

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

REGIONAL BENCH – COURT No. I

Customs Appeal No. 41154 of 2013

(Arising out of Order-in-Original No. 20252/2013 dated 18.02.2013 passed by Commissioner of Customs, Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

M/s. Novozymes South Asia Private Limited

...Appellant

Survey No. 193, Hoody Circle,
Whitefield Road,
Bangalore – 560 048.

Versus

Commissioner of Customs

...Respondent

Chennai Import Commissionerate,
No. 60, Rajaji Salai,
Custom House,
Chennai – 600 001.

And

Customs Appeal No. 41203 of 2013

(Arising out of Order-in-Original No. 20252/2013 dated 18.02.2013 passed by Commissioner of Customs, Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

Commissioner of Customs

...Respondent

Chennai Import Commissionerate,
No. 60, Rajaji Salai,
Custom House,
Chennai – 600 001.

Versus

M/s. Novozymes South Asia Private Limited

...Appellant

Survey No. 193, Hoody Circle,
Whitefield Road,
Bangalore – 560 048.

APPEARANCE:

For the Assessee : Mr. Rohan Muralidharan, Advocate
For the Revenue : Mr. Anoop Singh, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 41257-41258 / 2024

DATE OF HEARING : 06.08.2024

DATE OF DECISION: 30.09.2024

Order :- Per Mr. VASA SESHAGIRI RAO

M/s Novozymes, South Asia Pvt. Ltd., Chennai and the Department have preferred separate appeals assailing the Order of the Commissioner of Customs, Chennai II Commissionerate involving the issue of classification of 'RTS Mycorrhiza Roots Soluble' and for non-imposition of penalty under Section 114A of the Customs Act, 1962 respectively. Both the appeals being against the same impugned order are being taken up together for disposal by this common order.

2.1 Thus, Customs Appeal No. E/41154/2013 has been filed by M/s. Novozymes South Asia Pvt. Ltd., Chennai (Assessee) assailing the Order-in-Original No. 20252/2013 dated 18.02.2013 issued by the Commissioner of Customs, Chennai-II ordering for reclassification of imported 'RTS Mycorrhiza Roots Soluble' under CTH 38089340 instead of under CTH30029030 and confirming the demand of short levied duties of Rs.51,04,336/- during the period from May 2010 to October 2010 and Rs. 38,51,823/- for the past consignments from May 2008 to April 2010 under proviso to Section 28/28(1) of Customs Act, 1962 ('ACT') besides imposing redemption fine of Rs.20,00,000/- in terms of Section 125 of Customs Act, 1962 in respect of provisionally released goods and imposing penalty of Rs.30,00,000/-under Section 112(a) of Act *ibid*.

2.2 Customs Appeal No. C/41203/2013 has been filed by the Department against non-imposition of equal penalty under Section 114A of the Act *ibid*.

2.3 The issue involved in these appeals pertain to alleged misclassification of goods *Viz.* "RTS Mycorrhiza Roots soluble", imported by M/s. Novozymes South Asia Pvt. Ltd, Bangalore *vide* Bill of Entry No. 509205 dated 13.05.2010, facilitated through RMS. The Assessee is, *inter alia* engaged in the research and development of biotechnology products as well as their import and distribution in the domestic market. The Assessee imported 'RTZ Mycorrhiza Roots Soluble' which acts as a rooting stimulant for plants and classified the same under CTH 3002 9030 and discharged BCD at merit rate of 10%, 0% CVD and 4% SAD availing benefit of exemption from CVD under Notification No. 19/2006-Cus. dated 01.03.2006. The Assessee imported the subject goods in bulk packs of 12.25 Kg and sold the same to M/s. Rallis India Ltd. who undertook packing of these goods in packs of 100 grams and sold the goods under the brand name 'Rallis Gold'. The impugned item was imported from USA classifying under CTH 30029030 under NIL CVD based on the letter issued by the Regional Director, Department of Agriculture and Co-operation, Bangalore stating that the item imported contains bacteria but, it does not come under FCO, 2006; that they are the beneficial micro- organisms, used in agricultural crop and also based on the importer's declaration dated 18.05.2010 that the product 'Mycorrhiza Roots' is a soluble rooting stimulant, and it contained the cultures of micro-organisms (Mycorrhizae) with viable organism and the role of these micro-

organisms was to improve water and nutrient absorption in the plants, to improve stress tolerance and to help in extending the root system.

2.4 The test reports issued by the Centre for Advanced Study in Botany, University of Madras have disclosed the presence of bacteria in the sample drawn from the subject imported goods consisted of six different bacteria and two of them namely, *Pseudomonas fluorescens* and *Bacillus* sp. are predominantly present; that all the bacteria identified in the test belong to Plant Growth Regulating organisms. So, the Department was of the view that the subject item being comprised of phytohormones is classifiable under the CTH 38089340 as plant growth regulators which attracts 10% Basic Customs Duty + 10% Additional Duty of Customs + 3% Educational Cess + 3% Higher Educational Cess + 4% Special Additional Duty of Customs.

2.5 Apart from the impugned Bill of Entry, the importer had cleared four consignments of similar description goods in the past and filed two more Bills of Entry during the investigation. The live consignments were assessed provisionally against BG and provisionally released under bond. Thus, in total, the importer had cleared seven consignments of RTS Mycorrhiza Roots Soluble (Culture of micro-organisms) for a total assessable value of Rs.7,36,08,008/-.

2.6.1 The details of such past clearances by the Assessee-Importer were as follows: -

(In Rupees)

Sl.No.	Bill of Entry No. and Date	Description	Declared Assessable Value	Duty paid Under CTH 30089340	Duty paid Under CTH 30029030	Differential Duty Payable
1	744136 19.05.2008	Mycorrhiza Roots Soluble-Cultures of Micro Organism (excluding yeast)	53,99,460	17,11,811	7,94,369	9,17,442
2	299717 31.08.2009	-do-	77,91,260	19,02,731	11,46,250	7,56,481
3	454735 11.03.2010	-do-	90,43,584	24,28,084	13,30,492	10,97,592
4	471643 01.04.2010	-do-	89,01,174	23,89,849	13,09,541	10,80,308
Total			3,11,35,478	84,32,475	45,80,652	38,51,823

2.6.2 Further, during the course of investigation the importer had filed two more Bills of Entry and the details of 3 live consignments are as below: -

(In Rupees)

Sl.No	Bill of Entry No. and Date	Description	Declared Assessable Value (Rs.)	Duty paid Under CTH 30089340	Duty paid Under CTH 30029030	Differential Duty Payable
1	509205 dt 13.05.2010	RTS Mycorrhiza Roots Soluble-Cultures of Micro Organism (excluding yeast)	1,74,30,678	46,79,910	25,64,401	21,15,509
2	661145 18.10.2010	-do-	88,79,756	23,84,099	13,06,390	10,77,709
3	675634 01.11.2010	-do-	1,61,62,096	42,88,886	23,77,768	19,11,118
Total			4,24,72,530	1,13,52,895	62,48,559	51,04,336

2.7 A Show Cause Notice dated 21.09.2011 was issued to the Assessee-importer seeking to reject the declared classification of the imported goods, under CTH 30029030 and to re-classify under CTH 38089340 and proposing to demand differential duties in respect of live/past consignments under proviso to Section 28 / 28(1) of the ACT *ibid* respectively, besides holding the seized & provisionally released live/Past consignments liable for confiscation under Section 111 (m) of the ACT *ibid* and proposing to impose penalties under Section 112(a) /114A of the ACT *ibid*.

2.8 After following the due process of law, the Adjudicating Authority confirmed all the proposals put forth in the SCN and imposed a penalty of Rs.30 lakhs on the Assessee-importer under Section 112(a) of the Customs Act, 1962. Being aggrieved, both the Assessee-importer and the Department filed appeals before this forum.

3.1 The Ld. Counsel Shri Rohan Muralidharan for the Assessee argued that the subject goods are not classifiable as plant growth regulators under CTH 3808 9340 as the subject goods are not separate chemically defined elements or compounds and therefore, the subject goods are excluded from the Chapter by virtue of Note 1(a)(2) to Chapter 38; that the subject goods only have a positive effect on plants and do not retard growth of plants which is an essential requirement for goods to be classified under CTH 3808 9340; that the subject goods are applied on the soil and not on

plants and therefore, they cannot be characterized as 'plant growth regulators; that in order to merit classification under CTH 3808 9340 as plant growth regulators, the goods in question must be separate chemically defined elements or compounds. It was submitted that as per General Explanatory Note to Chapter 29, a separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In this regard, it was pointed out that the subject goods are not separate chemically defined compounds as they comprise live spores and propagules of mycorrhizal fungi which are the primary performing ingredients or the active ingredients. Though the imported goods also contain other ingredients such as humic acid, cold water kelp extracts, ascorbic acid, amino acids etc., they are added to keep the product stable and to provide a carrier and survival medium to the constituent micro-organisms and are only peripheral to the primary performing ingredient and thus inert in nature.

