

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 56049 of 2013

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

M/s Crop Chemicals India Ltd

.....Appellant

Unit II, Industrial Growth Centre, Samba Jammu J and
K

VERSUS

**Commissioner of Central Excise, ...Respondent
Chadigarh-II**

Central Revenue Building, plot No. 19, Sector 17,
Chandigarh 160017

WITH

**(2) Excise Appeal No. 56050 of 2013 M/s Crop Chemicals
India Ltd**

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

**(3) Excise Appeal No. 56051 of 2013 M/s Crop Chemicals
India Ltd**

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

**(4) Excise Appeal No. 56052 of 2013 M/s Crop Chemicals
India Ltd**

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

**(5) Excise Appeal No. 56053 of 2013 M/s Crop Chemicals
India Ltd**

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

**(6) Excise Appeal No. 56054 of 2013 M/s Crop Chemicals
India Ltd**

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

**(7) Excise Appeal No. 56055 of 2013 M/s Crop Chemicals
India Ltd**

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

(8) Excise Appeal No. 56056 of 2013 M/s Crop Chemicals India Ltd

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

(9) Excise Appeal No. 56057 of 2013 M/s Crop Chemicals India Ltd

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

(10) Excise Appeal No. 56058 of 2013 M/s Crop Chemicals India Ltd

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

(11) Excise Appeal No. 56059 of 2013 M/s Crop Chemicals India Ltd

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

(12) Excise Appeal No. 56060 of 2013 M/s Crop Chemicals India Ltd

[Arising out of Order-in-Appeal No. 171-182/CE/APPL/CHD-II (J&k) 2012 dated 26.11.2012 passed by the Commissioner (Appeals), Chandigarh]

APPEARANCE:

Present for the Appellant: Shri Sudeep Singh Bhangoo, Advocate

Present for the Respondent: Shri Shivam Syal, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60382 - 60393/2024

DATE OF HEARING: 26.06.2024

DATE OF DECISION: 28.06.2024

PER P.ANJANI KUMAR

The appellants, M/s Crop Chemicals India Pvt Ltd, filed 12 refund claims during the period 09/2008 to 09/2011; Department rejected part of the refund claim on account of Education Cess/Secondary and Higher Education Cess and on then issue of classification of one the products namely, Triacntanol, which the

appellants classified under Chapter 38 (3808.30/3808.20) as plant growth regulators (PGP); the Original Authority classified the product as plant growth promoter (PGP) on appeals filed by the appellant commissioner (Appeals) vide impugned orders held that the impugned product Triaccontanol was neither a plant growth regulator (PGR) nor a plant growth promoter (PGP) but was an insecticide classifiable under CETH 380810, as held by the Tribunal in the case of Bahar Agro Chem and Seeds Pvt Ltd vs. CCE, Pune-2012 (277) ELT 382; Ld. Commissioner (Appeals) held that though the appropriate action could be to remand the matter to the Original adjudicating authority with a direction to classify the product as insecticide, He (Commissioner Appeals) has no power to remand; accordingly, he rejected the claim of the appellant. Hence, these appeals.

2. Shri Sudeep Singh Bhangoo, Ld. Counsel for the appellants submits that the first appellate authority has erred in rejecting the refund claim even though he came to the conclusion that the impugned product is classifiable as insecticide under CETH 3808.10, which is chargeable to duty; he should have allowed the refund as applicable to the classification arrived at; the case needs to be remanded back to the original authority for working out the refund amount in terms of notification No. 56/2002-CE; the Department cannot retain the duty paid on Triaccontanol. He relies on the following cases:

- Commissioner of Central Excise, Jammu Vs. M/s Ravi Crop Science – 2013-TIOL- 2442-CESTAT-New Delhi-central Excise.

- Commissioner of Central Excise, Jammu Vs. M/s Sudershan Consolidated Ltd. – 2013- TIOL-2446-CESTAT-New Delhi-Central Excise.
- Godrej Agrovat Ltd. Vs. CCE, Jammu and Kashmir 61970-61976/2018.

3. Shri Shivam Syal Ltd. Authorised Representative reiterates the findings of OIO and OIA and submits that the matter may be remanded to the original authority on the issue of classification, as the classification arrived at by the Commissioner (Appeals) was not as subject matter before the original authority; it may also be remanded for quantification of the refund amount. He relies on the Final Order No. FO/57954-57970/2013 dated 08.10.2013 passed by the Delhi Bench in the case of M/s Godrej Agrovat Ltd Vs. Commissioner of Central Excise, Jammu.

4. Heard Both side and perused the record of the case.

5. We find that the brief issues involved in the case are as to whether the case requires to be remanded back to the original authority to decide the classification and to requantify the amount of refund accordingly and as to whether the appellants are eligible for the refund of Education Cess/Secondary and Higher Education Cess. Coming to the second issue of eligibility of refund of Education Cess/Secondary and Higher Education Cess, we find that the issue is no long res integra. Hon'ble Supreme Court of India held in the case of **Unicorn Industries Vs. UOI-2019 (370) ELT 3 (SC)** that the appellants, operating under area based exemption notification, are

not eligible for refund of Education Cess/Secondary and Higher Education Cess.

