-CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL0
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60386 of 2017

[Arising out of Order-in-Original No. JNK/CEX/000/09-10/2016-17 dated 03.02.2017 passed by the Commissioner of Central Excise, Jammu & Kashmir]

M/s Dhanuka Agritech Ltd. **……Appellant**
Plot No.1, IID Centre, SICOP Industrial
Estate, Bttal Ballian, Udhampur,
Jammu & Kashmir - 182101

VERSUS

Commissioner of Central Excise, **……Respondent**
Jammu & Kashmir
OB-32, Rail Head Complex,
Jammu & Kashmir - 180012

WITH

Excise Appeal No. 60177 of 2020

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-237-19-20 dated 22.01.2020 passed by the Commissioner (Appeals), CGST, Jammu]

M/s Dhanuka Agritech Ltd. **……Appellant**
Plot No.1, IID Centre, SICOP Industrial
Estate, Bttal Ballian, Udhampur,
Jammu & Kashmir - 182101

VERSUS

Commissioner of Central Excise, **……Respondent**
Jammu & Kashmir
OB-32, Rail Head Complex,
Jammu & Kashmir - 180012

APPEARANCE:

Ms. Krati Singh and Shri Aman Singh, Advocates for the Appellant

Shri Siddharth Jaiswal and Ms. Amita Gupta, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.61682-61683/2025

DATE OF HEARING: 10.10.2025
DATE OF DECISION: 18.11.2025

P. ANJANI KUMAR:

The appellants, M/s Dhanuka Agritech Ltd, are engaged in clearing Sea Weed/ Bio-Fertiliser Formulations under the Brand name of "Dhanzyme Liquid", "Dhanzyme Gold" and "Activzyme", classifying the same under 3101 0099 of the First Schedule to the Central Excise Tariff Act, 1985, without payment of duty; the formulations were cleared in plastic bottles of 100 ml, 250 ml & 500 ml. Revenue was of the opinion that the products were classifiable under CETA 3105 1000 and are liable to duty at the rate of 6% in terms of Notification No.02/2011; two show cause notices dated 04.02.2015 and 02.11.2017, covering the period April 2014 to September 2015 and October 2015 to March 2016, demanding duty of Rs.3,57,31,284/- and Rs.1,03,22,802/- respectively, along with interest and penalty. The proposals in the show cause notices were upheld vide OIO dated 03.02.2017 and 28.03.2018 along with equal penalty under Rule 25 of Central Excise Rules, 2002. Hence, these appeals.

2. Ms. Krati Singh, learned Counsel for the appellants submits that the Revenue's contention is incorrect and the formulations do not merit inclusion under Chapter Heading 3105 as the products are in liquid form and are packaged as per their volume (ml, ltr) and not as

per mass/ quantity (gms, kg); they are not packed in the tablet form but were packed in plastic bottles. The issue stands settled by the case of Biostadt India Ltd. – 2022 (381) ELT 492 wherein the Department themselves argued that the Biozyme manufactured by the appellant therein and cleared in unit packs of 100 ml, 250 ml & 500 ml; Legal Meteorology Rules, 2011 prescribes that the declaration of quantity shall be expressed on the packaging in the unit of litres if the product is in liquid form; this was accepted in the above case. She also submits that, applying the principle of *noscitur a sociis*, the impugned goods cannot be classified along with tablets and other formulations; Heading 3105 only refers to goods sold in solid form and not in liquid form; she holds that the principle of *noscitur a sociis* was upheld for the purpose of classification in the cases of Madura Coats Private Limited – 2017 (12) TMI 1268-CESTAT Chennai, Pardeep Aggarbatti – 1997 (10) TMI 338 (SC) & Rohit Pulp & Paper Mills Ltd. – 1990 (47) ELT 491 (SC).