3.2 It was averred that the basic scientific principle was that a mixture cannot be a compound, leave alone the other requirement of being separately chemically defined. In other words, first it has to be proved that the product is a compound and only thereafter it has to be seen that it is a separately defined compound. As both the requirements were not met, neither the product is a compound (it is a mixture only) nor is it separately defined and do not meet the criterion specified to Note 1 to Chapter 38 for meriting classification under CTI 3808 9340. Reliance was placed in this

regard on the ratio of decision in the case of *In Leeds Kem vs. Commissioner of Central Excise* [2001 (134) E.L.T. 294 (Tri. - Del.)], wherein the Hon'ble Tribunal held that any product to be classified as plant growth regulator must be a separate chemically defined element or compound. Relevant extract reads as follows: -

"7.8 The argument of *Id. SDR* that the product has to be classified as plant growth regulator on account of the presence of cytokinins cannot be accepted inasmuch as the uncontroverted literature of National Institute of Oceanography is, *inter alia*, to the effect that cytokinins contained in seaweed bio-fertilizer are growth promoting hormones. Even if it is assumed that cytokinins are plant growth regulators rather than plant growth promoters, the mere presence of small amounts of cytokinins in a bio-fertilizer will not detract from the latter's character of bio-fertilizer. Moreover, going by the Tariff Entry 38.08 read with Note (1) to Chapter 38, we find that any product to be classified as plant growth regulator must be a separate chemically defined element or compound. Chapter Note 1 in Chapter 38 reads as under:

(2) Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products

The above note indicates that plant growth regulators etc., mentioned under Heading 38.08 are chemically defined elements or compounds. In the instant case, the product is a mixture of plant nutrients. It is not a chemically defined element or compound and hence cannot be considered as plant growth regulator. We note that it is not even the case of the Revenue that the product is a chemically defined compound having the sole or principal function of regulating plant growth. They have only contended that the product contains cytokinins which are plant growth regulators, and, that too, without denying the fact that the product is a mixture of hydrolysed/chelated casein and seaweed extract."

The Assessee importer also placed reliance on the decision in *Northern Minerals Ltd.* [2001 (131) ELT 355 (Tri.)] which was affirmed by the Supreme Court as reported in [2003 (153) E.L.T. A301 (S.C.)] wherein it was held that the products are sea-weed extracts classifiable as fertilizer of Heading 31.01 and are not classifiable as plant growth regulator classifiable

under CTH 3808 by following the decision in the case of *Leeds Kern vs. Commissioner of Central Excise* [2001 (134) E.L.T. 294 (Tri. - Del.)].

3.3 It was pointed out that the impugned order failed to establish that the imported products are 'separately chemically defined element or compound'. In as much as neither are the subject goods compounds (these are mixtures only) nor are they separate chemically defined. Therefore, the imported goods do not meet the requirement of Note 1 to Chapter 38 in order to merit classification under Heading 3808 as the fact that the imported goods are mixtures is evidenced from the technical literature evidencing the formulation of cultures of mycorrhizal fungi. In this regard, the Assessee placed reliance on the following decisions: -

- i. *Commissioner of Central Excise v. Safex Chemicals (I) Ltd.* [2017 (7) GSTL 234 (Tri. Chan.)]
- ii. *Commissioner of Central Excise v. Aries Agrovat Industries Ltd.* [2017 (7) GSTL 317 (Tri. Hyd.)]
- iii. *San Industry vs. Commissioner of Central Excise* [2018 (11) GSTL 320 (Tri. Hyd.)]
- iv. *Indo Australian Humigrow System v. Commissioner of Central Excise* [2018 (7) TMI 162 - CESTAT CHANDIGARH]

The Ld. Counsel also adverted to the following clarification issued vide Circular No. 1022/10/2016-CX, dated 06.04.2016: -

“Plant Growth Regulators are defined as *organic compounds other than nutrients that affect the physiological processes of growth and development in plants when applied in low concentration. Plant growth regulators are active at low concentrations in promoting, inhibiting or modifying growth and development. They are either natural or synthetic compounds that are applied directly to a target plant to alter its life processes and its structure to improve quality, increase yields, or facilitate harvesting etc. These are in the nature of plant hormones and classical of them are auxins, cytokinins, gibberellins (all three promoters) and abscisic acid, ethylene (both*

inhibitors). PGRs in the list are not exhaustive and more growth substances are being discovered in this category. PGRs are naturally produced by plants and they act by controlling or modifying, plant growth processes such as formation of leaves and flowers, elongation of stems, development and ripening of fruits etc. Synthetic organic chemicals are also used as PGRs and are industrially produced and marketed. A list of some of the PGRs industrially produced in India is enclosed with the reply of IARI.”

It was averred that the subject goods were a mere mixture of various plant nutrients and for that reason alone, the re-classification of the subject goods under Heading 3808 must be held to be without merit.

3.4 The Ld. Counsel has further submitted that in order to be classified as plant growth regulator, the product should be capable of inhibiting or promoting the growth having regard to the health of the plant at a particular time and in the instant case, the Department has not established by evidence that the subject goods inhibit physiological processes on plants. It was pointed out that the imported goods contain mycorrhizal fungi which forms a symbiotic relationship with plant roots and owing to the high absorption capacity inherent to mycorrhizal fungi, water and mineral nutrients are absorbed in higher quantities which aids in plant promotion and as the imported goods do not alter the life process of the plant, it is not a plant growth regulator. It was submitted that from the various definitions and meaning of 'plant growth regulator', it was clear that the plant growth regulators 'regulate' the growth of the plants. whereas the product in question is used to increase the absorption of the nutrients and water from the soil and are used to promote the plants. In this regard reliance was placed on the test report dated 24.11.2010 of Tamil Nadu Agricultural University wherein it is stated that **'the identified AM fungi and**

bacteria are beneficial only and not harmful'. As the imported goods do not in any way adversely affect or retard the growth of the plant and as the impugned Order does not hold that the imported goods could retard the growth of the plant, it was averred that the impugned order erroneously classified the imported goods as 'plant growth regulator' under Heading 3808. Reliance was placed on the decision in the case of *Commissioner of Central Excise v. Chemcel Bio-tech Ltd.* [2007 (211) E.L.T. 414 (Tri. - Bang.)], where a distinction was drawn between 'plant growth promoter' and 'plant growth regulator' and it was held that plant growth promoters are not classifiable under CTH 3808.

3.5 It was submitted that the HSN Explanatory Notes to Chapter Heading 3808 excludes 'Cultures of Microorganisms' from being classified under said heading and reads as under: -

"This heading excludes:

(a) Products for disinfecting, insecticidal etc., uses, not answering to the description above. These products are classified according to their nature under appropriate heading, for example:

.....

(v) **Cultures of micro-organisms used as a basis for rodenticides, etc. (heading 30.02)**"

Reliance in this regard was placed on the decision of the Tribunal in the case of *T. Stanes & Co. v. Commissioner of Central Excise* [2009 (235) ELT 183 (Tri.-Chennai)] wherein it was held that cultures of microorganisms which perform the function of bio-pesticides or bio-fungicides are excluded from

being classified under CTH 3808 by the HSN Explanatory Notes. Relevant portion of the said decision is reproduced below: -

"10.4 *The HSN Explanatory notes for CH 3808 clarifies that the said heading does not cover rodenticides etc. with cultures of micro-organisms used as basis. They fall under CH 3002. This note in HSN reads as :*

"This heading excludes :

(a) Products for disinfecting, insecticidal etc., uses, not answering to the description above. These products are classified according to their nature under the appropriate headings, for example:

...

Cultures of micro-organisms used as a basis for rodenticides, etc. (heading 30.02).

Chapter Heading 3808 covers, inter alia, insecticides, fungicides and rodenticides. Therefore CH 3808 does not cover insecticides and fungicides with cultures of microbes as basis.

11. In the result we hold that Bio-Cure (F), Bio-Cure (B), Bio-Catch, Bio-Power and Priority manufactured by M/s. T. Stanes and Co., do not fall under CH 3808 and fall under CH 3002."

It was pointed out that the said decision was subsequently followed in *Commissioner of Central Excise v. Bannari Amman Sugars Ltd. [2018 (7) TMI 985 - CESTAT CHENNAI]*.

3.6 The Ld. Counsel has put forth that though CTH 3808 covers insecticides, fungicides, plant growth regulators etc., it does not cover insecticides, fungicides, and plant growth regulators which are cultures of micro-organisms. It was pointed out that the subject goods though used as plant growth regulators admittedly contained cultures of 18 species of microorganisms named mycorrhizal fungi as evidenced by the test report dated 21.06.2010 issued by the University of Madras which does not deny the existence of mycorrhizal fungi and mentioned that the bacteria identified in the test regulate plant growth by producing plant growth

regulators/phytohormones/biologically active substance and the report does not state that the imported goods as such, are plant growth regulators. It was also submitted that *Pseudomonas Fluroescens* and *Bacillus Sp* which were identified as the primary bacteria present in the sample are in the nature of Bio-Feterilizers and not plant growth regulators.

3.7 It was averred that reliance cannot be placed on inconclusive test reports to re-classify goods under Heading 3808 and in this regard reliance was placed on the decision in the case of *K.J. Associates v. CC* [2021 (377) E.L.T. 892 (Tri.- Bang.)], the Hon'ble Tribunal wherein it was held that when the test report which only stated "it may find use as a plant growth regulator" was held to be inconclusive to classify the goods as a plant growth regulator under Heading 3808. In *CCE v. Safex Chemical India Ltd.* [2017 (7) G.S.T.L. 234 (Tri. - Chan.)], the report of the Chemical Examiner was held to be inconclusive. Relevant portion of the decision was referred as extracted below: -

"6. We find that the report of the Chemical Examiner states that the impugned product is essentially composed of sulphates, borates, silicates of potassium, ammonium and iron together with organic compound. Report also mentions on basis of literature of the product that it contains auxins and cytokinins in addition to other ingredients. Auxin and cytokinins are known to find use as plant growth regulator. The report is clearly inconclusive as it does not indicate the quantitative composition or percentage of various ingredients. We have also seen the literature of the product Shakti which mentions that it is mixture of micronutrients, Cytokins, Auxins, Enzymes, Amino acids and Hydrolysed proteins. However, from the accompanying literature too, percentage of auxin and cytokinins cannot be found ascertained. The literature says that it increases the yield and product quality of Rice, Wheat, Cotton, Sugarcane, Potato, Vegetables and Fruits. It increases the growth activities of plants like vegetative growth, flowering and fruit bearing. It acts as a Bio-stimulant which increases chemical activities in plant cells resulting in increased photosynthesis and protein building. It is also mentioned that Shakti granules are for soil application."