6. We find that while the original dispute in the matter was the classification of Triacontanol and the dispute was whether the same was a plant growth regulator or a plant growth promotor. We find that Commissioner (Appeals) relied upon the decision of Tribunal in the case of ***Bahar Agro Chem and Seeds Pvt Ltd vs. CCE, Pune-2012 (277) ELT 382***. We find that the Tribunal held that :

7.6 *In all the literature and labels relating to the product, the appellant has declared the product to be a Plant Growth Promoter and not as a Plant Growth Regulator. There is a substantial difference between a Plant Growth Promoter on the one hand and Plant Growth Regulator on the other. In the case of Northern Minerals Ltd. v. C.C.E., New Delhi - [2001 \(131\) E.L.T. 355](#) (Tri.-Del), this Tribunal had occasion to examine the difference between a Plant Growth Promoter and a Plant Growth Regulator. The Tribunal observed in the said case that Plant Growth Regulator is a natural or synthetic compound, other than nutrients, which can inhibit, promote or otherwise alter physiological processes in plants, whereas a plant growth promoter only promotes plant growth and would not inhibit it. Accordingly, they held that a plant growth promoter cannot be considered as a plant growth regulator. The said conclusion was derived by this Tribunal based on the HSN explanatory notes and also based on the technical literature on the subject, namely, Kirk-Othmer "Encyclopedia of Chemical Technology", Plant Physiology by Robert M Devlin & Francis H. Witham and J.C. Johnson's Plant Growth Regulators and Herbicide Antagonists - Recent Advances". Based on the technical literature and the HSN explanatory notes, this Tribunal held that plant growth promoter and plant growth regulator are distinct and different and they cannot be classified under the same heading in the Central Excise tariff. The said decision of the Tribunal was also upheld by the*

Apex Court in the same case reported in [2003 \(156\) E.L.T. A161](#) (S.C.). In the labels affixed on the product and the various affidavits submitted by the appellant, it is clear that the product Vipul Booster is used as a plant growth promoter. Therefore, it is distinct and different from the plant growth regulator specified in the Central Excise tariff falling under heading 3808.20 and, therefore, the appellant's claim that their product has to be categorized as "plant growth regulator" does not have much force or merit.

7.7 There is also a claim that Vipul Booster, which contains Triacntanol as the active ingredient cannot kill insecticides or pests and, hence, cannot be classified as an insecticide. There is no requirement in the excise tariff that an insecticide should necessarily kill. In the Aero Industries case reported in [2006 \(204\) E.L.T. 61](#) (Tri.-Mum), this Tribunal had held that there cannot be any distinction between insecticides that kill and insecticides that repel but does not kill. In the said case, the issue related to classification of a product wherein the active ingredient was allethrin 0.5% which is an insecticide) and it was held that the product is an insecticide. So this claim has no relevance or bearing for classification of the product as an insecticide.

7.8 It is an admitted fact that Triacntanol has been notified as an insecticide and all the procedures prescribed under the Insecticide Act, 1968 and Rules made there under are applicable not only to Triacntanol but also to the preparations containing Triacntanol and the appellant has been complying with those provisions of the Insecticides Act, 1968. Section 38 of the Insecticide Act specifically provides that the provisions of said Act will not apply to any substance specified or included in the schedule or preparation containing any one or more substances, if such substance or preparation is intended for the purpose other than preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds and other forms of plant or animal life not useful to human beings. If the appellant's contention is that Vipul Booster is not used or capable of being used as an insecticide, they could have claimed exemption under Section 38 of the

Insecticides Act and they need not have followed any of the procedures prescribed under the said Act or the Rules made there under. However, they have not exercised this option available under the law. This clearly shows that the appellants, by their very conduct, have agreed that their product is an insecticide coming within the purview of the Insecticides Act. If they did not want to market their product as an insecticide at all they should have sought exemption under Section 38 of the said Act rather than following the procedures, such as, registration, labeling, packing, providing statutory warning, etc. applicable to insecticides and preparations thereof in respect of said product. So from this angle also, it is clear that the product under consideration merits classification as an insecticide and not as a plant growth regulator

7. We find in view of the above that the classification of Triaccontanol has been settled by the Tribunal. Though, it is reported that the decision of the Tribunal has been challenged before the Apex Court, no stay has been granted and therefore there is no occasion to differ with the decision of the Tribunal. therefore, no purpose will be served if the case is remanded back to the original authority for the classification of the impugned product i.e. Triaccontanol as the original authority is bond by the decision of the Tribunal. Thus, we are of the considered opinion that the classification of the impugned product can be held to be under CETH 3808.10 as an insecticide. Accordingly, we hold so. We also find that there is not reason to remand the matter back to the original authority for quantification also. The original authority can very well sanction the refund to the appellant as per the classification arrived at, as above.

8. In view of the above, the appeal is partly allowed as per the following terms:

- (i) The classification of Triacontanol shall be done under CETH 3808.10.
- (ii) The appellants are not eligible for refund of Education Cess/Secondary and Higher Education Cess.
- (iii) The original authority shall calculate the amount of refund payable to the appellants in view of (i) and (ii) above and pay the same to the appellants.

(Order pronounced in the open court on 28.06.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)