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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1317,1326-1329,928-929/2008,64-67/2009,1333-1334,1387,1459-1460,1720-1723,1583-1586/2008,1019/2009,1710/2008,752-756,965-66, 1469-1470,1757-1761,1808-1809,2216-2218,2225-2231,2376-2389/2009, 1403-1404,2629/2010- EX[DB] WITH E/S/738-42,926-27, 1490-91, 1812-16, E/S/1866-67, 2299-2301/2009 & E/S/1439-40, 42392/2010-EX E/MISC/241-245/2010-EX E/1757-61/09 Date **21/01/2011**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To :
C.C.E. JAMMU
OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.

C.C.E. JAMMU — Appellant

MISC ORDER NO. 57-61/2011-EX.
STAY ORDER NO. 98-119/2011-EX

Vs

M/S INSECTICIDES INDIA LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 17-85/ 2011 EX[DB]** dated 19-1-11

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S INSECTICIDES INDIA LTD.
SICCO INDUSTRIAL GROWTH
CENTRE, SAMBA.
DISTT. JAMMU.
2. Adv. / Consult
MR.AJAY JAIN
1293, SEC 18-C, CHANDIGARH
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

P.T.O.-2,

16. M/S. HINDUSTAN PULVERISING MILLS UNIT-II,
INDUSTRIAL GROWTH, CENTRE, SAMBA, JAMMU (J&K)

17. M/S. CROP CHEMICALS INIDA LTD. (UNIT-II)
INDUSTRIAL GROWTH CENTRE, SAMBA JAMMU

18. M/S. JAI SHREE RASAYAN UDYOG LTD.,
SIDCO INDUSTRIAL GROWTH CENTRE, SAMBA JAMMU

19. M/S. BHARAT INSECTICIDES LTD.,
SIDCO INDUSTRIAL AREA, KATHUA (J&K)

20. M/S. ANU PRODUCTS LTD.,
INDUSTRIAL GROWTH CENTRE,
SAMBA, JAMMU (J&K)

21. M/S. JAI SHREE RASAYAN UDYOG LTD.,
PHASE-II, INDUSTRIAL GROWTH CENTRE,
SAMBA (J&K)

22. M/S. ANU PRODUCTS LTD.,
INDL. GROWTH CENTRE, SIDCO, SAMBA (J&K)

23. M/S. JAI BHARAT CROP CHEMICAL (P) LTD.,
LANE NO. 3(C), SIDCO INDUSTRIAL COMPLEX,
PH.-II, BARI BRAHMANA, JAMMU (J&K)

24. SH. BIPIN GARG, ADV.,
B-1/1289-A, VASANT KUNJ, N. DELHI-70

25. SH. K. K. ANAND, ADV.,
A-103, DEFENCE COLONY, N. DELHI-24

26. SH. T. R. RUSTAGI, ADV.,
SD-84, TOWER APARTMENTS,
PITAMPURA, DELHI-34

27. SH. SADHU RAM, CON.
HOUSE NO. 340/14, FARIDABAD

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 8.12.2010
Date of Pronouncement: 19.1.2011

Sl.No.	Stay Application No. in Central Excise Appeal No.	Appellants	Respondent	Arising out of order in appeal No. and date	Passed by
1 -5	E/Stay/738 to 742 of 2009 in E/752-756 of 2009	Commissioner of Customs & Central Excise, J & K. Jammu	Hindustan Pulverising Mills, Unit II	782-786/CE/ Appl/ Jal/2008 dated 17.12.08	C.C.E. (Appeals), Jalandhar, Chandigarh
6- 7	E/Stay/926 to 927 of 2009 in E/965 to 966 of 2009	-do-	Bharat Insecticides Ltd	22-23/CE/Appl/ Jal(JK)/09 dated 14.1.09	-do-
8-9	E/Stay/1490 to 1491 of 2009 in E/1469 to 1470 of 2009	-do-	Jai Shree Rasayan Udyog Ltd.	115-116/CE/Appl/ Jal/2008 dated 27.3.08	-do-
10-14	E/Stay/1812 to 1816 of 2009 in E/1757 to 1761 of 2009	-do-	Insecticides India Limited	250-254/CE/ Appl/ Jal(JK)/2009 dated 13.3.09	-do-
15-16	E/Stay/1866 to 1867 of 2009 in E/1808 to 1809 of 2009	-do-	Bharat Insecticides Limited	255-256/CE/Appl/ Jal(JK)/2009 dated 13.3.09	-do-
17-19	E/Stay/2299 to 2301 2009 in E/2216 to 2218 of 2009	-do-	Crop Chemicals India Ltd.	416-418/CE/ Appl/Chd-II(JK)2009 dated 30.4.09	-do-
20-21	E/Stay/1439 to 1440 2010 in E/1403 to 1404 of 2010	-do-	Jai Bharat Crop Chemical Pvt. Ltd.	130-131/CE/Appl/ Chd-II (JK)/2010 dated 5.3.2010	-do-
22.	E/Stay/2392 of 2010 in E/2629 of 2010	-do-	-do-	775/CE/Appl/Chd.-II(JK)/2010 dated 13.5.2010	-do-