The said decision was also followed in *Goldmuhar Agrochem & Feeds Ltd. v. CCE [2022 (8) TMI 103 - CESTAT MUMBAI]*.

3.8.1 In *Indo Australian Humigrow System v. CCE 2018 (7) TMI 162 - CESTAT CHANDIGARH*, the report of the chemical examiner which concluded that the product was a plant growth regulator based on the ingredient of plant growth hormone mentioned in the literature, was held to be inconclusive. Relevant portion is extracted below: -

“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.

...

6.4 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.**”

3.8.2 In *Jai Shree Rasayan Udyog Ltd. v. CCE* [2015 (10) TMI 1777 - CESTAT NEW DELHI], the report of the chemical examiner which was based on the importer's product literature was held to be inconclusive for re-classification of the product under Heading 3808.

3.8.3 In *Uma Mercantile Pvt. Ltd. v. CC* [2003 (156) E.L.T. 110 (Tri. - Chennai)], it has been held that once an expert body has given a report on the samples, drawn and sent by the Commissioner the same is required to be accepted unless there is rebuttal evidence in the matter.

In view of the above it was pointed out that the imported goods containing mycorrhizal fungi are not plant growth regulators as such and the same is excluded from being classified under CTH 3808.

3.9 Further, the Ld. Counsel has submitted that the burden of proving an alternate classification is on the Department as it is a trite law that in case the Department intends to classify goods under a particular heading or sub-heading different from that claimed by the Assessee, relying on the following decisions: -

- i. Puma Ayurvedic Herbal (P) Ltd. v. CCE* [2006 (196) E.L.T. 3 (S.C.)]
- ii. H.P.L. Chemicals Ltd. v. CCE* [2006 (197) E.L.T. 324 (S.C.)]

It was averred that in the present case, the Department has failed to discharge its burden to prove the classification of the goods under CTH 3808 and in such circumstances the proposal to reclassify the goods must be set aside and the classification adopted by the assessee must prevail.

3.10 It was also submitted that when the classification proposed by the Department cannot be sustained, then irrespective of the fact as to whether or not the classification of the assessee is proper, the same would prevail as held by the Hon'ble Apex Court in *Warner Hindustan Ltd. v. CCE* [1999 (113) E.L.T. 24 (SC)] which was followed by Hon'ble Tribunal in *Pepsico Holdings Pvt. Ltd. v. CCE*, [2019 (25) G.S.T.L. 271 (Tri-Mumbai)] wherein the Tribunal held that the classification proposed in the Bill of Entry will prevail when classification of Revenue is found to be inappropriate.

3.11.1 Further, the Hon'ble Supreme Court in *CC v. Sunrise Traders* [2022 (382) E.L.T. 23 (S.C.)] affirmed the decision of the Hon'ble Tribunal in *M/s. Sunrise Traders & Ors. v. CC*, [2022 (381) E.L.T. 393 (Tri. - Ahmd.)] that when the classification proposed by the Department fails, the correct course of action would be to sustain the classification adopted by the Assessee. In the present case, the re-classification under Heading 38083940 is erroneous for various reasons as discussed above. Therefore, the imported goods must be held to have been correctly classified.

3.11.2 Reliance was also placed on the Tribunal's decision in *CC vs. Toyota Kirloskar Motor Pvt. Ltd.* [2024 (1) TMI 1170 - CESTAT CHENNAI] wherein it was held that when the classification proposed by the department cannot be sustained, then irrespective of the fact as to whether or not the classification of the assessee is proper, the same would prevail.

3.11.3 Thus, the Ld. Counsel prayed for setting aside the impugned Order-in-Original No. 20252/2013 dated 18.02.2013 and argued against invocation of extended period and imposition of fine and penalty, terming it as illegal and without merit.

3.12 It was submitted that in the present case, the interest and penalty have been imposed in relation to demand of additional customs duty leviable under Section 3(1) of the Customs Tariff Act, 1975. In this regard it was pointed out that the Customs Tariff Act has limited machinery provisions and therefore it borrows various provisions from the Customs Act for implementation of its provisions. Section 3(8) of the CTA (now Section 3(12) of CTA) is the borrowing provision regarding additional customs duty.

“(8) The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.”

The Assessee also submitted that on a reading of the above provision, it is clear that Section 3 of CTA which levies duties other than Basic customs duty borrows the procedural provisions of Customs Act, however substantive provisions relating to penalty, confiscation, fine and interest from the Customs Act is not explicitly borrowed. Reliance was placed on the decision in the case of *Mahindra & Mahindra Ltd. v. Union of India [2022 (10) TMI 212 - BOMBAY HIGH COURT]*, wherein it was held that in the absence of specific provisions for levying of interest or penalty under the Customs Tariff

Act, 1975, the same cannot be borrowed from the Customs Act, 1962. This decision of the Hon'ble Bombay High Court was affirmed by the Hon'ble Apex Court in *Union of India Vs Mahindra and Mahindra Ltd.*, [2023 (8) TMI 135 - SC] and the Review Petition filed by the Department was also dismissed by the Hon'ble Supreme Court *vide* order dated 09.01.2024 in Review Petition (Civil) Diary No. 41195/2023. Further, reliance was placed on the decision in the case of *Acer India Private Ltd. v. CC, Chennai*, [2023-VIL-998-CESTAT-CHE-CU], wherein the Tribunal also affirmed the above view and held that even in cases where differential CVD is payable, there shall be no recovery of interest or confiscation of goods or imposition of fine since the Customs Tariff Act has not borrowed the relevant provisions.

3.13 The Ld. Advocate has referred to the impugned Order which held in Para 41 that Chapter 30 covers Pharmaceutical products which relates only to goods of prophylactic or therapeutic use and does not include goods that are to be used as Plant Growth regulators, which appears to be more specifically covered under the CTH 38089340. In this regard, it was submitted that the classification of goods is governed by the General Rules for Interpretation of the Tariff. Rule 1 of the General Rules for Interpretation of the Tariff provides that the titles of Sections, Chapters and Sub-chapters are provided for ease of reference only and for legal purposes, classification shall be determined according to the terms of the heading and any relative Section or Chapter Notes. It was pointed out that the Ld. Commissioner has relied on the title of Chapter 30 i.e., pharmaceutical products and compared the same with the heading of CTH 38089340, which is impermissible and

therefore the reliance placed on the title of Chapter 30 for the purposes of comparison is contrary to Rule 1 of the General Rules for Interpretation of the Tariff. Further on comparison of the headings CTH 3002 9030 i.e., 'Cultures of microorganisms' and CTH 38089340 i.e. 'plant growth regulators', it was evident that cultures of microorganism are more specifically classified under the former heading. Reliance was placed on the decision in the case of *NMS Babu v. CCE, Bangalore [2006 (198) E.L.T. 528 (Tri. - Bang.)]*, wherein it was held that product Echoderma and Echohume which is a fungicide containing microorganism is specifically classified under CTH 3002 90 30 and not under 3808. Relevant portion of the said decision is reproduced below: -

"The correct classification of Echoderma and Echohume, according to the appellants, would be under Chapter Headings 30.02 and 31.01 as cultures of micro-organisms and animal and vegetable fertilizer, respectively. The Department contends that the items are classifiable under Heading 38.08 as fungicides/pesticides. The contention of the appellant is that fungicides/pesticides are synthetic chemicals meant to kill the pests and harmful fungi, whereas Echoderma itself is a living fungi which can be killed by typical fungicide. Secondly, pesticides kill the target pests by poisoning them through different mode of action. Echoderma does not kill any fungi. It is a beneficial fast growth fungus which when applied to soil grows fast preventing other harmful fungi to attack the plant. In fact, Echoderma is a biochemical agent. According to the Central Insecticide Board, Echoderma is an antagonistic fungus. The appellants have produced enormous technical literature on the subject. The Fredrick Institute of Plant Protection and Toxicology has tested the item and stated that the same can be used as an antagonistic fungus for biocontrol. No reliance can be placed on the Chemical Examiner's Report as it is on record that the concerned laboratory of the Department does not undertake testing for fungus and bacteria. Hence, in our view the classification of Echoderma under Chapter 30 appears to be correct"

4. Shri Anoop Singh, the Ld. Authorised Representative for the Department reiterated the findings of the Original Adjudicating Authority with regard to appropriate classification of the imported product but

contested that the impugned order was not legal and proper in so far as it relates to non- imposition of penalty under Section 114 A of the Customs Act, 1962. It was submitted that the Adjudicating Authority having confirmed the charges of suppression of facts on the part of the importer with a view to evade payment of appropriate duty confirmed the demand of differential duty of Rs.89,56,159/- under proviso to Section 28 of the CA, 1962 but refrained from imposing any penalty on the importer as prescribed under Section 114 A on which the demand of duty was confirmed by reason of suppression of facts. The Ld. AR placed reliance on the decision of the Hon'ble Supreme Court in the case of *UOI Vs. Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3 SC]* wherein it was observed as follows: -

"One cannot fail to notice that both the proviso to Sub Section 1 of Section 11 A and Section 11 AC use the same expression: by reasons of fraud, collusion or any wilful mis-statement or suppression of facts etc with intent to evade payment of duty.....". In other words the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty. It therefore follows that if the notice under Section 11 A [1] states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under Section 11 A [2] there is legally tenable finding to that effect then the provisions of Section 11 AC would also get attracted".

