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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
Excise ~~SINGLE MEMBER~~ **APPEAL BRANCH**

Appeal No. E/5~~7~~34/2004-5741/2004 - ~~SM~~ 5734 Date 26/02/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S FUNIGICIDES (INDIA)
LTD.
SIDCO INDUSTRIAL COMPLEX,
BARI BRAHMANA
M/S FUNIGICIDES (INDIA)
LTD.

Appellant

Vs

C.C.E.JALANDHAR

Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 151-158/2009-**SM[BR]** dated 06-2-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(~~SM~~ Appeal Branch)

Copy to :
1. Respondent
   C.C.E.JALANDHAR
   PLOT NO-19,SECTOR 17-C
   CHANDIGARH
2. Adv. / Consult SH. S.P. KAUSHIK, ADV.,
   A-14/3, SFS FLATS, SAKET,
   N. DELHI - 17
3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(~~SM~~ Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal Nos. 5734-5741 of 2004

[Arising out of Order-in-Appeal No. 400-407/CE/Jal/2004 dated 31.8.04 passed by Commissioner of Central Excise , Jalandhar, Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27: of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3. Whether Their Lordships wish to see the fair copy of the Order? :

No.

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Fungicides (India) Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jalandhar — Respondent

Appearance:

Mr. J.P. Kaushik, Advocate for the Appellant
Mr. B.S. Suhag, DR for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of Hearing/Decision: 6.2.2009

FINAL **ORDER NO .** 151-158/09-EX

Per P.K.Das (for the Bench):

All these appeals are arising out of a common order and therefore all are being taken up together for disposal.

2. The appellant filed these appeals against demand of duty and penalty on final product Virex-H classified under heading No. 3808.90 and the claim of the appellant is under heading No. 3808.10 of CETA, 1985.

3. The learned advocate submits that the appellant received Virex-H from M/s. Hari Organics Manure Ltd., Saharanpur. Thereafter, they are re-packing and relabeling them in small containers. He submits that the appellant initially claimed classification of the goods under heading No. 3808.10 based on affidavits of a supplier. Subsequently, show cause notices were issued proposing the classification under Chapter heading 3808.90. In reply to show cause notice, the appellant claimed the classification under Chapter heading 13.01 as the product being a herbal extract. He submits that Commissioner (Appeals) proceeded on the basis of report of Assistant Commissioner, Central Excise Division, Saharanpur, which is not supplied to them. He also submits that their claim under heading 3808.10 or 1301

was not considered by the lower authorities. He also submits that the demand of duty is barred by limitation.

4. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that Commissioner (Appeals) after discussing held that goods are classified under heading 3808.90. He also drew attention of the Bench to finding of the Commissioner (Appeals).

5. After hearing both the sides, we find that the Commissioner (Appeals) observed that the Assistant Commissioner of Central Excise, Saharanpur vide letter C.No. II-(8)Prev./Mic/31/97/Pt./3100 dated 27.5.99 informed the Assistant Commissioner, Central Excise Division, Jammu that M/s. Hari Organic Manures Ltd. had claimed the classification of their product Virex-H under Chapter sub heading 3808.10 but the jurisdictional Excise Authorities have sought its classification under Chapter sub-heading 3824.90 and not under 3808.10. It appears that the said report was not disclosed to the appellant. We also noted that the supplier of Virex-H, M/s. Hari Organic Manures has classified the product under heading 3808.10. Therefore, the classification at the end of the appellant under chapter heading 3808.90 may not be sustainable. Therefore, we find that the matter is required to be examined in detail by the original authority. The impugned orders are set aside and the matters are remanded back to the original authority to decide afresh after considering the submissions of the appellants on merits as well as on limitation. It is also directed that the

original authority shall supply copy of report as relied upon by the Commissioner (Appeals) to the appellants. Needless to say that the original authority shall give proper opportunity of hearing to the appellant before decision.

6. All the appeals are allowed by way of remand.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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