Appearance:

S/Shri

Ajai Jain, Bipin Garg and T.R. Rastogi, Advocates, for the appellants and none for the appellants at serial Nos.17 to 19

Shri R.K. Verma and Shri I. Baig, Authorized Departmental Representative (DRs) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

STAY Order No. 98-119/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

As we propose to dispose of the appeals themselves, all these applications are disposed of as dismissed.

(Pronounced in the open Court on 19.1.2011)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 8.12.2010

Date of Pronouncement: 19.1.2011

Miscellaneous Applications Nos.241 to 245 of 2010 in Central Excise Appeals Nos.1757 to 1761 of 2009

M/s Insecticides India Ltd. ... Appellants

Vs.

C.C.E., Jammu ... Respondent

Appearance

Shri Ajai Jain, Advocate for the appellants
Shri R.K. Verma and Shri I. Baig, Authorized Departmental Representative (DRs) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

Misc Order No. 57-61/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

In view of disposal of appeals Nos.1757, 1758, 1759, 1760, 1761 of 2009 , the applications are dismissed.

(Pronounced in open Court on 19.1. 2011)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 08.12.2010

Date of pronouncement: 19.1.2011

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Sl.No.	Central Excise Appeal No.	Appellants	Respondent	Arising out of order in appeal No. and date	Passed by
1.	1317 of 2008	Commissioner of Customs & Central Excise, J & K. Jammu	Insecticides India Ltd.	94/CE/Appl/Jal/08 dated 20.3.08	C.C.E. (Appeals), Jalandhar, Chandigarh
2.	1326 of 2008	-do-	Insecticides India Ltd.	89-92/CE/Appl/ Jal/08 dated 20.3.08	-do-
3.	1327 of 2008	-do-	-do-	-do-	-do-
4.	1328 of 2008	-do-	-do-	-do-	-do-
5.	1329 of 2008	-do-	-do-	-do-	-do-
6.	928 of 2008	-do-	Hindustan Pulverising Mills, Unit II	6-7/CE/Appl/ Jal/08 dated 17.1.08	-do-
7.	929 of 2008	-do-	Hindustan Pulverising Mills, Unit II	-do-	-do-
8.	64 of 2009	-do-	-do-	561-564/CE/Appl/ Jal/2008 dated 30.9.08	-do-
9.	65 of 2009	-do-	-do-	561-564/CE/Appl/ Jal/2008 dated 30.9.08	-do-
10.	66 of 2009	-do-	-do-	561-564/CE/Appl/ Jal/2008 dated 30.9.08	-do-

11.	67 of 2009	-do-	-do-	561-564/CE/Appl/ Jal/2008 dated 30.9.08	-do-
12.	1333 of 2008	-do-	Insecticides India Ltd.	95-96/CE/Appl/ Jal/08 dated 20.3.08	-do-
13.	1334 of 2008	-do-	Insecticides India Ltd.	95-96/CE/Appl/ Jal/08 dated 20.3.08	-do-
14.	1387 of 2008	-do-	Crop Chemicals India Ltd.	77-CE/Appl/Jal/08 dated 29.2.08	
15.	1459 of 2008	-do-	Jai Shree Rasayan Udyog Ltd.	115-116/CE/Appl/ Jal/08 dated 27.3.08	-do-
16.	1460 of 2008	-do-	-do-	-do-	-do-
17.	1720 of 2008	-do-	Bharat Insecticides Ltd.	194-197/CE/Appl/ Jal/2008 dated 17.4.08	-do-
18.	1721 of 2008	-do-	-do-	-do-	-do-
19.	1722 of 2008	-do-	-do-	-do-	-do-
20.	1723 of 2008	-do-	-do-	-do-	-do-
21.	1583 of 2008	-do-	Anu Products Ltd.	171-174/CE/Appl/ Jal/2008 dated 31.3.08	-do-
22.	1584 of 2008	-do-	-do-	-do-	-do-
23.	1585 of 2008	-do-	-do-	-do-	-do-
24.	1586 of 2008	-do-	-do-	-do-	-do-
25.	1019 of 2009	-do-	-do-	21/CE/Appl/ Jal/2008 dated 15.1.09	-do-
26.	1710 of 2008	-do-	Bharat Insecticides Ltd.	193/CE/Appl/Jal/08 dated 15.4.08	-do-
27.	752 of 2009	-do-	Hindustan Pulverising Mills, Unit II	782-786/CE/ Appl/ Jal/2008 dated 17.12.08	-do-
28.	753 of 2009	-do-	-do-	-do-	-do-
29	754 of 2009	-do-	-do-	-do-	-do-
30.	755 of 2009	-do-	-do-	-do-	-do-
31.	756 of 2009	-do-	-do-	-do-	-do-
32.	965 of 2009	-do-	Bharat Insecticides Ltd.	22-23/CE/Appl/ Jal(JK)/09 dated 14.1.09	-do-
33.	966 of 2009	-do-	-do-	-do-	-do-
34.	1469 of 2009	-do-	Jai Shree Rasayan Udyog Ltd.	115-116/CE/Appl/ Jal/2008 dated 27.3.08	-do-
35.	1470 of 2009	-do-	-do-	-do-	-do-
36.	1757 of 2009	-do-	Insecticides India Limited	250-254/CE/Appl/ Jal(JK)/2009 dated 13.3.09	-do-

37.	1758 of 2009	-do-	-do-	-do-	-do-
38.	1759 of 2009	-d0-	-do-	-do-	-do-
39.	1760 of 2009	-do-	-do-	-do-	-do-
40.	1761 of 2009	-do-	-do-	-do-	-do-
41	1808 of 2009	-do-	Bharat Insecticides Limited	255-256/CE/Appl/ Jai(JK)/2009 dated 13.3.09	-do-
42.	1809 of 2009	-do-	-do-	-do-	-do-
43.	2216 of 2009	-do-	Crop Chemicals India Ltd.	416-418/CE/ Appl/Chd-II(JK)2009 dated 30.4.09	-do-
44.	2217 of 2009	-do-	-do-	-do-	-do-
45.	2218 of 2009	-do-	-do-	-do-	-do-
46.	2225 of 2009	-do-	Bharat Insecticides Ltd.	385-391/CE/ Appl/Chd-II(JK)2009 dated 30.4.09	-do-
47.	2226 of 2009	-do-	-do-	-do-	-do-
48.	2227 of 2009	-do-	Anu Products Ltd.	-do-	-do-
49.	2228 of 2009	-do-	Insecticides Ltd.	-do-	-do-
50.	2229 of 2009	-do-	-do-	-do-	-do-
51.	2230 of 2009	-do-	Anu Products Ltd.	-do-	-do-
52.	2231 of 2009	-do-	-do-	-do-	-do-
53.	2376 of 2009	-do-	Jai Shree Rasayan Udyog Ltd.	419-432/CE/ Appl/Chd-II(JK)2009 dated 19.5.2009	-do-
54.	2377 of 2009	-do-	-do-	-do-	-do-
55.	2378 of 2009	-do-	-do-	-do-	-do-
56.	2379 of 2009	-do-	-do-	-do-	-do-
57.	2380 of 2009	-do-	-do-	-do-	-do-
58.	2381 of 2009	-do-	-do-	-do-	-do-
59.	2382 of 2009	-do-	Jai Bharat Crop Chemical Pvt. Ltd.	419-432/CE/Appl/ Chd-II(JK)/09 dated 19.5.2009	-do-
60.	2383 of 2009	-do-	-do-	-do-	-do-
61.	2384 of 2009	-do-	-do-	-do-	-do-
62.	2385 of 2009	-do-	-do-	-do-	-do-
63.	2386 of 2009	-do-	-do-	-do-	-do-

64.	2387 of 2009	-do-	-do-	-do-	-do-
65.	2388 of 2009	-do-	-do-	-do-	-do-
66.	2389 of 2009	-do-	-do-	-do-	-do-
67.	1403 of 2010	-do-	-do-	130-131/CE/Appl/ Chd-II (JK)/2010 dated 5.3.2010	-do-
68.	1404 of 2010	-do-	-do-	-do-	-do-
69.	2629 of 2010	-do-	-do-	775/CE/Appl/Chd-II(JK)/2010 dated 13.5.2010	-do-

Appearance:

S/Shri

Ajai Jain, Bipin Garg, Saurav Yadav, Proxy Counsel of Shri K.K. Anand, T.R. Rastogi, Advocates, Sadhu Ram, Consultant for the respondents and none for the respondents at serial Nos.43,44 & 45

Shri R.K. Verma and Shri I. Baig, Authorized Departmental Representative (DRs) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Order No. 17-85/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Since a common question of law and facts arise in all the above matters, they were heard together and are being disposed of by this common order.

2. We have heard at length the DRs for the Department and the Advocates for some of the respondents. Others have chosen to remain absent.

3. All these appeals arise from the orders passed by the lower authorities granting refund in relation to the duty paid on Tiacontanol and Ethethone as also refund of the amount paid as education cess and higher education cess. The refund has been ordered in terms of the Notification No.56/2002-CE, dated 14.11.2002. As regards the issue as to whether the education and higher education cess which was paid along with excise duty in terms of Notification No.56/2002-CE dated 14.11.2002 is refundable along with excise duty or not under the said Notification was the subject matter of dispute and was finally disposed of by the decision of the Tribunal in the matter of C.C.E., Jammu vs. Jindal Drugs Ltd. reported in 2010

(97) RLT ON LINE 13. Being so, the appellants are justified in contending that the impugned orders as far as the claim for refund of education cess is concerned were not maintainable and the impugned orders in that regard cannot be sustained.

4. As regards the duty amount paid on Triacontanol and Ethethone is concerned, the DR as well as the Advocate for the assessees have sought to produce various materials in the form of technical opinions and literatures in support of rival contentions.

5. Bare perusal of the impugned orders discloses that the main issue involved in this regard is whether the said products are growth promoters or growth regulators. The controversy between the parties is essentially relating to the classification of the product and consequently, whether the product was at all dutiable or not. It is the contention of the Department that the product was not dutiable and therefore, whatever amount paid allegedly in terms of the said Notification, could not be said to have been made in accordance with the provisions of the said Notification and therefore, there could be no refund under the said Notification. On the contrary, it is the case of the respondents that the product was squarely dutiable and therefore, refund claim is to be allowed in accordance with the provisions of the said Notification.

6. Perusal of the impugned orders discloses that the authorities below nowhere referred to any material to confirm the classification nor dealt with the matters in the manner in which it was required to be dealt with. Before arriving at any conclusion in the matter, it is necessary for the authorities below to take into consideration all the materials to be placed on record by both the parties in support of their rival contentions. It is the grievance on behalf of the assessee that no such opportunity was given to the assessee to produce any material in support of their contention. Be it as it may, the fact remains that the impugned orders do not disclose proper application of mind to the issue involved in the matter and a fair opportunity having been given to the parties to prove their rival contentions.

7. Besides, in case the authorities below arrive at a conclusion that the payment by the assessees in relation to products in question was not in accordance with the

provisions of law comprised under the said Notification and therefore, the amount is not refundable under the said Notification, it would be necessary for the authorities below to consider whether even in those circumstances, whether the Department can refuse the claim for refund on general provisions of law applicable to the claim for refund and, if so, whether the conditions attached to such provisions are satisfied. Needless to say that the impugned orders do not disclose this aspect having been considered at all.

8. In the circumstances, therefore, while confirming the orders regarding rejection of refund relating to the cess amount by placing reliance in the decision of the Tribunal in Jindal Drugs Ltd. matter, the order as far as they relate to the rejection of the refund claim pertaining to the amount which is stated to have been paid as duty on Triacontanol and Ethethone are hereby set aside and the matters are remanded to the adjudicating authority to decide the same afresh in accordance with the provisions of law and bearing in mind the observations made herein above.

9. Needless to say that we have not expressed any opinion in relation to such claim. All the issues are kept open except the issue covered by the decision in Jindal Drugs Ltd. case. The parties shall be given opportunity to lead evidence if they so desire in support of their rival contentions.

10. The Appeals are accordingly disposed of in the above terms.

(Pronounced in the open Court on 19.1. 2011)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/