No. 470/2014 dated 30.07.2014 passed by Commissioner of Central Excise (Appeals-II) Bangalore]

(iii) Excise Appeal No. 20711 of 2015

(G. Mahesh Shetty)

[Arising out of Order-in-Appeal No. 469/2014-CE dated 31.07.2014 passed by Commissioner of Central Excise (Appeals-II) Bangalore.]

Appearance:

Mr. M.S. Nagaraja, Advocate for Appellant

Mr. Sanjay venkat, Authorized Representative for Respondent

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

FINAL ORDER Nos. 21373-21376 of 2025

Date of Hearing: 03.01.2025
Date of Decision: 02.07.2025

Per: P. A. Augustian

The issues in the present appeals are:-

i) whether the products manufactured/marketed by the Appellants are re-classifiable for demand of central excise duty;

ii) whether the demand of duty can be confirmed by invoking the extended period of limitation;

iii) whether personal penalties imposed under Rule 26 of the Central Excise Rules, 2002 are sustainable; and

iv) whether the Appellant is eligible for refund of the duty, interest and penalty paid after issue of first Order-in-Original.

2. The details of the appeals and the issues involved as submitted by the Appellant are tabulated below;

Sl. No	Appeal No	Impugned Order	Demand of duty with Interest and penalty
1	E/1179/2010 Filed by Multiplex Fertilizers Pvt.,Ltd.	OIA No 115/2010 dated 09.03.2010	Rejection of claim for refund of Rs. 32,89,915/- paid vide TR-6 Challan dated 17.07.2004; (i) Excise Duty - Rs. 16,28,724 (ii) Interest - Rs. 12,54,010 (iii) 25% of Penalty - Rs. 4,07,181 in terms of OIO No.JC/10/2014 dated 15.6.2004 for the period 1998 to March 2002. Consequent to setting aside of the demand by CESTAT vide Final Order dated 26.2.2007 in **Karnataka Agro Chemicals Vs .CCE (2007) (215) ELT 470 (Tri – Bangalore)**
2	E/23457/2014 Filed By Multiplex Fertilizers Pvt., Ltd.	OIA No 468/2014 dated 30.07.2014 In respect of OIO No 47/2009 dated 31.03.2010/ 13.04.2010 passed by the Additional Commissioner in De novo proceedings	De novo proceedings and demand of Excise Duty for period 1998–99 to 2001–02. Excise duty of Rs. 14,20,840/- with interest and Penalty of Rs. 14,20,840/- under Section 11 AC of Central Excise Act, 1944
3	E/23458/2014 Filed by Shri Mahesh G Shetty, Partner	OIA No 470/2014 dated 30.07.2014 rejecting the Appeal against imposition of personal penalty in OIONo.47/2009 dated31.03.2010/ 13.04.2010	Personal Penalty of Rs. 50,000/- imposed on Shri. Mahesh G Shetty, Partner under Rule 26 of CER, 2002

4	E/20711/2015 Filed by Shri Mahesh G Shetty, Partner	OIA No 469/2014- CE dated 31.07.2014 in Department's appeal arising from OIO No. 47/2009 dated 31.03.2010 for enhancement of penalty	Personal Penalty enhanced by CCE (A) to Rs. 4,50,000/-

3. As regards classification of the goods, Learned Counsel draws our attention to the details of the Final Order Nos. 341-347/2007 issued by this Tribunal in the present case in first stage of litigation in the matter of **Karnataka Agro Chemicals Vs. CCE, Bangalore - 2007 (215) ELT 470 (Tri. Bang)** wherein it has dealt with the Appeals filed by M/s. Multiplex Fertilizers Pvt., Ltd., separately and recorded findings in respect of 4(four) products stated to have been manufactured by the Appellant the relevant details pertaining the appellant as per the common Final Order No. 341-347/2002 dated 26.02.2007 are as under:

E/164 & 165/2005: M/s. Multiplex Fertilizers Pvt. Ltd. and Shri Mahesh G. Shetty

"7. The impugned product is Muliplex Multinol manufactured by the appellant. The appellants have contended that the impugned product is a Micronutrient Fertilizer containing Nitrogen. They have referred to the test report of the sample by Chemical Examiner which says that the product is composed of organic matter containing Nitrogen. However, in a Note appended to the Report, the Chemical Examiner has stated that from the literature supplied by manufacturer that the sample (Multinol) is 'manufactured from Rice bran, Potassium Hydroxide and Ethyl Alcohol'. Based on the above and laboratory findings, the sample is free from fertilizing elements Nitrogen, Phosphorous and Potassium. The test report is rather contradictory. The learned Advocate has pointed out that the above Test Report relates to samples drawn from M/s Karnataka Agro Chemicals and not from M/s Multiplex Fertilizers Pvt Ltd. He has drawn our attention to Annexure C and submits that Multiplex Multinol is mentioned at Sl. No. 5 under Group B. Against B, it is clearly mentioned that

the samples of the 14 products mentioned in the said group are drawn at the factory premises of M/s Karnataka Agro Chemicals. Even the test memo indicates that the samples are drawn at M/s Karnataka Agro Chemicals. The samples drawn at M/s Karnataka Agro Chemicals cannot be the basis for deciding the classification of the product manufactured by the appellant. On this ground alone, we cannot sustain the demand on Multiplex Multinol and its classification under CH 38.08 as 'Plant Growth Regulator'.

7.1 Further, the appellants have pointed out that the other products Multiplex Samras, Multiplex Sulphur and Multiplex Multilaxin are not manufactured by the appellants. They are only re-packed goods. In respect of Multiplex Samras, we have already decided in M/s Karnataka Agro Chemicals that the activity of repacking from tankers in to smaller packs does not amount to manufacture. Therefore, the demand on account of re-packing of Multiplex Samras is not sustainable.

7.2 It has been further pointed out that in respect of Multiplex Sulphur and Multiplex Multilaxin, the duty requires re-computation after extending the benefit of cum duty and Cenvat credit. We do not find that Revenue should have any objection in acceding to the request for extending cum duty benefit and Cenvat credit. The duty liability in respect of Multiplex Sulphur and Multiplex Multilaxin should be re-computed after giving the benefit of Cenvat credit and cum duty price."

4. The Learned Counsel submits that though the above Final Order was challenged by the Department before the Hon'ble Supreme Court along with the Order in the matter of **CCE Vs. M/s Karnataka Agro Chemicals-(2008) 227 ELT 12 (SC)** while remanding the matter, the Hon'ble Supreme Court made the following observations;-

"2. For the sake of convenience we reproduce herein below the facts as reproduced in the case of Commissioner of Central

Excise, Bangalore v. M/s. Karnataka Agro Chemicals [Civil Appeal Nos. 378-381 of 2008]

3. Respondent-assessee manufactures "multi micronutrients" for soil application and for foliar application. The Ministry of Agriculture has granted registration to the assessee's product(s) as "fertilizer" in terms of Section 2(h) of the Fertiliser (Control) Order.

4. By show cause notices dated 26-8-02, 25-2-03, 1-10-03 and 24-5-04, the Department alleged that the assessee had mis-declared that the impugned product (s) contained nitrogen and had cleared the same without payment of duty. According to the Department, the label on each of the products of the assesse indicated the composition of each of the several products. The label indicated the percentage of zinc, ferrous, manganese and boron (micronutrient elements). In the label there was no mention of N (nitrogen), P (phosphorus) or K (potassium). According to the show cause notices, the chemical analysis of the samples confirmed the fact that fertilizing elements N, P or K were not there in "micronutrient compounds" of the assesse. According to the show cause notices, the mixtures manufactured by the assesse did not contain N, P or K as essential constituents. That, in any event, N, P or K are not the essential constituents of the micronutrients. That, in the impugned product(s) there was no N, P or K as fertilizing element. That, addition of N, P or K was only a pretence to misdeclare their product(s). Therefore, the impugned product(s) were classifiable under CSH 3808 20 of the Central Excise Tariff.

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22. In the present case, the impugned product(s) is "multi micronutrient"………………

23. Therefore, the relevant question to be asked is: what is the method of manufacture of "multi micronutrient"? This question becomes relevant as the impugned product(s) is a mixture of *various inorganic substances. It is the "method of manufacture" which has a strong bearing on the question whether the product(s) needs to be classified under CSH 3808.20 or under CSH 3105.00. This aspect has not been examined by the Adjudicating Authority.*

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26. For the aforestated reasons, on the point of classification and not on the point of invocation of larger period (which is separately dealt with hereinafter) we set aside the impugned judgment dated 26-2-07 of CESTAT and remit the matter to the Adjudicating Authority for de novo determination of the said case in accordance with law.