3. Learned Counsel further submits that the activity undertaken by the appellants does not amount to manufacture and no duty is payable; the products in question are sea weed based vegetable fertilizers derived from liquid bio-extract organic fertilizer input concentrate obtained from natural vegetable sea weed which has about 42% of the content; the appellants procure the se weed concentrate classified under Tariff Item 3101 0099 of CETA chargeable to NIL rate of duty; the appellants dilutes the same with water and adds alkaline and other preservatives; the nature of the

product does not change from that of being a sea weed even after the processes undertaken by the appellants. Tribunal in the case of appellants themselves i.e. Northern Minerals Ltd. (now known as M/s Dhanuka Agritech Ltd.) – 2001 (131) ELT 355 (Tri. Delhi) held that the appellant's activity does not amount to manufacture; the said decision was upheld by the Hon'ble Apex Court – 2003 (156) ELT A161 (SC). She also relies on the following cases:

- Commissioner Of Central Excise vs. Karam Chand 2009 (236) E.L.T. 647 (H.P.).
- Karamchand Appliances Private Ltd. vs. Union of India 2015 (318) E.L.T. 221 (Del.)
- Sudarshan Chemical Industries Ltd. vs. Commr. of C. Ex., Mumbai 2004 (166) E.L.T. 214 (Tri. Mumbai) affirmed in Supreme Court at 2004 (170) E.L.T. A265 (S.C.)]
- Kilpest (India) Ltd. vs. Commissioner of C. Ex., Indore 1999 (110) E.L.T. 866 (Tribunal).
- Collector of Central Excise vs. Markfed Agro Chemicals 1993 (68) E.L.T. 848 (Tribunal).
- Commissioner of C. Ex., New Delhi-III vs. Northern Minerals Ltd. 2002 (142) E.L.T. 426 (Tri. Del.) affirmed in Supreme Court at 2003 (153) E.L.T. A301 (S.C.)

4. Learned Counsel submits that Notification No.12/2012-CE dated 17.03.2012 prescribes concessional rate of duty of 1% for the items under Chapter 31 if credit is not availed; the appellants have reversed the credit availed on the inputs and therefore are eligible for the concessional rate of duty; accordingly, the duty demand requires to be re-quantified; she also submits that the Department has adopted the value uniformly at the rate of 70% of the MRP in contravention of Rule 7 of CEVR, 2000 as the appellants cleared the formulations to its depots at a price of about 50% of the MRP all over

India on stock-transfer basis after affixing MRP; she also submits that cum-duty benefit is applicable to the appellants; she also submits that as the duty is not chargeable, penalty and interest cannot be levied. She relies on the following cases:

- Commissioner of C. Ex., Chandigarh-1 vs. Diplast Plastics Ltd. 2010 (257) E.L.T. 397 (P & H)
- Hitech Constructions vs. CCE & ST- Ludhiana 2024 (1) TMI 776 – CESTAT CHANDIGARH
- CCE, Chandigarh vs. JCBL Ltd. 2017 (6) TMI 422 CESTAT CHANDIGARH.
- Chandrapur Magnet Wires (P) Ltd. vs. Collector of C. Excise, Nagpur 1996 (81) E.L.T. 3 (SC).
- Hindustan Petroleum Corpn Ltd vs. Commissioner of Central Excise 2014 (2) TMI 921-CESTAT Mumbai.
- Commissioner vs. Maruti Udyog Limited, 2002 (141) ELT 3 (SC)

5. Ms. Amita Gupta, learned Authorized Representative for the Revenue takes us through the Headings under 3101 and 3105 and submits that any product manufactured falling under Chapter 31 if in tablet or similar form or in packages of gross weight not exceeding 10 kg is to be classified under 3105 1000. Referring to the dictionary meaning of "Tablet", she submits that technically a tablet is a dosage form which a drug or a chemical molecule is delivered to the site of action. The forms of dosage can be like palettes, capsules, semi-solids, suspensions, liquid and gaseous. She refers to the website of the appellant and submits that the website www.dhanuka.com refers to the product and says the product was recommended to be used in a dosage form only. She submits that any dosage must be

understood along with the word "Tablet" as in 3105 1000. She relies on Penshibao Wang Pvt. Ltd. – 2018 (364) ELT 312 (Tri. Bang.).

6. Heard both sides and perused the records of the case. We find that the issue of manufacture has already been settled in the appellant's own case by the Tribunal and the same was endorsed by the Hon'ble Apex Court. It was held by the Tribunal that the process undertaken by the appellants does not amount to manufacture. Tribunal held as follows:

> **7.1** We have carefully examined the submissions. We are primarily concerned with the classification of the appellants' goods branded "Dhanzyme". The goods cleared by the appellants under the said brand name were in two forms, one in liquid form and the other in granular form. The liquid product was admittedly smaller packings of "Biozyme", a bio-fertiliser supplied in bulk quantities to the appellant-company by M/s. Samruddhi and M/s. Wockhardt under the brand names "Sampdazyme" and "Wokazim" respectively. It is the appellant's consistent claim that the said bulk products branded "Sampdazyme" and "Wokazim" were classified by the manufacturers thereof under CSH 3101.00 and that the Department had never proposed to revise such classification. We note that this claim of the appellants has not been rebutted by the department. What the appellants did was simply to repack the bulk products of "Sampdazyme" and "Wokazim" brand received from Samruddhi and Wockhardt into smaller packings of 1000 ml, 500 ml, 180 ml, 90 ml and 30 ml and sell the same under their own brand name "Dhanzyme". In the absence of any Chapter Note in Chapter 31 of the Central Excise Tariff Schedule creating a legal fiction that repacking of bulk product into smaller packings amounted to manufacture, the aforesaid repacking activity of the appellants could not be held to be a process of manufacture within the meaning of Section 2(f) of the Central Excise Act inasmuch as that activity did not bring into existence any commodity different in

character, use or commercial identity from the bulk product. Therefore liquid "Dhanzyme" was not excisable and the demand of duty on the product is not sustainable.

7.2 As regards the appellant's granular product "Dhanzyme", we note that the product was obtained by spraying liquid "Dhanzyme" over granules of Bentonite clay and that the granules so obtained were to be applied to the soil, unlike liquid "Dhanzyme" itself which was for direct application to the plant. The Bentonite clay granules with a spray of liquid "Dhanzyme" over them are not the same product as liquid "Dhanzyme" in the mind of the ultimate customer i.e., the farmer. While liquid "Dhanzyme" is to be applied directly to the plant, the granular product is to be applied to the soil. Therefore, in the mind of the customer, granular "Dhanzyme" is different in character and use from liquid "Dhanzyme". It would follow that granular "Dhanzyme" emerged out of a process of "manufacture" within the scope of Section 2(f) of the Act and the product would be excisable. However, we find that on the classification of the product, ld. Commissioner has not taken into account all the materials placed before him by the appellants, nor has he applied his mind to the classification of the bulk product as approved by the department at the end of Samruddhi and Wockhardt.

7.3 The five reasons stated in the SCN for classifying 'Dhanzyme' as Plant Growth Regulator (in short, PGR) under CSH 3808.20 appear to have been approved in toto in the impugned order. Those reasons (as in SCN) read as under : -

"(i) The literature of the product taken over from the party itself describes the product as a plant growth promoter.

(ii) The leaflet says Cytokinins and Auxin precursors contained in Dhanzyme are plant growth promoters, which *induce and control* seed germination, flowering, transition from vegetative to reproductive stages, fruit settling and maturation of seeds. The functions, as stated here, clearly indicate that Dhanzyme *regulates* various activities of the plants from vegetative to reproductive stages.

(iii) It enhances photosynthesis in plants and also helps in Cell growth.

(iv) It does not appear to increase the fertility of soil as is in the case of fertilizers. It works directly on the plants.

(v) Significantly it is not covered as a fertilizer in Fertilizer Control Order, 1985, where the fertilizers are covered. It is, therefore, obvious that statute does not recognise Dhanzyme as a fertilizer".

The Commissioner appears to have held plant growth promoter to be synonymous with plant growth regulator. He has fallen into a patent error here. A plant growth promoter will only promote growth of the plant and will not inhibit it. On the other hand, a plant growth regulator can inhibit, promote or otherwise alter physiological processes in plants. The relevant HSN Note is clear to this effect. Kirk-Othmer "Encyclopaedia of Chemical Technology" (3rd Edition - Volume 18) introduces PGRs as follows :

"Plant-growth regulators, other than nutrients, usually are organic compounds. They are either natural or synthetic compounds and are applied directly to a plant to alter its life processes or structure in some beneficial way so as to enhance yield, improve quality, or facilitate harvesting. Plant hormones, i.e., phytohormones, are plant-produced growth regulators and, therefore, are naturally occurring plant substances. Plant-growth regulators, however, apply to phytohormones as well as synthetic compounds."

"Plant Physiology" (4th Edition) by Robert M. Devlin & Francis H. Witham gives the following description: -

"Plant regulators are organic compounds other than nutrients that in small amounts promote, inhibit, or otherwise modify a physiological process in plants".

J.C. Johnson's "Plant Growth Regulators and Herbicide Antagonists - Recent Advances" introduces PGRs as under: -

"Plant growth regulators are compounds, mainly organic, other than nutrients which in relatively small amounts inhibit, promote or otherwise alter physiological plant processes".

