IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.40354 of 2015

(Arising out of Order-in-Appeal No. 193/2014-CE dated 12.11.2014 passed by the Commissioner of Central Excise, Salem)

M/s. Caress Industries **Appellant**
302, Hospital Road
Kavindapadi
Erode – 638 435.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Foulkes compound
Anaimedu, Salem – 636 001.

(i) Excise Appeal No 41625/2015 – **Caress Industries**
(Arising out of Order-in-Appeal No.28/2015-CE dated 30.4.2015 passed by the Commissioner of Central Excise (Appeals – I), Salem

(ii) Excise Appeal No. 41786/2015 – **Caress Industries**
Arising Out of Order-in-Appeal No. 35/2015-CE dated 20.5.2015 passed by the Commissioner of Central Excise (Appeals – I), Salem

APPEARANCE:

Ms. L. Maithili, Advocate for the Appellant
Shri Vikas Jhajharia, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Venkata Subba Rao, Member (Technical)

Final Order Nos. **42145-42147 / 2021**

Date of Hearing: 25.08.2021
Date of Decision: 25.08.2021

Per Ms. Sulekha Beevi C.S.

All the appeals involve a common issue and hence they are taken up together for hearing and for disposal by this common order.

2. The ld. Counsel Ms. L. Maithili appeared for the appellant. Her submissions are as under:-

(a) The issue involved in the present appeal pertains to classification of chelated micronutrient mixtures as under (hereinafter referred to as "Subject Goods"):-

i. Chelated Zinc at 12% EDTA
ii. Chelated Iron as 12% Fe EDTA
iii. MNM Chelated

(b) Micronutrient mixtures are manufactured by the Appellant by using chelating agents with an organic compound i.e. Ethylene Diamine Tetra Acid (EDTA), by dissolving the same in Ammonia and water (para 2.7 of SCN- P.61).The final product so manufactured retains Nitrogen contributed from Ammonia.

(c) The Appellant claimed classification of the subject goods as "Other Fertilizers" under Chapter sub-heading 3105 90 which reads as under:

Tariff Item	Description of Goods	Unit	Rate of duty
3105	Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg		
3105 90	- Other:	Kg.	12%

The term "other fertilizers" is defined under Note 6 to Chapter 31, which reads as under:

> *"For the purpose of heading 3105, the term "other fertilisers" applies only to products of a kind used as fertilisers and containing, as an essential constituent, atleast one of the fertilising elements nitrogen, phosphorus or potassium.*

(d) It is submitted by the ld. Counsel that the subject goods are micronutrient mixtures manufactured by being subjected to a process of chelation and are therefore described as chelates of the respective compounds of Zinc, Ferrous and MNM. The purpose of chelation is to make available metal ions required as essential minerals for a healthy development of plants. In the absence of chelation, positively charged metal ions such as Zinc, Magnesium, Copper and Iron would readily react with hydroxide ions abundant in alkaline or neutral soils and soilless media. The Appellant uses Ammonia for the manufacture of the subject goods. The Ammonia so used provides the Nitrogen content in the final product. The percentage of Nitrogen and other nutrients vary based on the nature of the soil where they are intended to be used. Since Nitrogen is an essential ingredient for the manufacture of the subject goods and the same are used as fertilizer, the requirements specified under Note 6 to Chapter 31 are met for the classification of the subject goods under Chapter Sub-heading 31 05 90 of the Schedule to the Central Excise Tariff Act.

(e) In terms of Notification No.4/2006 C.EX. dated 01.03.2006, products falling under Chapter 31 and answering to the description in S.No.63 of the said notification are wholly exempted from Central Excise duty. S.No.63 of the above said notification reads as under:-

"31 All goods, other than those which are clearly not to be used-

(a) As fertilizers; or

(b) In the manufacture of other fertilizers, whether directly or through the stage of an intermediate product

This exemption entry was amended vide notification No. 4/2011C.E dated 01.03.2011 and after amendment reads as under:-

(1)	(2)	(3)	(4)	(5)
"63.	31	All goods, other than those which are clearly not to be used in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product	Nil	-

Under Notification No. 12/2012 C.E dated 17.03.2012, the entry reads as follows:-

(1)	(2)	(3)	(4)	(5)
127	31	All goods, other than those which are clearly not to be used in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product	Nil	-

Hence, the effective rate of duty applicable to the classification claimed by the Appellant was subject to nil rate of duty

(f) In the Budget of 2011, Central Excise duty at the rate of 1% was imposed on, inter alia, *"All goods other than those which are clearly not to be used as fertilizers".* Hence, on the premises that the subject goods are used as fertilizers, the Appellant was directed by the Department to pay 1% duty' with effect from 01-03-2011 (vide Notification No. 1/2011-C.E. dated 1-3-2011 – Sl. No. 40 thereof).

(g) Thereafter samples were drawn of the subject goods and sent for technical analysis by the Customs House Laboratory, Chennai. The Chemical Examiner gave test reports providing the nitrogen content in the samples tested, as below:-

S.No.	Lab. Cx. No.	Description	% of Nitrogen
1.	105/12	Chelated Zinc	1.8
2.	106/12	MNM Chelated	2.5
3.	107/12	Chelated Iron	3.3

By way of periodic Show Cause Notices, the department sought to classify the subject goods as "Plant Growth Regulators" under chapter heading 3808 of the Schedule to the Central Excise Tariff Act.

(h) It is submitted that the issue involved in the present case is covered in favour of the Appellant by Final Order No. 42339/2018 dated 04.09.2018 passed in the Appellant's own case for the period April 2008 to August 2012. Hence, the present Appeals may be allowed on this ground alone. The Tabulation of the cases is as under:-

S. No.	SCN / SOD Sl No. Date	Period involved	Stage of Adjudication	Central Excise Duty involved Rs.
1.	23/2013 – C.Ex (ADC) dt 06.05.2013	April 2008 to August 2012 (issued invoking proviso to Section 11A (4) of the Central Excise Act, 1944	Final Order 42339/2018 dated 04.09.2018	14,95,381/-
2.	38A/2013 - C.Ex (AC/Erode-II) dt 03.10.2013	September 2012 to 30.04.2013 (issued under Section 11A of the Central Excise Act, 1944	Appeal No E/40354/2015 filed before CESTAT, Chennai	3,13,671/-
3.	13/2014 – C.Ex (DC/Erode-II) dt 23.05.2014	May 2013 to November 2013 (issued under Section 11A of the Central Excise Act, 1944	Appeal No E/41625/2015 filed before Cestat Chennai	4,82,974/-
4.	18/2014 – C.Ex (DC/Erode-II) dt 20.08.2014	December 2013 to March 2014 (issued under Section 11A of the Central Excise Act, 1944	Appeal No E/41786/2015 before Cestat Chennai	1,54,732/-

3. The ld. Counsel prayed to allow the appeals.

4. The ld. AR Shri Vikas Jhajharia appeared for the department. He supported the findings in the impugned order.

5. Heard both sides.

6. The issue is with regard to the classification of the following goods:-

i. Chelated Zinc at 12% EDTA
ii. Chelated Iron as 12% Fe EDTA
iii. MNM Chelated

7. The department has sought classification of the impugned goods under Chapter Heading 3808 of CETA, 1985. The said Chapter Heading reads as under:-

Tariff Item	Description of Goods	Unit	Rate of duty
3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant growth regulators, disinfectants and similar products, put up in forms or packings for retail or as preparations or articles (for example, sulphur treated bands, wicks and candles, and fly-papers)		
3808 93 40	---Plant growth regulators	kg.	12%

8. The appellants have classified the said goods under CETA 3015 as other 'Fertilizers' and claimed nil rate of duty vide Notification 4/2006-CE dated 1.3.2006.

9. The above issue was analyzed in the appellant's own case for a different period wherein the Tribunal had upheld the classification adopted by the appellant. The relevant portion of the order is as under:-

> *"5. The issue of classification of 'micronutrients' has been in confusion for a number of years. The CBEC have revised their stance in respect of the classification in successive circulars. No doubt, the Commissioner (Appeals) has relied upon the judgment of the Hon'ble Supreme Court in the case of Karnataka Agro Chemicals – 2008-TIOL-117-SC-CX. However, we notice that the Hon'ble Supreme Court in that case has only remanded the issue back to the adjudicating authority to examine whether addition of 0.31% of Nitrogen would convert 'Plant Growth Regulators' into nutrient falling under Heading 3105 of the CETA. It is important to note that the judgment in Karnataka Agro Chemicals was rendered by the Hon'ble Supreme Court on 15.5.2008. It is however pertinent to note that the Hon'ble Supreme Court in an earlier judgment, in Ranadey Micronutrients Vs. Collector of Central Excise – 1996 (87) ELT 19 (SC) had referred to the circular dated 21.11.1994 issued by the CBEC (withdrawing earlier circular dated 20.6.1990) and held that micronutrients are required to be classified under CETA 3015. Subsequent to the judgment in Ranadey Micronutrients, Board had issued one more circular on 19.5.1998. Yet another circular was issued on 6.4.2016 wherein inter alia it was clarified that for classification under Chapter 31, at least one of the elements namely Nitrogen, Phosphorous or Potassium should be an essential constituent of the fertilizer.*
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> *5.1 From the test reports of the Customs Laboratory found in the file, it is seen that the percentage of Nitrogen in chelated zinc has been found at 1.8%, in MNM chelated as 2.5% and in chelated iron it is 3.3% with regard to test report dated 1.4.2013. One of the main ground for the view taken in the impugned order is that though nitrogen is present in the impugned goods, it is present in very low percentage which is not sufficient to be called as essential constituent of the fertilizer. We, however, find that the ld. Advocate is correct in her assertion that there being no minimum prescribed percentage of Nitrogen etc. prescribed in*

> *Note 6 to Chapter 6 of the Central Excise Tariff Act, the requirements of that Note being classified as micronutrient in other fertilizers, CETA 31.05 are satisfied. We also, note that the Board's circular dated 6.4.2016 also does not specify any minimum percentages for such elements to be considered as "essential constituents". Evidently, the essentiality of these elements is then to be decided by the "essential manner" that they act upon the soil or the 'essential role' of these elements in the fertilizing action per se. However, there is nothing forthcoming on record nor any evidence brought forth by the department to indicate that the Nitrogen present in the impugned goods though in admittedly small percentages are NOT an 'essential constituent' of the impugned goods. This being so, we are afraid that there is no other reason why the impugned goods cannot be classified under CETA 31.05 as clarified in the CBEC Circular dated 6.4.2016."*

10. We do not find any reason to deviate from the above decision for the demand raised in these appeals for a different period. The impugned orders are set aside. The appeals are allowed with consequential reliefs, if any, as per law.

(Operative portion of the order was pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. VENKATA SUBBA RAO**)
Member (Technical)

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