27. On the question of invocation of extended period of limitation, we are in agreement with the view expressed by the Tribunal that the larger period of limitation was not invokable by the Department. As stated above, three Circulars have been issued by the Department. Till today, the controversy regarding the classification of "micronutrient fertilizers" was not settled. There is even a conflict of views between Ministry of Finance and Ministry of Agriculture. In the circumstances, question of invoking extended period of limitation does not arise. It is well-settled that mere non-declaration is not sufficient to invoke the larger period but some positive act of suppression is required for invoking larger period of limitation under Section 11A of the Central Excise Act, 1944 [See: Padmini Products v. Collector of Central Excise - 1989 (43) E.L.T. 195 (S.C.)]. Therefore, in the present case, there is no warrant to invoke larger period of limitation or to impose penalty and to that extent we uphold the order of the Tribunal.

28. Accordingly the civil appeals are partly allowed to the extent indicated above with no order as to costs.”

5. Thus as per the judgment of Hon’ble Supreme Court, the method of manufacture of 'multi micro nutrients' is relevant and it is a mixture

of various inorganic substances and the said finding is relevant only against the appeal filed against the Final Order of the Tribunal in the matter of M/s. Karnataka Agro Chemicals. In Appellant's own case, the Hon'ble Tribunal had recorded the finding that the samples of 'Multiplex. Multinol' drawn at M/s. Karnataka Agro Chemicals cannot be the basis for deciding the classification of the product manufactured by the appellant. On this ground alone, the demand on 'Multiplex-Multinol' and its classification under Central Excise Tariff Heading (CETH) 38.08 as 'Plant Growth Regulator' was set aside;

6. As regards remaining goods, Learned Counsel draws our attention to the Final order of the Tribunal dated 26.02.2007. and submits that while disposing the matter, this Tribunal observed that when M/s. Multiflex Fertilizers Pvt., Ltd., was admittedly manufacturing only 'Multiplex Multinol' and other products were only being repacked for retail sale, the direction of the Hon'ble Supreme Court on the method of "manufacture of Multi Micronutrient" has no applicability, Learned Counsel submits that the judgment of the Hon'ble Supreme Court has not made any reference to any of the facts or interfered with the finding given by this Tribunal in Appellant's own case. The Learned Counsel also draws our attention to the order issued by the Adjudication authority vide Order-in-Original No. 47/2009 dated 13.04.2010 whereas per paragraph 42, it is observed that the Adjudication Authority has recorded in the de novo Order dated 13.4.2010 as under:

> *"(i) Para 42 - the judgment of the Hon Supreme Court is common in respect of M/s Karnataka Agro Chemicals, its Directors, M/s Multiplex Fertilizers Pvt Ltd and its Managing Director; that the production or repacking/relabeling was stopped long back and hence it is construed that the directions of the Hon'ble Supreme Court are confined to M/s. Karnataka Agro Chemicals;*
>
> *(ii) Para 43-the Noticee was a manufacturer of only Multiplex Multinol and other items which were being repacked/relabeled were Multiplex Multilaxin, Multilplex Samras, and Multiplex Sulphur;*

(iii) Para 44 - the finding of the Hon Supreme Court in respect of Karnataka Agro Chemicals is recorded,

(iv) Para 46 - the Supreme Court has not given specific directions in this case, but refers to the directions in respect of Karnataka Agro Chemicals,"

7. Thus as regards classification of products of M/s. Multiplex Fertilizers, the finding with regard to classification of 'Multiplex Multinol' under CETH 3808.20 as 'Plant growth regulator(PGR)' and justification for accepting the Test Report of the Chemical Examiner, CRCL, Chennai in respect of the samples drawn at the factory premises of M/s. Karnataka Agro chemicals have already been considered and held as unsustainable by this Hon CESTAT in Final Order Nos. 341-347/2007, dated 26-2-2007 and the said order has become final and binding. Thus the de novo adjudication order dated 13.4.2010 on appellant is without jurisdiction, contrary to settled law and hence unsustainable. Notwithstanding the above, Learned counsel draws our attention to the Test Memo dated 01.11.2000 issued by the DD, DG of Anti-Evasion, Bangalore for sending samples to the Chemical Examiner, Customs Laboratory, Chennai. Thus the demand of duty on the 'multiplex multinol' is unsustainable, since the Hon’ble Supreme Court has not set aside the finding of this Tribunal.