All the above literatures cited by ld. Advocate seem to be converging on the point covered by the HSN Note. They indicate that PGRs are natural or

synthetic organic compounds other than nutrients and that, when applied in small amounts, they can alter physiological processes in plants. In the instant case, the Department had no case that "Dhanzyme" could inhibit or otherwise modify (apart from promoting) plant processes. The appellant's plea that the product contained only aminoacids and other nutrients and, therefore, only promoted plant growth has not been successfully dislodged in the Commission's order. Kirk-Othmer says that PGRs are directly applied to plants. The appellants' 'Dhanzyme' on granules was applied to soil only. The Department has had no dispute about this fact. From the literature and other evidence on record, we find that the appellants' product in question is only a bio-fertilizer capable of promoting plant growth by providing nutritional support. The suppliers of 'Biozyme' - the bulk product repacked by the appellants into smaller 'Dhanzyme' packings - certified in their brochure that their product contained two major components viz. Seaweed extract and Hydrolyzed protein complex. In an apparently alternative method of manufacturing 'Dhanzyme' liquid in small HDPE containers, the appellants used seaweed extract powder imported from Canada, which was sought to be classified by Customs authorities under ITC (HS) 31010000. Whether supplied by the Biozyme manufacturers or formulated by the appellants themselves from the imported seaweed extract powder, the 'Dhanzyme' liquid used for spray over Bentonite clay granules had a seaweed origin.

7.4 In the case of *Leeds Kem* [2000 (41) RLT 674], we had occasion to examine the question whether seaweed was a bio-fertilizer or not. In that case, after consulting technical authorities on fertilizers, we held that 'plantozyme' manufactured mainly from seaweed extract was a bio-fertilizer classifiable under Heading 31.01. We also held that the mere presence of small amounts of cytokinins in a bio-fertilizer would not detract from the latter's character of bio-fertilizer. It was further observed, in that case, that a product to be classified as plant growth regulator under CH 38.08 must be a separate chemically defined compound, on which basis we found that the

> decision in *Unique Farmaid* (supra) holding 'floramin' to be a PGR did not help the Revenue in *Leeds Kem's* case. We may, contextually, observe that the DR's reliance on the decision in *Northern Minerals Pvt. Ltd*. v. *CCE* - [1998 (102) E.L.T. 182] wherein 4.5% aqueous solution of Alpha-Naphthyl Acetic Acid (Trade name: "Dhanumon") was held to be a PGR is equally unhelpful to the Revenue in the instant case. 'Floramin' and 'Alpha-Naphthyl Acetic Acid' were chemically defined organic compounds. In the instant case, the Department appears to have had no case that the "Dhanzyme" brand products of the appellants were chemically defined organic compounds.
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> **7.5** We would adopt the relevant reasonings of ours from the case of *Leeds Kem* for the purpose of deciding the classification of the present appellants' "Dhanzyme" on granules. We hold that the "Dhanzyme" on granules, cleared by the appellants during the material period was a bio-fertilizer classifiable under CSH 3101.00 chargeable to Nil rate of duty and no duty of excise was liable to be demanded in respect thereof.

7. We find that the appellants are engaged in mere dilution of the concentration of the seaweed concentrate procured by them from 42% to the desired percentage by adding water and preservatives. By no stretch of imagination, the activity can be held to amount to manufacture. Moreover, we find that the above decision of the Tribunal in the case of appellant's themselves was upheld by the Hon'ble Supreme Cour.t Therefore, we find no reason to go into classification. We find that both the learned Counsel and the Authorized Representative have strained themselves out to put forth arguments in their favour. We find that when the process does not amount to manufacture, the question of classification becomes superfluous. The demand cannot be sustained on this issue alone.

Therefore, we do not find it necessary to offer findings on the issue. We hold that the appellant is not engaged in any activity that would amount to manufacture so as to attract central excise duty at whatever rate. Learned Authorized Representative submits that the appellants took this ground only in one of the appeals. We find that the issue of manufacture being of a legal nature can be taken at any stage. Moreover, it would be absurd to assume that the same processes would amount to manufacture during some period and not so in some other period, particularly when there is no change in the statute. Accordingly, we find that the impugned orders have no merit and cannot be sustained.

8. In view of the above, the appeals are allowed.

(Order pronounced in the open court on 18/11/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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