...

...

"Penalty under Section 11 AC of Central Excise Act, 1944 is punishment for an act of deliberate deception by the Assessee with the intent to evade duty by adopting any of the means mentioned in the Section. It was further observed in paragraph 23 that "the decision in Dharmendra Textile must,sss therefore, be understood to mean that though the application of Section 11 AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under Sub Section [2] of Section 11 A".

It was stressed that even though the above said ruling was given in a Central Excise case involving interpretation of Section 11 AC, the ratio is squarely applicable to Customs cases also, since Section 114 A is in *pari*

materia to Section 11 AC and the proviso to Section 11 A [1] and proviso to Section 28 [1] are similarly worded.

5. Heard both sides and carefully considered the submissions and evidences on record.

6. The issues which arise for decision in this appeal are: -

- i. Whether the imported 'RTS Mycorrhiza Roots Soluble' is classifiable under Customs Tariff Heading (CTH) 3002 9030 as Cultures of micro-organisms as self-assessed by the Assessee or is classifiable under CTH 38089340 as a plant growth regulator as held in the impugned order?
- ii. Whether confiscation of subject imports and imposition of fine and penalty are sustainable and if so, whether equal penalty under Section 114AA of the Customs Act, 1962 is imposable considering the facts and circumstances of the case?

7. We find that the Assessee-importer imported 'RTZ Mycorrhiza Roots Soluble' powder which acts as a rooting stimulant for plants and classified the same under CTI 3002 9030. The Assessee discharged BCD at merit rate of 10%, 0% CVD and 4% SAD (under Notification No. 19/2006-Cus. dated 01.03.2006). The department was of the view that the subject item as comprised of phytoharmones, classifying them under CTH 30029030

appeared to be incorrect and the goods appeared to be rightly classifiable under the CTH 38089340 as plant growth regulators. The department relied on the test reports before rejecting the declared classification. The Assessee-Importer disputed that the subject goods are not classifiable as plant growth regulators under CTH 3808 9340 as the subject goods are not separate chemically defined elements or compounds and therefore, the subject goods are excluded from that Chapter by virtue of Note 1(a)(2) to Chapter 38. In their written submissions, the Assessee-importer have relied on various case laws contesting the classification arrived at by the department and countered the confiscation and imposition of penalty in the impugned order. The department has also filed an appeal praying for imposition of equal penalty under Section 114AA of Customs Act, 1962 in as much as suppression was duly established by the findings in the impugned order.

8. The Classification of imported goods under the first schedule of Customs Tariff Act, 1975 is governed by the General Rules for Interpretation (GRI) of Import Tariff. As per Rule 1 of GRI, classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes. For the purposes of Rule 1 of GIR, the relative Section and Chapter Notes apply, unless the context otherwise requires. This is the first Rule to be considered in classifying any product. In other words, if the goods to be classified are covered by the words in a heading and the Section and Chapter Notes do not exclude classification in that heading, that heading would apply to the said goods. If such headings or notes do not otherwise require then the classification is to be determined in accordance with Rule 2

to 6 of said Rules. Rule 2(b) of GRI stipulates that the classification of goods consisting of more than one material or substance shall be according to the principle laid down in Rule 3 of GRI. Rule 3(a) stipulates that the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to a part only of the materials or substances contained in mixed or composite goods, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a precise or complete description of the goods. Rule 3(b) stipulates that mixtures, composite goods consisting of different materials which cannot be classified under Rule 3(a) shall be classified as if they consisted of the material or component which gives them essential character.

9. In order to ascertain the correct classification of the product, we reproduce the relevant Tariff entries of Customs Tariff Act and HSN explanatory notes as below: -

3002	HUMAN BLOOD; ANIMAL BLOOD PREPARED FOR THERAPEUTIC, PROPHYLACTIC OR DIAGNOSTIC USES; ANTISERA, OTHER BLOOD FRACTIONS AND IMMUNOLOGICAL PRODUCTS, WHETHER OR NOT MODIFIED OR OBTAINED BY MEANS OF BIOTECHNOLOGICAL PROCESSES; VACCINES, TOXINS, CULTURES OF MICRO-ORGANISMS (EXCLUDING YEASTS) AND SIMILAR PRODUCTS ;			
3002 10	- <i>Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes:</i>			
	--- Antisera;			
3002 10 11	----	For diphtheria	kg.	10% 10%
3002 10 12	----	For tetanus	kg.	10% 10%
3002 10 13	----	For rabies	kg.	10% 10%
3002 10 14	----	For snake venom	kg.	10% 10%
3002 10 19	----	Other	kg.	10% 10%
3002 10 20	---	Hemoglobin blood globulins and serum globulins	kg.	10% 10%
	--- <i>Other :</i>			
3002 10 91	----	Of human origin	kg.	10% 10%
3002 10 99	----	Other	kg.	10% 10%
3002 20	- <i>Vaccines for human medicine :</i>			
	--- <i>Single vaccines :</i>			
3002 20 11	----	For cholera and typhoid	kg.	10% 10%
3002 20 12	----	For hepatitis	kg.	10% 10%
3002 20 13	----	For tetanus	kg.	10% 10%
3002 20 14	----	For polio	kg.	10% 10%
3002 20 15	----	For tuberculosis	kg.	10% 10%
3002 20 16	----	For rabies	kg.	10% 10%
3002 20 17	----	For Japanese encephalitis	kg.	10% 10%
3002 20 18	----	For whooping cough (pertussis)	kg.	10% 10%
3002 20 19	----	Other	kg.	10% 10%
	--- <i>Mixed vaccines :</i>			
3002 20 21	----	For diphtheria, pertussis and tetanus (DPT)	kg.	10% 10%
3002 20 22	----	For diphtheria and tetanus (DT)	kg.	10% 10%
3002 20 23	----	For measles, mumps and rubella (MMR)	kg.	10% 10%
3002 20 24	----	For typhoid-paratyphoid (TAB) or typhoid- paratyphoid-cholera (TABC)	kg.	10% 10%
3002 20 29	----	Other	kg.	10% 10%
3002 30 00	- Vaccines for veterinary medicine			
3002 90	- <i>Other :</i>			
3002 90 10	---	Human blood	kg.	10% 10%
3002 90 20	---	Animal blood prepared for therapeutic, prophylactic or diagnostic uses	kg.	10% 10%
3002 90 30	---	Cultures of micro-organisms (excluding yeast)	kg.	10% 10%
3002 90 40	---	Toxins	kg.	10% 10%
3002 90 90	---	Other	kg.	10% 10%



Assessee' Classification

Chapter 38 of the First Schedule to the Customs Tariff deals with Miscellaneous Chemical Products, including “plant growth regulators” and the relevant entries are: -

3808	INSECTICIDES, RODENTICIDES, FUNGICIDES, HERBICIDES, ANTI-SPROUTING PRODUCTS AND PLANT-GROWTH REGULATORS, DISINFECTANTS AND SIMILAR PRODUCTS, PUT UP IN FORMS OR PACKINGS FOR RETAIL SALE OR AS PREPARATIONS OR ARTICLES (FOR EXAMPLE, SULPHUR-TREATED BANDS, WICKS AND CANDLES, AND FLY-PAPERS)				
3808 50	-	<i>aldrin (ISO); binapacryl (ISO); camphechlor (ISO) (toxaphene); captafol (ISO); chlordane (ISO); chlordimeform (ISO); chlorobenzilate (ISO); DDT (ISO) (clofenotane (INN), 1,1,1-trichloro-2,2-bis (p-chlorophenyl)ethane); dieldrin (ISO,INN), dinoseb (ISO), its salts or its esters; ethylene dibromide (ISO) (1,2-dibromoethane); ethylene dichloride (ISO); (1,2-dichloroethane); fluoroacetamide (ISO); heptachlor (ISO); hexachlorobenzene (ISO); 1,2,3,4,5,6,-hexachlorocyclohexane (HCH (ISO)), including lindane (ISO, INN); mercury compounds; methamidophos (ISO); monocrotophos (ISO); oxirane (ethylene oxide); parathion (ISO); parathion-methyl (ISO) (methyl-parathion); pentachlorophenol (ISO); phosphamidon (ISO); 2,4,5-T (ISO) (2,4,5- trichlorophenoxyacetic acid), its salts or its esters:</i>			
3808 50 00	---	<i>aldrin (ISO); binapacryl (ISO); camphechlor (ISO) (toxaphene); captafol (ISO); chlordane (ISO); chlordimeform (ISO); chlorobenzilate (ISO); DDT (ISO) (clofenotane (INN), 1,1,1-trichloro- 2,2-bis(p-chlorophenyl)ethane); dieldrin (ISO,INN), dinoseb (ISO), its salts or its esters; ethylene dibromide (ISO) (1,2-dibromoethane); ethylene dichloride (ISO); (1,2-dichloroethane); fluoroacetamide (ISO); heptachlor (ISO); hexachlorobenzene (ISO); 1,2,3,4,5,6,- hexachlorocyclohexane (HCH (ISO)), including lindane (ISO, INN); mercury compounds; methamidophos (ISO); monocrotophos (ISO); oxirane (ethylene oxide); parathion (ISO); parathion-methyl (ISO) (methyl-parathion); pentachlorophenol (ISO); phosphamidon (ISO); 2,4,5-T (ISO) (2,4,5-trichlorophenoxyacetic acid), its salts or its esters</i>	kg.	10%	-
3808 91	---	<i>Other:</i>			
3808 91 11	----	<i>Insecticides;</i> Aluminium phosphate (for example phostoxin)	kg.	10%	-
3808 91 12	----	Calcium cyanide	kg.	10%	-
3808 91 13	----	D.D.V.P. (Dimethyle-dichloro-vinyl- phosphate)	kg.	10%	-
3808 91 21	----	Diagonal	kg.	10%	-
3808 91 22	----	Methyl bromide	kg.	10%	-
3808 91 23	----	Dimethoate, technical grade	kg.	10%	-
3808 91 24	----	Melathion	kg.	10%	-
3808 91 31	----	Endosulphan, technical grade	kg.	10%	-
3808 91 32	----	Quinal phos	kg.	10%	-
3808 91 33	----	Isoproturon	kg.	10%	-
3808 91 34	----	Fenthion	kg.	10%	-
3808 91 35	----	Cipermethrin, technical grade	kg.	10%	-
3808 91 36	----	Allethrin	kg.	10%	-
3808 91 37	----	Synthetic pyrethrum	kg.	10%	-
3808 91 91	----	Other			
3808 91 92	----	Repellants for insects such as flies, mosquito	kg.	10%	-
3808 91 99	----	Paper impregnated or coated with insecticides such as D.D.T. coated paper	kg.	10%	-
3808 92	----	<i>Fungicides:</i>			
3808 92 10	----	Maneb	kg.	10%	-
3808 92 20	----	Sodium penta chlorophenate (santrobrite)	kg.	10%	-

3808 92 30	--- Thiram (tetra methyl thiuram disulphide)	kg.	10%	-
3808 92 40	--- Zineb	kg.	10%	-
380892 50	--- Copper oxychloride	kg.	10%	-
380892 90	--- Other	kg.	10%	-
380893	-- <i>Herbicides, anti-sprouting products and plant-growth regulated</i>			
3808 93 10	--- Chloromethyl phenoxy acetic acid (M.C.P.A)	kg.	10%	-
3808 93 20	--- 2:4 Dichloro phenoxy acetic acid its and esters	kg.	10%	-
3808 93 30	--- Gibberellic acid	kg.	10%	-
380893 40	--- Plant growth regulators	kg.	10%	-
380893 50	--- Weedicides and weed killing agents	kg.	10%	-
3808 93 90	--- Other	kg.	10%	-
3808 94 00	--- Disinfectants	kg.	10%	-
3808 99	-- <i>Other:</i>			
3808 99 10	--- Pesticides, not else where specified or included	kg.	10%	-
3808 99 90	--- Other	kg.	10%	-

Department's classification

HSN Explanatory Notes

30.02 - Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products.

3002.10 - Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes

3002.20 - Vaccines for human medicine

3002.30 - Vaccines for veterinary medicine

3002.90 - Other

This heading covers :

(A) **Human blood** (e.g., human blood in sealed ampoules).

(B) **Animal blood prepared for therapeutic, prophylactic or diagnostic uses.**

Animal blood not prepared for such uses falls in heading 05.11.

(C) **Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes.**

These products include :

(1) **Antisera and other blood fractions, whether or not obtained by means of biotechnological processes.**

Sera are the fluid fractions separated from blood after clotting.

The heading covers, *inter alia*, the following products derived from blood : "normal" sera, human normal immunoglobulin, plasma, thrombin, fibrinogen, fibrin and other blood coagulation factors, blood globulins, serum globulins, and haemoglobin. This group also includes modified haemoglobins obtained by means of biotechnological processes, e.g., cross-linked haemoglobins such as hemoglobin crosfumaryl (INN), hemoglobin glutamer (INN) and hemoglobin raffimer (INN).

The heading further includes blood albumin (e.g., human albumin obtained by fractionating the plasma of whole human blood), prepared for therapeutic or prophylactic uses.

Antisera are obtained from the blood of humans or of animals which are immune or have been immunised against diseases or ailments, whether these are caused by pathogenic bacteria and viruses, toxins or allergic phenomena, etc. Antisera are used against diphtheria, dysentery, gangrene, meningitis, pneumonia, tetanus, staphylococcal or streptococcal infections, snake bite, vegetable poisoning, allergic diseases, etc. Antisera are also used for diagnostic purposes, including in vitro tests. Specific immunoglobulins are purified preparations of antisera.

The heading **does not cover** blood albumin not prepared for therapeutic or prophylactic uses (heading 35.02) or globulins (other than blood globulins and serum globulins) (heading 35.04). The heading also **excludes** medicaments which are not separated from the blood but which in some countries are described as "sera" or "artificial sera"; they include isotonic solutions based on sodium chloride or other chemicals and suspensions of pollen which are used against allergic diseases.

(2) **Modified immunological products, whether or not obtained by means of biotechnological processes.**

Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows :

- (a) **Monoclonal antibodies (MABs)** - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.
- (b) **Antibody fragments** - parts of an antibody protein obtained by means of specific enzymatic splitting.
- (c) **Antibody conjugates and antibody fragment conjugates** – conjugates which contain at least one antibody or an antibody fragment. The simplest types are a combination of the following :
 - (i) antibody – antibody;
 - (ii) antibody fragment – antibody fragment;
 - (iii) antibody - antibody fragment;
 - (iv) antibody – other substance;
 - (v) antibody fragment – other substance.

Conjugates of types (iv) and (v) include, for example, enzymes (e.g., alkaline phosphatase, peroxidase or betagalactosidase) or dyes (fluorescein) covalently bound to the protein structure, which are used for straightforward detection reactions.

(D) **Vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products.**

These products include :

(1) **Vaccines.**

The most typical vaccines are prophylactic preparations of microbial origin containing either viruses or bacteria suspended in saline solutions, oil (lipovaccines) or other media. These preparations have usually been treated to reduce their toxicity without destroying their immunizing properties.

Other vaccines include recombinant vaccines, peptide vaccines and carbohydrate vaccines. These vaccines generally contain an antigen, a recognised part of an antigen or a gene coding for a recognised part of an antigen (peptides, recombinants or conjugates of protein and others). The “recognised part of an antigen” is the part of an antigen which triggers the immunological response in the organism. Many of these vaccines target a specific virus or bacterium. These vaccines are used for prophylactic or therapeutic purposes.

The heading also covers mixtures consisting of vaccines or toxoids (such as Diphtheria, Tetanus and Pertussis (DPT) vaccine).

(2) **Toxins (poisons), toxoids, crypto-toxins and anti-toxins.**

(3) Cultures of micro-organisms (excluding yeasts). These include ferments such as lactic ferments used in the preparation of milk derivatives (kephir, yogurt, lactic acid) and acetic ferments for making vinegar; moulds for the manufacture of penicillin and other antibiotics; and cultures of micro-organisms for technical purposes (e.g., for aiding plant growth).

Milk or whey containing small quantities of lactic ferments is classifiable in Chapter 4.

(4) **Virus, human, animal and vegetable and anti-virus.**

(5) **Bacteriophage.**

The heading also includes diagnostic reagents of microbial origin, other than those provided for in Note 4 (d) to this Chapter - see heading 30.06. It does not cover enzymes (rennet, amylase, etc.) even if of microbial origin (streptokinase, streptodornase, etc.) (heading 35.07) nor dead single-cell micro-organisms (other than vaccines) (heading 21.02).

(E) **Diagnostic kits.**

Diagnostic kits are classified here when the essential character of the kit is given by any of the products of this heading. Common reactions occurring in the use of such kits include agglutination, precipitation, neutralization, binding of complement, haemagglutination, enzyme-linked immunosorbent assay (ELISA), etc. The essential character is given by that single component which governs to the greatest extent the specificity of the test procedure.

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Notes to Chapter 38

38.08 - Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers) (+).

3808.50 - Goods specified in Subheading Note 1 to this Chapter

- Other :

3808.91 -- Insecticides

3808.92 -- Fungicides

3808.93 -- Herbicides, anti-sprouting products and plant-growth regulators

3808.94 -- Disinfectants

3808.99 -- Other

This heading covers a range of products (**other than** those having the character of medicaments, including veterinary medicaments - heading 30.03 or 30.04) intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches, etc.), mosses and moulds, weeds, rodents, wild birds, etc. Products intended to repel pests or used for disinfecting seeds are also classified here.

These insecticides, disinfectants, herbicides, fungicides, etc., are applied by spraying, dusting, sprinkling, coating, impregnating, etc., or may necessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc.

The heading further covers anti-sprouting products and plant-growth regulators intended to inhibit or promote physiological processes in plants. Their modes of application vary and their effects range from destruction of the plant to enhanced growth-vigour and improved crop-yield.

These products are classified here in the following cases only :

- (1) When they are put up in packings (such as metal containers or paperboard cartons) for retail sale as disinfectants, insecticides, etc., or in such forms (e.g., in balls, strings of balls, tablets or plates) that there can be no doubt that they will normally be sold by retail.

Products put up in these ways may or may not be mixtures. The unmixed products are mainly chemically defined products which would otherwise fall in Chapter 29, e.g., naphthalene, or 1,4-dichlorobenzene.

The heading also includes the following products, **provided** they are put up for retail sale as disinfectants, fungicides, etc. :

- (a) **Organic surface-active products and preparations**, with active cation (e.g., quaternary ammonium salts), having antiseptic, disinfectant, bactericidal or germicidal properties.
- (b) **Poly(vinyl pyrrolidone)-iodine**, being a reaction product of iodine and poly(vinyl pyrrolidone).

- (2) When they have the character of preparations, whatever the presentation (e.g., as liquids, washes or powders). These preparations consist of suspensions or dispersions of the active product in water or in other liquids (e.g., a dispersion of DDT (ISO) (clofenotane (INN), (1,1,1-trichloro-2,2-bis(*p*-chlorophenyl)ethane) in water), or of other mixtures. Solutions of active products in solvents **other than water** are also included here (e.g., solutions of pyrethrum extract (other than standardised pyrethrum extract), or copper naphthenate in a mineral oil).

Intermediate preparations, requiring further compounding to produce the ready-for-use insecticides, fungicides, disinfectants, etc., are also classified here, **provided** they already possess insecticidal, fungicidal, etc., properties.

Insecticidal, disinfecting, etc., preparations may have a basis of copper compounds (copper acetate, sulphate, acetoarsenite, etc.), of sulphur or sulphur compounds (calcium sulphide, carbon disulphide, etc.), of mineral creosote or anthracene oils, of DDT (ISO) (clofenotane (INN), (1,1,1-trichloro-2,2-bis(*p*-chlorophenyl)ethane), lindane (ISO, INN), parathion, of phenol or cresol derivatives, of arsenical products (calcium arsenate, lead arsenate, etc.), of materials of vegetable origin (nicotine, tobacco essences and powders, rotenone, pyrethrum, red squill, rape oil), of plant-growth regulators, natural or synthetic (e.g., 2,4-D), of cultures of micro-organisms, etc.

Poisoned bait composed of edible products (wheat grains, bran, molasses, etc.) mixed with poison is another example of the preparations included in this heading.

- (3) When they are put up in the form of **articles** such as sulphur-treated bands, wicks and candles (for disinfecting and fumigating vats, living quarters, etc.), fly-papers (including those coated with glue not containing poisonous matter), grease bands for fruit trees (including those not containing poisonous matter), papers impregnated with salicylic acid for preserving jams, papers or small wooden sticks coated with lindane (ISO, INN) and acting by combustion, etc.

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The products of heading 38.08 can be divided into the following groups :

(I) **Insecticides**

Insecticides include not only products for killing insects, but also those having a repellent or attractant effect. The products may be in a variety of forms such as sprays or blocks (against moths), oils or sticks (against mosquitoes), powder (against ants), strips (against flies), cyanogen gas absorbed in diatomite or paperboard (against fleas and lice).

Many insecticides are characterised by their mode of action or method of use. Among these are :

- insect growth regulators : chemicals which interfere with biochemical and physiological processes in insects.
- fumigants : chemicals which are distributed in the air as gases.

- chemosterilants : chemicals used to sterilise segments of an insect population.
- repellents : substances which prevent insect attack by making their food or living conditions unattractive or offensive.
- attractants : used to attract insects to traps or poisoned baits.

(II) Fungicides

Fungicides are products which protect against the growth of fungi (e.g., preparations based on copper compounds) or which are designed to eradicate the fungi already present (e.g., preparations based on formaldehyde).

Fungicides can be characterised by their mode of action or method of use. Examples of this are :

- Systemic fungicides - these chemicals are translocated in the sap stream from the site of application to other plant parts.
- Fumigants - chemicals which counteract fungi when they are applied to affected materials in a gaseous form.

(III) Herbicides, anti-sprouting products, plant-growth regulators

Herbicides are chemicals which are used to control or destroy unwanted plants. Some herbicides are applied to dormant plant parts or seeds, while other herbicides are applied to the whole foliage. They can provide control which is **selective** (herbicides which affect specific plants) or **non-selective** (herbicides which result in the complete eradication of vegetation).

The group also includes defoliants, which are chemicals intended to cause the leaves or foliage of plants to drop prematurely.

Anti-sprouting products can be applied to seeds, bulbs, tubers or soils to inhibit or delay germination or sprouting.

Plant-growth regulators are applied to alter the life processes of a plant so as to accelerate or retard growth, enhance yield, improve quality or facilitate harvesting, etc. Plant hormones (phytohormones) are one type of plant-growth regulator (e.g., gibberellic acid). Synthetic organic chemicals are also used as plant-growth regulators.

(IV) Disinfectants

Disinfectants are agents which destroy or irreversibly inactivate undesirable bacteria, viruses or other micro-organisms, generally on inanimate objects.

Disinfectants are used, for example, in hospitals for cleaning walls, etc., or sterilising instruments. They are also used in agriculture for disinfecting seeds and in the manufacture of animal feeds to control undesirable micro-organisms.

The group includes sanitisers, bacteriostats and sterilisers.

The heading also includes products to control mites and ticks (acaricides), molluscs (molluscicides), nematodes (nematocides), rodents (rodenticides), birds (avicides), and other pests (e.g., lampreycides, predacides).

This heading **excludes** :

- (a) Products for disinfecting, insecticidal etc., uses, not answering to the description above. These products are classified according to their nature under the appropriate headings, for example :
 - (i) Ground pyrethrum flowers (**heading 12.11**).
 - (ii) Pyrethrum extract (whether or not standardised by the addition of mineral oil) (**heading 13.02**).
 - (iii) Creosote oil or mineral creosote (**heading 27.07**).
 - (iv) Naphthalene, DDT (ISO) (clofenotane (INN), (1,1,1-trichloro-2,2-bis-(*p*-chlorophenyl)ethane) and other separate chemically defined compounds (including aqueous solutions) (Chapter 28 or 29).
 - (v) Cultures of micro-organisms used as a basis for rodenticides, etc. (**heading 30.02**).
 - (vi) Spent oxide (**heading 38.25**).
- (b) Preparations covered by more specific headings of the Nomenclature, or having subsidiary disinfecting, insecticidal, etc., properties, for example :
 - (i) Anti-fouling paints for ships' hulls, containing toxic materials (**heading 32.08, 32.09 or 32.10**).
 - (ii) Disinfectant soaps (**heading 34.01**).
 - (iii) DDT (ISO) (clofenotane (INN), (1,1,1-trichloro-2,2-bis(*p*-chlorophenyl)ethane) wax polishes (**heading 34.05**).
- (c) Disinfectants, insecticides, etc., having the essential character of medicaments, including veterinary medicaments (**heading 30.03 or 30.04**).
- (d) Prepared room deodorisers, whether or not having disinfectant properties (**heading 33.07**).

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Subheading Explanatory Note.

Subheadings 3808.91 to 3808.99

Products which have multiple uses, and are therefore *prima facie* classifiable in more than one subheading, are usually classified by application of General Interpretative Rule 3.

10. Upon comparison of the scope of the Tariff sub headings of chapter 3002 and chapter 3808 respectively and the test results, the Adjudicating Authority has held that the bacteria are predominantly found i.e. *Pseudomonas Fluorescens* & *Bacillus* sp which figure in the schedule to the Insecticide Act, 1968 and observed that the subject item has bacteria which belong to 'plant growth regulating organism' which regulates plant growth and are so appropriately classifiable under chapter 3808. The impugned order further observed that the imported goods per se are not "culture of microorganism" and the role of the balance material which

constitute 76.7% consists of amongst other things *viz.* Humic acid, Ascorbic acid (Vitamin C), cold water kelp extract, Amino Acid, myo-inositol is also relevant and the imported goods with the preparation of various non-plant material along with 23.3 % micro-organism, all of them contributing to plant growth/regulating activity as a whole is rightly classifiable under Chapter 3808, as plant growth regulators. The Adjudicating Authority has further held that the importer has suppressed the role of the other ingredients and claimed they are all inert carriers, whereas their own literature available on the Net disclosed that the other ingredients *viz.* Amino acids form proteins, while cytokinins stimulate root growth and retard senescence. Further, it was also observed that samples of imported goods were drawn and tested in the Centre For Advanced Studies in Botany, University of Madras and the Analysis Report revealed the presence of 6 different Bacteria and 2 of them *viz.* *Pseudomonas Fluorescens* and *Bacillus* sp were predominantly present and all the bacteria identified in the test belong to Plant Growth Regulating organism; they regulate plant growth by producing plant growth regulators/ phytohormones/biologically active substances. The retest conducted by Tamil Nadu Agricultural University (TNAU), Coimbatore has also identified the bacterial population on retest pointing its classification under CTH 3808 as Plant Growth Regulator.

Mycorrhizae Roots Soluble Powder:-

11.1 From the records in the appeal and the submissions of the Assessee, it is evident that the absorption of nutrients and moisture is the function of the plant root. The roots, which typically extend into the soil, are

characterized by the functions of absorption of water and inorganic nutrients and their storage, anchoring of the plant body to the ground and vegetative reproduction. In response to the concentration of nutrients, roots synthesize cytokinin, a plant hormone, which promotes cell division and determines the plant growth. In order to maximize nutrient absorption, the roots enter into symbiosis with certain fungi naturally found in the soil to form a mutualistic association, as with a large range of other organisms including bacteria. This mutualistic association or symbiotic relationship is termed Mycorrhiza after the presence of these fungi in the plant's rhizosphere (root system) and is an important component of soil life and soil chemistry.

11.2 The distribution of plant roots in the soil depends on plant form, the spatial and temporal availability of water and nutrients, and the physical properties of the soil. As is the case of all living beings, environmental extremes and scarcity of nutrients impact the ability of the plant to extract nutrition from the soil and perform as per its highest potential. Over time this becomes a cyclical issue as the reduced ability of the plant reduces its stress tolerance and makes it vulnerable to insects, pests, environmental hazards and weather conditions. The Assessee has informed that biotechnological offerings of Novozymes, including the imported product, play a significant role in uptake of moisture and nutrients by the plants.

11.3 The Ld. Counsel has referred to the definition of *Mycorrhiza* as per Wikipedia which is as under: -

"Mycorrhiza: A mycorrhiza is a mutual symbiotic association between a fungus and a plant. The term mycorrhiza refers to the role of the fungus in

the plant's rhizosphere, its root system. Mycorrhizae play important roles in plant nutrition, soil biology and soil chemistry."

11.4 The declaration dated 18.05.2010 made by M/s. Novozymes South Asia Pvt Ltd described that the product 'Mycorrhiza Roots' is a soluble rooting stimulant, and it contained the following cultures of micro-organisms (Mycorrhizae).

MYCORRHIZAE (NUMBER OF VIABLE ORGANISMS / GRAM)			
Pisolithus tinctorius	1,600,000	Glomus intraradices	21
Rhizopogon amylopogon	80.000	Glomus aggregatum	20
Rhizopogon villosuli	80,000	Glomus mosseae	20
Rhizopogon fulvigleba	80,000	Glomus clarum	1
Rhizopogon luteolus	80,000	Glomus monosporum	1
Scleroderma citrinum	40,000	Glomus deserticola	1
Scleroderma cepa	40,000	Glomus etunicatum	1
Laccaria laccata	16,000	Glomus brasilianum	1
Laccaria bicolor	16,000	Gigaspora margarita	1

The specification sheet for the product had stated that Mycorrhiza ROOTS is the soluble/injectable form of ROOTS Concentrate with mycorrhizae. It contains eighteen species of Mycorrhizae, to provide broad spectrum application for increased nutrient uptake and enhanced root system. It further showed that cultures of micro-organisms constitute 23 % of the preparation. The balance items are as hereunder: -

i	Humic Acid	-28.90%
ii	Ascorbic Acid (Vitamin C)	-12.30%
iii	Cold Water Kelp extract	-18.00%
iv	Amino Acids	-08.50%
v	Myo - Inositol	-03.50%
vi	Surfactant	-02.50%
vii	Thiamine (Vitamine B1)	-02.00%
viii	Alpha-Tocopherol (Vitamin E)	01.00%
	Total	76.70%

11.5 When applied to the soil around the plant, the constituent Mycorrizhae in the Product colonize the roots and help the plant by infusing additional nutrients, Fungus in the soil to help in the root system extension, nutrient absorption and stress tolerance. The Product therefore improves overall plant health and performance.

11.6 The Assessee has submitted that the composition of the Product has not been disputed by the Department. But it was alleged that notwithstanding the presence of the Mycorrizhal fungi, the primary role of the Product is played by other ingredients and, so, the Product is classifiable under CTH 38089340. It has been submitted that the Mycorrizha in the Product cannot survive in isolation. In order to keep the Product stable, it is necessary to include other ingredients such as seaweed, humic acids vitamins etc., which not only act as carriers for the Mycorrizhae but also provide a survival medium. Additionally, some of these constituents also help the plant by offering vitamins and other natural nutrients for enhanced plant performance.

11.7 The Ld. Counsel has put forth that the primary performing ingredient of the Product remains to be the Mycorrizhal fungi and not the other ingredients which are, at most, peripheral and ancillary to the role performed by the primary ingredient.

Plant Growth Regulators: -

12.1 Plant Growth Regulators or plant hormones (also known as phytohormones) are chemicals that regulate plant growth. All plants produce substances which regulate cellular processes so as to determine formation of flowers, stems, leaves, the shedding of leaves and the development and ripening of fruit. Plant hormones shape the plant, affecting seed growth, time of flowering, the sex of flowers, senescence of leaves, and fruits. They affect the tissues grow upward and which grow downward, leaf formation and stem growth, fruit development and ripening, plant longevity, and even plant death. These hormones are vital to plant growth, and, lacking them, plants would be mostly a mass of undifferentiated cells. It is reiterated that plant hormones are not nutrients but chemicals that in small amounts promote and influence the growth, development, and differentiation of cells and tissues.

12.2 The Ld. Advocate has submitted that from a reading of the composition, nature and function of the Product in the light of the above description of Plant Growth Regulators, it would clearly show that the Product does not scientifically fit the description of plant growth regulators. Plant Growth Regulators are chemical compositions and not microbial preparations. It was also argued that mere presence of Bacteria does not support classification as Plant Growth Regulator.

13. The Ld. Advocate has referred to the Interim Order No. 25-30/2024 dated 02.09.2024 by the Larger Bench in the case of *P.I. Industries Ltd.* wherein on the issue of classification of Bio stimulants, the Larger Bench has

noted that Bio stimulants are in the nature of plant growth promoters / fertilisers which are different from plant growth regulators. This order discusses about plant growth promoters and plant growth regulators which we find relevant to resolve the classification dispute in these appeals. The relevant paragraphs read as given below: -

"8. It is for this reason that the Division Bench referred the following issue in P.I. Industries to be decided by a Larger Bench of the Tribunal:

"Is it necessary for a plant growth promoter to be able to simultaneously inhibit growth or otherwise modify (apart from promotion) plant processes, to qualify as plant growth regulator under heading 3808 of Central Excise Tariff Act, 1985.

OR

So long as it promotes growth by modifying life processes of a plant it qualifies as plant growth regulator under heading 3808 of Central Excise Tariff Act, 1985"

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45. Bio-stimulants are fertilizers which influence the growth, yield and quality of plants by providing essential nutrients. The Ministry of Agriculture also considers "bio-stimulants" as "fertilizer", and hence, requires compliance of the Fertiliser (Inorganic, Organic or Mixed) (Control) Order, 1985. In this connection, it needs to be noted that "bio-stimulants", being a fertilizer, was brought under this Control Order by Order dated 23.02.2021 issued by Ministry of Agriculture and Farmers Welfare. The definition of "bio-stimulants" contained in the aforesaid Order excludes plant growth regulator, which have been stated to be regulated under the Insecticides Act, 1968. It is true that the aforesaid definition of "bio-stimulants" was included in the Fertilizer Order by Order dated 23.02.2021 of the Ministry, but as the Ministry has clearly expressed that bio-stimulants would exclude plant growth regulators, the definition would certainly provide guidance.

46. Fertilizers and plant growth regulators are both used in agriculture but serve different purposes. Fertilizers are substances added to the soil or plants to provide essential nutrients like nitrogen, phosphorus, and potassium that plants need to grow. They enhance soil fertility and promote plant growth by providing the necessary elements for healthy development. On the other hand, plant growth regulators are chemicals that influence plant growth and development by affecting physiological processes like cell division, elongation, and differentiation. They can regulate plant growth by promoting or inhibiting certain functions such as flowering, fruit setting, and root development. In a nutshell, fertilizers provide essential nutrients for plant growth, while plant growth regulators control specific aspects of plant growth and development.

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46. *Plant growth regulators are chemicals that control plant growth processes. They are classified into different groups:*

- (i) **Auxins:** *These promote cell elongation, root development, and apical dominance.*
- (ii) **Cytokinins:** *They stimulate cell division and promote lateral bud growth.*
- (iii) **Gibberellins:** *These regulate stem elongation, seed germination, and flowering.*
- (iv) **Abscisic Acid:** *It influences seed dormancy, drought tolerance, and stomatal closure.*
- (v) **Ethylene:** *It affects fruit ripening, flowering, and response to stress.*

47. *Plant growth regulators are used in specific concentrations to manipulate plant growth responses, such as controlling fruit ripening, promoting flowering, or preventing premature shedding of fruits.*

48. *It can, therefore, be said that fertilizers provide essential nutrients for plant growth and health, while plant growth regulators are chemicals that influence specific aspects of plant growth and development by regulating physiological processes. Both are vital tools in modern agriculture to optimize plant growth and maximize crop yields.*

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52. *The reference would, therefore, have to be answered in the following manner:*

- i. *A plant growth promoter cannot be equated with a plant growth regulator. A plant growth promoter only promotes the growth of the plant and does not inhibit it. On the other hand, a plant growth regulator inhibits, promotes or otherwise alters the physiological processes in a plant. The view to the contrary taken by the Division Bench in the referral order is not correct; and*
- ii. *Siapton 10L and Isabion merit classification as fertilizers under ETI 3101 00 99 and not as a plant growth regulator under ETI 3808 93 40."*

Whereas the imported goods whose classification is in dispute now have taken place between the period from May 2008 to April 2010.

14. We find that plant growth regulators (PGRs) are chemicals used to modify plant growth such as increasing branching, suppressing shoot growth, increasing return bloom, removing excess fruit or altering fruit maturity. Plant growth regulators are the hormones for plants and are

chemical substances which govern all the factors of development and growth within plants. Some other names used to refer to PGRs are phyto hormones and plant growth hormones. As above, there are five primary plant growth regulators viz. auxins, cytokinins, gibberellins, abscisic acid and ethylene. Each plant growth regulator functions in different ways. For instance, Auxins induce calli. Cytokinins stimulate cell division. *Bacillus subtilis* (B. subtilis) and *Pseudomonas fluorescens* (P. fluorescens) are two of the most important plant growth promoting rhizobacteria (PGPR) in agriculture. Both B. subtilis and P. fluorescens promoted growth and biomass of seedlings, while only B. subtilis was efficient in reducing gray mould incidence in greenhouse tomato. Considering the composition of the imported product and the purpose for which it is used, we are of the view that its classification as Plant Growth Regulator is not correct and so, cannot be supported.

15. We find that CTH 300290 includes Cultures of micro-organisms (excluding yeasts). These include ferments such as lactic ferments used in the preparation of milk derivatives (kephir, yogurt, lactic acid) and acetic ferments for making vinegar, moulds for the manufacture of penicillin and other antibiotics, and cultures of micro-organisms for technical purposes (e.g., for aiding plant growth).