8. As regards the demand of duty on 'multiplex samaras', 'multiplex Sulphur' and 'multiplex multilaxin', Learned Counsel submits that the demand of duty on the above products were set aside by this Tribunal in Appellant’s own case on the ground that the Appellant is only carrying out repacking of such goods from bulk packs to retail packs and as per the finding of this Tribunal the said activity is not amounting to manufacture, the finding given by the Adjudication/Appellate authorities regarding demand of duty on the ground of manufacturing of said products by the Appellant is prima facie unsustainable.

9. As regards invoking the extended period of limitation, in Appeal No. E/1179/2010, show cause notice was issued on 26.09.2003 proposing the demand of duty for the period from 01.09.1998 to

31.03.2002 by invoking the larger period of limitation. In this regard, the Learned Counsel draws our attention to the judgment of Hon'ble Supreme Court in the case of Karnataka Agro Chemicals (supra):-

> *"27. On the question of invocation of extended period of limitation, we are in agreement with the view expressed by the Tribunal that the larger period of limitation was not invokable by the Department. As stated above, three Circulars have been issued by the Department. Till today, the controversy regarding the classification of "micronutrient fertilizers" was not settled. There is even a conflict of views between Ministry of Finance and Ministry of Agriculture. In the circumstances, question of invoking extended period of limitation does not arise. It is well-settled that mere non-declaration is not sufficient to invoke the larger period but some positive act of suppression is required for invoking larger period of limitation under Section 11A of the Central Excise Act, 1944 [See: Padmini Products v. Collector of Central Excise - 1989 (43) E.L.T. 195 (S.C.)]. Therefore, in the present case, there is no warrant to invoke larger period of limitation or to impose penalty and to that extent we uphold the order of the Tribunal."*

10. Thereafter in Appeal, Hon'ble Supreme court also held that "there is no warrant to invoke larger period of limitation or to impose penalty and to that extent we uphold the order of the Tribunal". In appellant's case, Appellant was under bonafide belief that the products were classifiable as "Other Fertilizers" under CETH 31.05 attracting 'Nil' rate of duty. Appellants also relied on the judgment of the Hon Supreme Court in the case of Ranadey Nutrients Vs. CCE - 1996 (87) ELT 19 (SC) and submits that manufacturers of similar products were also following the same classification. There was no deliberate suppression of facts or contravention of the Central Excise Act, 1944 or the rules made thereunder with intention to evade payment of duty.

11. Further, the learned counsel for the Appellants rely on the following judgments:

(i) Sanjay Industrial Corporation Vs. CCE, Mumbai 2015 (318) ELT 15 (SC)

(ii) Kiran Ispat Udyog Vs. CCE, Rajkot - 2015 (321) ELT 182 (SC)

(iii) Jaiprakash Industries Ltd.. Vs. CCE, Chandigarh 2002 (146) ELT 481 (SC)

(iv) Larsen & Toubro Ltd Vs. CCE, Pune 2007 (211) ELT 513 (SC).

(v) Padmini Products Vs. Collector of Central Excise

12. As regards personal penalty, Learned Counsel submits that once the finding given by the Hon'ble Supreme Court for invoking the extended period of limitation and clarity regarding the classification of goods, imposing penalty for alleged wrong classification of the products manufactured by the manufacturer and imposing personal penalty is prima facie unsustainable. The Learned Counsel further submits that the personal penalty of Rs. 50,000/- imposed by the Adjudication authority vide Order-in-Original No. 47/2009 dated 13.04.2010 was enhanced by the Commissioner(Appeals) in Departmental appeal to Rs. 4,50,000/- vide Order-in-Appeal No.469/2014 dated 31.07.2014. Once the Tribunal and the Hon'ble Supreme Court has categorically held that invoking extended period of limitation and personal penalty are unsustainable, there is no reason or justification to impose personal penalty. Considering the same, the personal penalty is also unsustainable.

13. The Learned Counsel also draws our attention to Rule 26 of the Central Excise Rules, 2002 regarding penalty for certain offences and submits that as per Rule 26(1) of the Central Excise Rules, 2002 two ingredients are that (i) the person on whom the penalty is proposed to be to imposed, personally should have dealt with the excisable goods and (ii) the person has dealt with the excisable goods with knowledge or having reason to believe that the said goods are liable for confiscation. In the absence of order of confiscation of the goods, above said condition is not fulfilled and the personal penalty imposed is prima facie unsustainable.

