CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

DIVISION BENCH
COURT NO. I

APPEAL NO. E/322/2009-EX[DB]

[Arising out of Order-in-Appeal No. 247/ANS/PCK/2008 dated 11.11.2008 passed by the Commissioner of Central Excise (Appeals), Delhi-III]

Date of hearing/decision: 07.06.2018

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

Indo Australian Humigrow System	**:**	**Appellant(s)**
VS		
C.C.E., Delhi-III	**:**	**Respondent(s)**

Appearance:
Present for the Appellant(s): Sh. Amarinder Singh, Advocate
Present for the Respondent(s): Sh. Bhasha Ram, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO. 62476/2018

Per : Devender Singh

The appellants are in appeal against the impugned order dt. 11.11.2008 passed by Commissioner (Appeals).

2. Brief facts of the case are that the appellants are manufacturing three products namely Kelp-G Purakelp EC, K-Humate 3% Granules-K-Humate and Multiplex-G-Purakelp & K-Humate. The department felt that the products manufactured by the appellants were plant

growth regulators (PGRs), whereas the appellants maintained that they were manufacturing vegetable bio-fertilizer. An investigation was conducted and a sample of 'Pura Kelp Australian Biozyme' was drawn and tested at CRCL, New Delhi. On the basis of the test report of said sample and a letter issued by the Director of Agriculture, Haryana dt. 27.12.2006 stating that the above products were not fertilizers in terms of the Fertilizer (Control) Order 1985, a show cause notice was issued to the appellants demanding Central Excise duty of Rs.25,86,505/- along with interest and proposing penalty under Section 11AC of the Central Excise Act, 1944. The matter was adjudicated and the said demand was confirmed along with interest and imposition of equivalent amount of penalty under Section 11AC of the Act. In appeal, the Commissioner (Appeals) upheld the adjudication order and rejected the appeal of the appellants. Aggrieved from the order of Commissioner (Appeals), the appellants have filed this appeal.

3. Ld. Advocate for the appellants invited attention to the CRCL report dt. 24.04.2006 and contended that the chemical testing was done in respect of one item but the same test result was applied for all the three items. He further argued that the test report is incomplete and the testing has only brought out that there are amino acids in the sample but no composition was given, and on the basis of printed literature, it has been concluded by CRCL that the product is a plant growth regulator. He further drew attention to the composition and stated that the product contains nitrogen, phosphorus and potassium. He also stated that their product was not applied directly to the plants but is coated on clay particles, which are sprayed on the

soil. The contention is that the product has its action through the soil and enhances strength and ability of roots to absorb nutrients and water. He also drew attention to the Board Circular dt. 06.04.2016, which elaborates about fertilizers and PGRs. He relied on the judgments of this Tribunal in the cases of *Leeds Kem vs. CCE, Aurangabad – 2001 (134) ELT 294 (Tri.-Delhi)* and *CCE, Rohtak vs. Safex Chemical India Ltd. – 2017 (7) GSTL 234 (Tri.-Chandigarh)*.

4. Ld. AR reiterated the findings in the order of the Commissioner (Appeals).

5. Heard both the sides and perused the records.

6.1 We find that the report of the Chemical Examiner, which was admittedly done in respect of only one of the three products in question, merely states that the product is answering the test of amino acids. However, their exact profile and composition could not be ascertained. On the basis of the literature, which states that one of the ingredients is plant growth hormone, the report concludes that the product is a plant growth regulator. Clearly, the report is inconclusive and the conclusion that the product is plant growth regulator has been made on the basis of literature without paying attention to other ingredients and the nature of application and mode of action of the product. With the help of Ld. AR , we have gone through the Hindi literature of the products which shows that the product as 100% pure bulk kelp "contains nitrogen, phosphorus and potassium. The other two products also show nitrogen, phosphorus and potassium contents or nitrogen and potassium in their analysis. The narration given with the products says that the product is mixed with the other fertilizers and is used in the soil. The products improve the quality of soil in various ways and improve the ability of roots to absorb nutrients and increase their strength.

6.2. Since the products contain nitrogen, phosphorus and/or potassium and are of a kind of used as fertilizers, by virtue of Chapter Note 6 of Chapter 31 of Central Excise Tariff the products would fall in the category of other fertilizers.

6.3 We find that the Board had issued a Circular dt. 06.04.2016 on the subject of classification of fertilizers, micronutrients and plant growth regulators in which it was clarified that notifications issued under the Fertilizer (Control) Order 1985 are not relevant for deciding the classification of Central Excise Tariff. In view of the same, the opinion given by the Director of Agriculture, Haryana, which relies on Fertilize (Control) Order, 1985, is not relevant. In the aforesaid Board Circular, it is also clarified that the plant growth regulators are either natural or synthetic compounds that are applied directly to a target plant to alter its life processes or its structure to improve quality, increase yields or facilitate harvesting.

6.4 We find that Revenue has not been able to rebut the contention of the appellants that the products are not applied directly to the plant and are mixed with soil or clay to make them useable. In fact, in para 13 of the impugned order it is mentioned that the impugned products are mixed with soil/clay.

6.5 We also note that Chapter 38 covers the plant growth regulators which are 'separate chemically defined elements or compounds'. The CRCL test report has failed to establish that the product is a separate chemically defined element or compound and the same is not forthcoming from the literature as well.

7. In view of the foregoing, the conclusion in the impugned order that the products are plant growth regulators is not sustainable and the order of the Commissioner (Appeals) is therefore liable to be set aside. Accordingly, we do so.

8. In the result, the appeal is allowed.

(Operative part pronounced in the court)

(Ashok Jindal)
Member (Judicial)

(Devender Singh)
Member (Technical)

RAS'