16. The Ld. Advocate has relied upon the Notes 1 to Chapter 38 which says that imported product is not a separate chemically defined element or compound and as such its classification as Plant Growth

Regulator under CTH 38 is ruled out. However, the above Chapter Note very clearly makes an exception in respect of insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant growth regulators, disinfectants and similar products. The relevant Chapter Note 1 to Chapter 38 reads as under: -

CHAPTER 38

Miscellaneous chemical products

Notes:

1. This Chapter does not cover:

- (a) Separate Chemically defined elements or compounds with the exception of the following:
 - (1) Artificial graphite (Heading 3801);
 - (2) Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up as described in Heading 3808;

As such, the Assessee' contention does not have any legal basis and deserves to be rejected. A perusal of the test reports very clearly indicate that the sample contain non-cultured microorganisms whereas CTH 30029030 is applicable to only cultured micro-organisms that too for technical purposes. The imported product though containing many types of fungi and also certain types of bacteria is not classifiable under CTH 3002 as the Chapter Heading very clearly indicates that pharmaceutical products are only included therein. So, the Assessee' efforts to classify the imported product under Chapter Heading 30029030 as 'cultures of micro-organisms (excluding yeast)' and adding the words 'cultures of micro-organisms' in the declaration filed in the Bill of Entry are mis-leading. As such, the imported

product's classification under CTH 3002 9030 is clearly against the provision of the Customs Tariff Act, 1975.

17. On the other hand, Chapter 38 includes Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products. This heading covers a range of products (other than those having the character of medicaments, including veterinary medicaments heading 30.03 or 30.04) intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches, etc.), mosses and moulds, weeds, rodents, wild birds, etc. Products intended to repel pests are used for disinfecting seeds are also classified here. These insecticides, disinfectants, herbicides, fungicides, etc., are applied by spraying, dusting, sprinkling, coating, impregnating, etc., or may necessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc. The heading further covers anti-sprouting products and plant growth regulators intended to inhibit or promote physiological processes in plants. Their modes of application vary and their effects range from destruction of the plant to enhanced growth-vigour and improved crop-yield.

The products of heading 38.08 can be divided into the following groups: -

(III) Herbicides, anti-sprouting products, plant-growth regulators

Herbicides are chemicals which are used to control or destroy unwanted plants. Some herbicides are applied to dormant plant parts or seeds, while other herbicides are applied to the whole foliage. They can provide control

which is selective (herbicides which affect specific plants) or non-selective (herbicides which result in the complete eradication of vegetation). CTH 38089340 covers Plant growth regulators.

18. As per HSN Explanatory Notes ("HSN ENs") to Heading 3808, *"plant-growth regulators are applied to alter the life processes of a plant so as to accelerate or retard growth, enhance yield, improve quality or facilitate harvesting, etc. Plant hormones (phytohormones) are one type of plant-growth regulator (e.g., gibberellic acid). Synthetic organic chemicals are also used as plant-growth regulators"*.

19. Various biological activities are induced in the root system of the plant by the imported goods within the above parameters and therefore, the Department was of the view that imported goods are specifically covered as 'Plant Growth Regulator' under CTH 3808. Whereas imported goods are said to aid plant growth whereas PGRs regulates plant growth. The process of regulation covers a wider ambit in the sense that there can be a negative effect also i.e., they can retard growth. This fact is supported by the Test report dated 21.06.2010 issued by the Centre for Advanced Studies in Botany, University of Madras, wherein in Para 3, it is stated as "All the bacteria identified in the test belong to the plant growth regulating organisms. They regulate the plant growth by producing plant growth regulators, phytohormones and biologically active substances" Chapter 30 covers 'pharmaceutical products' which relates only to goods of prophylactic

or therapeutic use and does not include goods that are to be used as plant growth regulators which are more specifically covered under CTI 3808 9340. Only culture of micro-organisms for technical purposes are covered under Heading 3002.

20. CBIC vide Circular No. 1022/10/2016-CX, dated 06.04.2016, has clarified the definition of Plant growth regulators and the relevant extracts are produced below: -

"Plant Growth Regulators are defined as organic compounds other than nutrients that affect the physiological processes of growth and development in plants when applied in low concentration. Plant growth regulators are active at low concentrations in promoting, inhibiting or modifying growth and development. They are either natural or synthetic compounds that are applied directly to a target plant to alter its life processes and its structure to improve quality, increase yields, or facilitate harvesting etc. These are in the nature of plant hormones and classical of them are auxins, cytokinins, gibberellins (all three promoters) and abscisic acid, ethylene (both inhibitors). PGRs in the list are not exhaustive and more growth substances are being discovered in this category. PGRs are naturally produced by plants and they act by controlling or modifying, plant growth processes such as formation of leaves and flowers, elongation of stems, development and ripening of fruits etc. Synthetic organic chemicals are also used as PGRs and are industrially produced and marketed. A list of some of the PGRs industrially produced in India is enclosed with the reply of IARI."

21. We find that in order to be classified as plant growth regulator, the product should be capable of inhibiting or promoting the growth having regard to the health of the plant at a particular time. Only then the product could be said to 'regulate' the growth. In the instant case, the Department has not established by evidence that the subject goods inhibit physiological processes on plants nor does the literature of the product suggest so. The imported goods admittedly contain mycorrhizal fungi which aids in plant promotion. The product literature produced by the Assessee brings out the role of mycorrhizal fungi in plant promotion. Mycorrhizal fungi form a

symbiotic relationship with the plant root. The mycorrhizal fungi have higher absorptive capacity for water and mineral nutrients due to the comparatively large surface area. The mycorrhizal fungi adhere to the root of the plant thus improving the water and mineral absorption capacities of the plant. The increased absorption of water and minerals aids the promotion of the plant. The subject goods do not alter any of the life processes of the plant but, through its mycorrhizal fungi ingredient help the plant to draw out necessary nutrients and moisture from the soil. The roots in turn provide the carbohydrates for the fungi to thrive and through this symbiotic relationship the plant naturally increases its moisture uptake and environment tolerance. As the imported goods do not alter the life process of the plant, it is not a plant growth regulator. In view of the various definitions and meaning of 'plant growth regulator', it is clear that the plant growth regulators 'regulate' the growth of the plants. In other words, the plant growth regulators promote or retard/diminish the growth of the plants. The HSN Explanatory Notes describes the plant growth regulators as which are applied to 'alter' the life processes of a plant so as to accelerate or retard growth. The Assessee submits that the product in question is used to increase the absorption of the nutrients and water from the soil and are used to promote the plants. In its test report dated 24.11.2010, Tamil Nadu Agricultural University has mentioned that 'the identified AM fungi and bacteria are beneficial only and not harmful'. Thus, the imported goods do not in any way adversely affect or retard the growth of the plant or its life cycle process. It therefore appears that the Department has erroneously classified the imported goods as 'plant growth regulator' under Heading 3808. In *CCE v. Chemcel Bio-Tech Ltd.* [2007 (211) E.L.T. 414 (Tri.-Bang.)], a distinction

was drawn between 'plant growth promoter' and 'plant growth regulator' and it was held that plant growth promoters are not classifiable under CTH 3808. It was held therein that Plant Growth Regulators are chemicals that control plant growth processes. Some of the examples of plant growth regulators were explained in paragraph 46 of the above order cited *supra*. It was also held therein that a plant growth promoter cannot be equated with a plant growth regulator and a plant growth promoter only promotes the growth of the plant and does not inhibit it. On the other hand, a plant growth regulator inhibits, promotes or otherwise alters the physiological processes in a plant. The imported Mycorrhiza Roots Soluble Powder is in the nature of a plant growth promoter. After analysing the definitions, the purposes to which imported goods are applied to and ratio of decisions in the cases of *M/s. P.I. Industries Limited Vs. Commissioner of Central Excise [Interim Order No. 25-30/2024 dated 25.03.2024]* and *Commissioner of Central Excise Vs. Chemcel Bio-tech Ltd. [2007 (211) ELT 414 (Tri.-Bang.)]*, we are of the considered view that the Mycorrhiza Roots Soluble Powder is a plant growth promoter and not a plant growth regulator. The classification of the imported goods under CTH 30029030 as adopted by the assessee as cultured micro-organisms is also not tenable.

22. We have also considered the submission of the assessee that when the classification proposed by the Department cannot be sustained, then irrespective of the fact as to whether or not the classification of the assessee is proper, the same would prevail as held by the Hon'ble Apex Court in *Warner Hindustan Ltd. v. CCE [1999 (113) E.L.T. 24 (SC)]* which was followed by Hon'ble Tribunal in *Pepsico Holdings Pvt. Ltd. v. CCE, [2019*

(25) *G.S.T.L. 271 (Tri-Mumbai)*] wherein the Tribunal held that the classification proposed in the Bill of Entry will prevail when classification of Revenue is found to be inappropriate. Further, the Hon'ble Supreme Court in *CC v. Sunrise Traders [2022 (382) E.L.T. 23 (S.C.)]* affirmed the decision of the Hon'ble Tribunal in *M/s. Sunrise Traders & Ors. v. CC, [2022 (381) E.L.T. 393 (Tri. - Ahmd.)]* that when the classification proposed by the Department fails, the only course of action would be to sustain the classification adopted by the Assessee.

22. As such, the impugned order No. 20252/2013 dated 18.02.2013 passed by the Commissioner of Customs, Custom House, Chennai adopting the classification under Chapter Heading 38089340 as a plant growth regulator cannot be sustained and so ordered to be set aside. As the issue of the classification is decided against the Revenue, the orders of confiscation of the imported goods and imposition of fine and penalties cannot also be sustained.

23. Thus, the appeal filed by the assessee is allowed and the appeal filed by the Department is dismissed.

(Order pronounced in open court on 30.09.2024)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)