14. As regards refund against Appeal No. E/1179/2010, Learned Counsel submits that an amount of Rs. 32,89,915/- was deposited under protest and as per the Order No. JC 10/2004 dated 15.06.2004 and Appellant is entitled for refund and the provision of unjust enrichment is not applicable in the said case, since it was paid under protest. Considering the same, the Appellant is entitled for refund with interest from the date of expiry of 3(three) months from the date of submission of refund claim on 26.07.2007 till the date of refund of the amount. In this regard the Learned Counsel relied on the following decisions of **Ranbaxy Laboratories Limited Vs. UOI - 2011 (273) ELT 3(SC) and UOI Vs. Hamdard (Waqf) Laboratories Limited - 2016 (333) ELT 193 (SC).** Learned Counsel also relied on the judgment of the Hon'ble High Court of Karnataka in the case of **CC, Airport and ACC Vs. Pfizer Products India Pvt Ltd-2015 (324) ELT 259 (Kar).**

15. The Learned Authorised Representative (AR) reiterated the finding in the impugned orders and submits that the contention of the Learned Counsel for the Appellant is prima facie unsustainable. Though this Tribunal had allowed the appeal, the Department has challenged the same and the Hon’ble Supreme Court partially allowed the appeal and set aside the orders with a specific direction regarding the classification of the products. Thus the entire finding of the Tribunal has to be considered as set aside by Hon’ble Supreme Court. Learned AR further submits that in terms of the Hon’ble Supreme Court orders mentioned supra, the denovo adjudication proceedings were taken up and the Adjudicating authority has passed the Order-in-Original No. 4/2009 dated 13.04.2010 wherein demand of duty on 'Multiplex Samras' has been excluded on the basis of the case in respect of M/s. Karnataka Agro Chemicals, wherein the demand on 'Muliplex Samaras' has been set aside as repacking from bulk containers to small ones does not amount to manufacture. In case of the other 3(three) items 'Multiplex Multinol', 'Multiplex Laxin' and 'Multiplex Sulphur' demand after giving the cum duty benefit had been worked out and duty demand of Rs.14,20,840/- was confirmed. Thus when duty is confirmed the

question of refund now becomes redundant. The said Order-in-Original No. 47/2009 dated 31.03.2010 has been appealed against before Commissioner (Appeals) which has decided vide Order-in-Appeal No. 468/2014-CE dated 30.07.2014, wherein the Commissioner (Appeals) has held that all the 3(three) brands are owned by M/s. Karnatak Agro Chemicals and that with respect to 'Multiplex Sulphur' and 'Mutilaxin' the appellants have not contested the issue before CESTAT and thereby accepted the dutiability of the same. It has been concluded that 'Multiplex Multionol' which was sold only to M/s. Karnataka Agro Chemicals and is classifiable under CETH 3802. Thus the Commissioner (Appeals) has rightly rejected the appeal of the appellant and upheld the Order-in-Original No. 47/2009 dated 31.03.2010. Learned AR further submits that the judgment of the Hon'ble Supreme Court has also been followed in the case of the group's other unit M/s. Karnataka Agro Chemicals and in the denovo proceedings, the classification of goods manufactured was confirmed as falling under CETH 3802 and the duty demanded accordingly vide Order-in-Original No. 06-17/2010 dated 31.03.2010. The company has appealed against the said order and this Tribunal vide order 22.12.2023 upheld the findings regarding classification under CETH 3802 as 'Plant Growth Regulators' not as 'fertilizers'.

16. As regarding invoking the extended period of limitation, Learned AR fairly admits that the issue has attained finality, since the Tribunal as well as the Hon'ble Supreme Court has set aside the order invoking extended period of limitation and penalty. As regards the finding of the first Appellate authority, the Learned AR submits that the department filed an appeal before the Commissioner (Appeals) on the ground that the authority has failed to examine the unjust enrichment aspect and also that the Department had preferred Civil Appeals before the Hon'ble Supreme Court against the CESTAT order dated 26.02.2007 and that the said order of CESTAT has been set aside by remanding the entire matter to the original authority by the Hon'ble Apex Court. Thus the said order of CESTAT cannot be enforced by allowing the refund. The Commissioner (Appeals) has noticed that the Hon'ble Supreme Court

has referred back the case to the original adjudicating authority on 15.05.2008 to decide the classification of the products in dispute. In such a situation, the order of this Tribunal and Commissioner (Appeals) cannot be enforced as the issue of classification has not attained finality. Thus the Commissioner (Appeals) rightly allowed the department appeal and rejected the order sanctioning refund.

17. Heard both sides and perused the records.

18. As regards the submissions on the doctrine of merger, we find that Hon'ble Supreme Court in the matter of **Kunhayammed Vs. State of Kerala - 2011 (129) E.L.T 11 (S.C.)** held that:-

> *"44(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter."*

19. Similarly, in the matter of **M/s Citizen Watch Company Vs. Inspecting Assistant Commissioner (IAC) [1983] 15 Taxman 438/[1948] 148 ITR 774 (Kar.)** it was held that:-

> *"19. What was challenged in appeals, and dealt by the appellate authority, was only a specific part of the order of the ITO. When that is so, there would be a merger only to the extent that was challenged and decided by the appellate authority and not the other portions of the orders that are challenged only before this court. The incongruity in the proceedings, assuming there is any such incongruity, cannot and does not result in the merger of the*

> *orders of the ITO that are expressly challenged in these writ petitions and were not challenged in appeals before the Commissioner. On any legal principle it is difficult to hold that the orders made by the ITO to the extent they are challenged in these petitions and were not challenged before the Commissioner had merged in the order of the Commissioner".*

20. Thus as regarding classification, this Tribunal in Appellant's own case held that when samples of 'multiplex Multinol' was drawn at M/s. Karnataka Agro Chemicals, the same cannot be the basis for deciding the classification of the product manufactured by the appellant. As regards demand of duty on 'multiplex samaras', 'multiplex Sulphur' and 'multiplex multilaxin', the demand of duty on the above products were set aside by this Tribunal in Appellant's case on the ground that the Appellant is only carrying out repacking of such goods from bulk packs to retail packs and as per the finding of this Tribunal the said activity is not amounting to manufacture. However, the said findings of this Tribunal were not set aside by Hon'ble Supreme Court and in the absence of any finding, there would be a merger only to the extent that was challenged and decided by the appellate authority and not the other portions of the finding given by this Tribunal. The incongruity in the proceedings, assuming that there is any such incongruity, cannot and does not result in the merger of the orders of this Tribunal that are not expressly challenged. Thus the demand on the product 'Multiplex Multinol' and its classification under CETH 38.08 as 'Plant Growth Regulator' is unsustainble. When M/s. Multiplex Fertilizers Pvt., Ltd., was admittedly manufacturing only 'Multiplex Multinol' and other products were only being repacked for retail sale, the direction of the Hon'ble Supreme Court on the process/method of "manufacture of Multi Micronutrient" has no applicability. As regards the contention of the learned AR that in denovo proceedings, the classification of goods manufactured by M/s. Karnataka Agro Chemicals and acceptance of its classification by M/s. Karnataka Agro Chemicals is not a reason to uphold the classification issue against the appellant since the reason

given by this Tribunal in previous proceeding is entirely different from the finding in the other matter.

21. Facts being so, we find that in the absence of any admissible evidence regarding method of production as directed by Hon'ble Supreme Court and also considering the clear finding given by this Tribunal in Appellant's own case in first round of litigation, rule of merger is not applicable in the present case hence the impugned order is unsustainable. As regarding invoking the extended period of limitation and penalty, since the issue regarding invoking of extended period of limitation and penalty has attained finality as per the order of this Tribunal as well as the Hon'ble Supreme Court, demand by invoking extended period of limitation and penalty are unsustainable.

22. In view of the above discussion, impugned orders in Appeal Nos. E/1179/2010, 23457/2014, 23458/2014 and 20711/2015 confirming demand of duty and imposing penalty are set aside. As regarding refund claim in Appeal No. E/1179/2010, since it is rejected only on the ground of unjust enrichment and considering the fact that said amount was paid by the Appellant under protest, invoking the provision of Section 11B is unsustainable and the impugned order is liable to be set aside and accordingly is set aside.

23. In view of the above discussion the appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 02.07.2025.)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar