

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 4**

EXCISE APPEAL NO. 52232 OF 2019

[Arising out of Order in Original No. 06-08/COMMR/CEX/IND/2019 dated 31.05.2019 passed by the Commissioner of CGST & Central Excise, Indore]

M/S ADVANCE CROP CARE (I) PVT LTD **....APPELLANT**

Factory At 20, 21,24 & 25, Industrial Area,
Rangwasa Road Rau, Dist. Indore (MP)

Vs.

**COMMISSIONER OF CGST & CENTRAL
EXCISE-INDORE**

.....RESPONDENT

**WITH
EXCISE APPEAL NO. 52233 OF 2019**

[Arising out of Order in Original No. 06-08/COMMR/CEX/IND/2019 dated 31.05.2019 passed by the Commissioner of CGST & Central Excise, Indore]

**M/S ADVANCE BIO TECH INDUSTRIES
AND RESEARCH INPUTS INDIA** **...APPELLANT**

Factory at 21, 22, 23 & 24 Industrial Area,
Rangwasa Road Rau, Dist. Indore (MP)

Vs.

**COMMISSIONER OF CGST & CENTRAL
EXCISE -INDORE**

....RESPONDENT

**AND
EXCISE APPEAL NO. 52371 OF 2019**

[Arising out of Order in Original No. 06-08/COMMR/CEX/IND/2019 dated 31.05.2019 passed by the Commissioner of CGST & Central Excise, Indore]

M/S ASHISH TIWARI **.....APPELLANT**

Director of M/s Advance Crop Care (I) Pvt Ltd.
Factory at 20, 21, 24 & 25, Industrial Area,
Rangwasa Road Rau, Dist. Indore (MP)

Vs.

**COMMISSIONER OF CGST & CENTRAL
EXCISE -INDORE****....RESPONDENT****Appearance:**

Ms. Priyanka Goel, Advocate for the appellant
Shri Sanjay Jain, Special Counsel for the department

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO'S. 51583-51585 /2025

DATE OF HEARING : 02/07/2025
DATE OF DECISION : 14/10/2025

P.V. SUBBA RAO

1. These three appeals have been filed by M/s Advance Crop Care (I) Pvt Ltd.¹, Shri Ashish Tiwari² and Advance Biotech Industries and Research Inputs India³ to assail the order dated 31.05.2019 passed by the Commissioner of Central Excise in which he decided the proposals made in three show cause notices dated 31.1.2014, 06.01.2015 and 27.12.2017. The appellants ACCIPL and ABTIARI manufactured excisable goods- Micronutrient Fertilizers and other Pesticides, Fungicides, herbicides etc., during the period 2009-10 to 2013-14 and 07.08.2013 to 30.06.2017.

2. Acting on the intelligence that the appellants had manufactured and clandestinely removed finished goods, the Directorate General of Central Excise Intelligence⁴ conducted

1 ACCIPL
2 Ashish
3 ABTIARI
4 DGCEI

simultaneous searches on 07.08.2013 at the premises of ACCIPL and ABTIARI and of Director of the two Companies Shri Ashish Tiwari. They found that the factories of ACCIPL and ABTIARI were burnt and gutted and could not get any records except the finished goods stock register. They detained finished stocks lying in the factory under Panchnama dated 07.08.2013. Since the records could not be retrieved, the officers searched the premises of the chartered accountant for the appellants M/s Bhatia Solanki & Associates and seized and recovered certain documents. In follow up, they recorded statements of various persons, investigated the matter further and issued a show cause notice dated 31.06.2014 proposing confiscation of the seized goods. Another show cause notice dated 06.01.2015 was issued demanding duty for the period 2009-10 to 06.08.2013. Both show cause notices were decided earlier by Order-in-Original dated 30.03.2017. On appeal by the appellants this Tribunal by Final Order No. 51934-51936/2018 dated 11.05.2018 the matter was remanded to the Commissioner as follows:

"7. Accordingly, on merit, he submits that from show cause notice, it is evident that the purchase of raw material by the appellant for manufacture of finished goods is barely 5% of such finished goods which substantiates the claim of appellants that there was no actual sale. No seller of raw material has been found. The sales shown by the appellant was never cross verified. In such case, the demand can be made only where the department had made enquiries from the buyer and rest of demand could not sustain.

8. However, the above aspects have not been examined by the lower authorities.

9. Learned representative for the department agrees that this is not a forum to examine all these aspects.

10. When it is so, then we set aside the impugned order and remand the matter to the original adjudicating authority to decide the issue denovo but by providing a reasonable

opportunity to the appellant with the liberty to provide fresh evidence, as per law. If the appellant will not co-operate, then law will take its own course.

11. In the result, all appeals filed by the appellants are allowed by way of remand."

3. Meanwhile another show cause notice was issued to the appellant on 27.12.2017 covering the period 07.08.2013 to 30.06.2017. In the order impugned in this appeal, the matters remanded by this Tribunal in the first round of litigation and also the proposals in the show cause notice dated 27.12.2017 have been decided.

4. We have heard Ms. Priyanka Goel, learned counsel for the appellant and Shri Sanjay Jain, learned special counsel for the Revenue and perused the records.

5. The details of the duties confirmed, penalty imposed and confiscation of goods in the impugned order are as follows:

ORDER IN ORIGINAL (OIO)	OIO NO. 06-08/COMNMR/CEX/IND/2019 dated 31.05.2019
Period of involved in the appeal	2009-10 to 2013-14 (upto 06.08.2013) and 07.08.2013 to 30.06.2017
Central excise demand confirmed	1. Confirmed duty in respect of SCN dated 06.001.2015 - Rs.8,62,61,534/- against M/s Advance Crop Care (I) Pvt Ltd under section 11A (1) presently section 11A (4) of Central Excise Act 1944. (earlier Rs. 15,20,95,987/-) along with penalty of Rs.8,62,61,534/- under erstwhile section 11AC (Now Section 11 AC (1) (a)) of Central Excise Act 1944 - Rs.1,41,90,255/- against M/s Advance Bio Tech Industries and Research Inputs (India) under provision to section 11A(1) presently Section 11A (4) of the of Central Excise Act 1944 (earlier Rs. 5,47,80,201/-) along with penalty 1,41,90,255/ under erstwhile section 11AC (Now Section- 11 AC (1) (a)) of Central Excise Act 1944

	- Imposed penalty of Rs.50,00,000/- upon Ashish Tiwari (Noticee No. 3) under Rule 26(1) of Central Excise rule 2002 • 2. Confirmed demand in respect of SCN dated 27.12.2017 - Rs. 39,67,694/- against M/s Advance Crop Care (I) Pvt Ltd. under section 11A (1) presently section 11A(4) of Central Excise Act 1944(earlier Rs. 6,15,11,510/-).
Penalty	1. Imposed penalty in respect of SCN dated 31.01.2015 - Imposed penalty of Rs. 20,00,000/- upon M/s Advance Crop Care (I) Pvt Ltd. under Rule 25 of the Central Excise Rules, 2002 - Imposed penalty of Rs. 2,00,000/- upon Ashish Tiwari under Rule 26(1) of Central Excise Rules, 2002 2. Imposed penalty in respect of SCN dated 27.12.2017 - Imposed penalty of Rs. 39,67,694/- against M/s Advance Crop Care (I) Pvt Ptd. Under section 11AC (Now Section 11AC(1)(a) of Centrla Excise Act, 1944
Confiscation	1. Confiscation of goods in respect of SCN dated 31.01.2014 Confiscation of the goods seized in the premises at 1-D Industrial area Rangwasa Rau as per th Panchnama dated 22.10.13 valued at Rs. 2,17,90,120/- under Rule 25 of Central Excsie Rules, 2002

6. The common issue in all these appeals is that the appellants are alleged to have manufactured and removed pesticides and Fungicides etc., and other similar goods without paying central excise duty. During the relevant period ACCIPL was registered with the central excise department while ABTIARI was not registered with the central excise department. Acting on intelligence, DGCEI conducted searches. No records were

recovered from the factory because the factory was burnt. The adjacent unit ABTIARI was also completely burnt. Therefore, the premises of the appellant's CA M/s Bhatia Solanki and Associates was also searched and details of production of various insecticides were recovered from the accounts available in the computer of Bhatia Associates.

7. Since insecticides were regulated under the Insecticides Act, both ACCIPL and ABTIARI were registered with the Central Insecticides Board, Ministry of Agriculture. Further, insecticides were all sold through the Government Organization MARKFED, Bhopal and MP Agro. The details of the goods sold were also obtained from the MARKFED and MP Agro.

8. Based on this information the three show cause notices were issued to the appellants which culminated in the impugned order.

Submission of the appellant

9. Learned counsel for the appellant made the following submissions;

- (i) The demand is barred by time as there is no wilful suppression of production with intent to evade payment of duty in this case and the appellant was under the bonafide belief that the products were exempted from payment of duty;

- (ii) The allegation of clandestine removal is based on third party documents and data recovered from the CPU of the of the Chartered Accountant office and based on MARKFED and MP Agro data;
- (iii) The goods were correctly classified under central excise tariff heading 3002 as "antisera, other blood fractions, immunological products (including those from biotechnology), and vaccines, toxins, cultures of microorganisms and similar products" and not under CTH 3808 as "insecticides, fungicides and pesticides;
- (iv) The allegation of clandestine removal has to be proved beyond doubt which has not been done in this case.
- (v) The demand for subsequent period from 2013-14 to 2017-18 is not sustainable because once the department was aware of the appellant's activities it could not have invoked demand for extended period of limitation. Reliance has been placed on **Nizam Sugar Factory vs. Collector of Central Excise, AP⁵**.
- (vi) Penalty is not imposable and interest is not recoverable from the appellant.

Submission of the Revenue

10. Learned special counsel for the Revenue vehemently countered the submissions by the learned counsel for the appellant and submitted as follows:

- (i) The appellant had wrongly claimed that the sale on the basis of which the demand was made included various products on which no excise duty was payable. In the impugned order, at paragraphs 14 & 15, the Commissioner discussed at length the exempted goods, namely, zinc sulphate manufactured by the appellant and also the value of the goods which have been traded by the appellant. He excluded the value of both the exempted goods and the traded goods before determining the amount of duty payable. As recorded by the adjudicating authority in paragraph 15, the appellants never intimated about the trading activities nor were they registered as dealers with the central excise. Moreover, the appellants have not produced any evidence in support of their claim. They did not provide basic details like name of the goods, quantity of goods, date of purchase, name of sellers etc., to support their claim of trading activity. They did not mention the name of the premises where the trading activities took place and if they were the same premises as manufacturer's premises. They did not

submit any invoices, challans, transport details, payment details etc., to support their claim of trading. It is for this reason that the Commissioner has, in the impugned order, only excluded the value of trading of goods to the extent information was available and also the value of the exempted products.

- (ii) MARKFED and MP Agro are the nodal agencies for channeling agricultural inputs including insecticides and pesticides in the State of MP. Information was received from MP Agro and MARKFED of respective districts has been discussed in detail in the impugned order evidencing that the appellant had cleared finished goods, namely, insecticides and pesticides to MP Agro and MARKFED and also received consideration for the same;
- (iii) ABTARI is a manufacturer of excisable goods but it did not register with the Central Excise Department but it also supplied goods to MP Agro, the details of which were obtained from MP Agro;
- (iv) The appellant contested the classification of the goods and asserted that deserved to be classified under 3002 as cultures of micro organisms. However, the clear fact is that the cultures of micro organism manufactured by the appellant were found to be insecticides and they were not Anti sera which fall under CTH 3082. It is for this reason the appellant

had registered itself with the – with the Government and sold the insecticides through MARKFED and MP Agro. Therefore, the assertion of the appellant that the goods fall under 3002 is not correct;

- (v) The stock of the goods seized on 31.1.2014 shows the brand name, nature and use of the goods clearly as fungicides and insecticides. Even for this reason the appellant’s contention that they were classifiable under 3008 cannot be sustained because they were not only found in the market as fungicides and insecticides were being sold as such. The details of the goods which were manufactured by the appellant are as follows:

Sr. No.	Description of Goods	Products	Classification under CETA
1	Advance power (Tricodermaviride)	Fungicide	38089290
2	Neemed (Azadirictin)	Insecticide	39089199
3	Ado Beba (Beauveriabassana)	Insecticide	38089199
4	Super Ad (Pseudomonsfluorescens)	Fungicide	38089290
5	Ado Car (Carbendazim)	Fungicide	39089290
6	Adzo (Triazophos)	Insecticides	38089199
7	Ad Phos (chloropyriphos)	Insecticides	38089199
8	Ad Qoinal (Quinolphos)	Insecticides	38089132

- (vi) The appellant objected to placing reliance on sales register and other data retrieved from CPU of the statutory auditor on the ground that the procedure prescribed under section 36B of the Central Excise Act, 1944⁶ was not followed. But the auditor, in his statement had clearly stated that the CPU was

6 Act

brought by the appellant to their office as Tally was ERP9, which does not allow the data to be kept in any of the device and, therefore, the entire CPU had to be brought in. Even the director of the company had, in his statement suggested to the officer to obtain the sale and purchase details from their CA and at no point of time, attempted to disown that Tally data available in CPU. Therefore, the contention of the appellant that the data collected from the auditor computers cannot be relied on is not correct.

- (vii) As far as the quantification of the goods is concerned, the Commissioner deducted the value of zinc sulphate manufactured by the appellant (which was exempted) to arrive at the turnover of the goods manufactured.
- (viii) The appellant contended the cross examination of the persons involved was not allowed. This submission is not correct the appellant had asked for cross-examination of the ten panchas who were witnesses to various panchnamas drawn in such searches proceedings. The adjudicating authority found that neither Shri Ashish Tiwari, Director nor any other Authorized Representative of the appellant had ever challenged the legitimacy or the sanctity of the panchnama proceedings. In fact, the Ashish Tiwari, in his statement dated 08.08.2013, said that were satisfied with the proceedings conducted by the

officers under Panchnama dated 07.08.2013 at his factory and godown premises.

- (ix) In view of the above, there was no scope for cross-examination any panch witness.
- (x) The appellant also contended that there was no evidence of unaccounted for production. The Adjudicating authority found that both ACCIPL and ABTIARI had manufactured goods which were also specified as pesticides and insecticides. However, the appellant had not maintained records properly and for this reason that information had to be collected from third parties. In his statement dated 24.09.2013, Ashish Tiwari said that they maintained finished goods register, packing stock register, delivery challan, raw-materials stock register at their premises but the premises were burnt in fire on 26.09.2013. He suggested that the details would be available with their CA.
- (xi) The impugned order passed by the Commissioner is correct and calls for no interference.
- (xii) The appeals may be dismissed and the impugned order may be set aside.

11. We have considered the submissions advanced by learned counsel for the appellant and the learned authorized representative appearing for the department and perused the records.

12. This is the second round of litigation assailing the *de novo* order passed in pursuance of this Tribunal Final Order dated 11.05.2018. In the same order the proposals in a subsequent SCN dated 27.04.2017 issued for the subsequent period were also decided.

13. The first question to be decided by us in these appeals is if the goods manufactured by the appellant should be classified as insecticides or fungicides or they should be classified as cultures of micro organisms under CTH 3008. When classifying goods, it must be seen as to how the goods are marketed. Usually, in cases of alleged clandestine removal, not many documents are found. However, in this case, all the products manufactured by the appellant except zinc sulphate were being sold as fungicides or insecticides under Insecticides Act, through MARKFED and MP Agro-the governmental organizations. It is for this reason that substantial amount of data was available with these two Governmental Organizations which showed the quantities of insecticides sold. We do not agree with the submission of the appellant that these goods which were sold in the market as insecticides and which the appellant itself treated as insecticides under the Insecticides Act should, for the purpose of central excise, be treated as not insecticides but as merely as cultures of micro-organisms. Merely because the insecticides manufactured by the appellant have biological, rather than chemical origin, they do not cease to be insecticides or fungicides. We, therefore, find

in favour of the Revenue and against the appellant on the question of classification of the goods as insecticides.

14. The next question to be examined is the quantification of allegedly clandestinely removed goods. Learned counsel for the appellant vehemently opposed the demand on the ground that the data was collected from third parties and the demand should not be confirmed on that basis. It must be, however, be remembered that it is not always possible to obtain data of clandestine removal from the assessee. Invariably, some amount of investigation is required to determine the value of the goods clandestinely removed. It must also be remembered that when the DGCEI officers visited the factories of the appellant their offices and everything in them were gutted and there were no records. The Director of the appellant suggested that the data would be available in the office of the CA. It is for this reason the premises of the CA were searched and the data was obtained from the CA. The CA also explained that the entire CPU of the computer was brought to his office because "Tally software" of the version being used by the appellant did not allow copying of data. It is in that context that the data was taken from the appellant's CA's office. The other source of information of the DGCEI were records of MARKFED and MP Agro through whom the appellant sold insecticides/ pesticides. These are Governmental Organizations and we have no reason to doubt the authenticity of the information collected from them.

15. Another contention of the appellant was that they were also trading in goods and their entire turnover cannot be taken as that of manufacture of goods. It was also contended that the alleged sale of insecticides did not match their purchase of raw materials. It was for these two reasons that this Tribunal had remanded the matter to the Original Authority in the first round of litigation. We find the Commissioner has, in the impugned order, confirmed the demand of excise duty only on such value of the goods which were confirmed by the MARKFED and MP Agro through whom the appellant had sold its pesticides. He also took into account the value of the exempted product zinc sulphate sold by the appellant and the value of the goods traded by the appellant and only then determined the amount of goods manufactured and clandestinely removed by the appellant. He also took into account the SSI exemption available to the appellant as a small scale industry and, thereafter determined the amount of duty payable. The details of the duty payable determined by the appellant are in the table below:

M/S ACCIPL

Period	Sales turnover as per P & L a/c	Sales Turnover as per sales ledger(Tally)	Sales turnover considered in SCN	Sales turnover confirmed at the buyer's end	Value of clearance of zinc sulphate (exempted under Nfn no. 12/12 CE. Sr. No. 10	Value of Traded goods	Assessable value (after SSI exemption where applicable col. 5-6-7)	Rate of duty %	Central Excise duty confirmed
1	2	3	4	5	6	7	8	9	10
2009-10*	38419003	38540913	38540913	36792698	0	726660	21066038	10.3	2169802
2010-11	171933125	144416614	171933125	134755627	0	13725845	121029782	10.3	12466068
2011-12 (upto 16.03.2012)	0	0	407225085	233027623	25364390	9749830	197913403	10.3	20385081
17.3.12 to 31.3.12	422568721	420378310	15343636	0	0	0	0	12.36	0
2012-13	823720623	814540391	823720623	424478664	26871603	4951072	392655989	12.36	48532280
2013-14(upto 6.8.13)	0	214629946	214629946	33246674	10348827	986005	21911842	12.36	2708304
TOTAL	1456641472	1632506174	1671393328	862301286	62584820	30139412	769577054		86261534

M/S ABTIARI

PEIROD	Sals turnover as per P &L a/c	Sales turnover as per sales ledger (Tally)	Sales turnover considered under the SCN	Sales turnover confirmed at the buyer's end, which is considered for this order	Assessable value	Rate of duty %	Central Excise duty confirmed in this order.
1	2	3	4	5	6	7	8
2009-10	0	1047536	1047536	997653	997653	10.3	102758
2010-11	93047619	62157898	93047619	4721471	4721471	10.3	486312
2011-12 (upto 16.3.2012)	0	0	134333916	39161449	39161449	10.3	4033629
17.3.12 to 31.3.12	186516023	98052795	52182107		0	12.36	0
2012-13	0	200665843	200665843	77407414	77407414	12.36	9567556
TOTAL	279563642	361924072	481277021	122287987	122287987		141902555

16. No alternative figures or evidence have been put up by the appellant to counter the calculation by the Commissioner in the impugned order. We, therefore, are inclined to accept the calculation of the duty payable by the appellant as above.

17. The last submission of the appellant for the learned counsel is that the third SCN dated 27.12.2017 was also issued for an extended period covering 2013-14 to 2017-18. It is his submission that once appellant’s activities including what they were manufacturing and how they were clearing them were known to the department, a show cause notice for the subsequent period could not have been issued by the department invoking extended period of limitation. We find force in this submission. It has been held by the Supreme Court in **Nizam Sugar Factory (supra)** that when all relevant facts are in the knowledge of the authorities when issuing the first show cause notice, the second and third show cause notice based on same or similar facts cannot be taken as based on suppression of facts on the part of the assessee. We, therefore, find that the demand of

duty for the period of third show cause notice needs to be confined to only the normal period of limitation. The demand confirmed in the impugned order with respect to this show cause notice is reproduced below:

Year 2013-14						
Sr. No.	Production	UNIT	QTY	AMOUNT	Rate of Duty	Duty
1	Mix Neem Oil	LTR	19510	6168771	12.36	762460
2	TRICODERMA VIRIDE 1% WP (ADVANCE POWER)	KG	39357	8121734	12.36	1003846
3	TRICODERMA VIRIDE 1% WP (ADVANCE POWER)	MT	21.2	2875230	12.26	355378
	TOTAL			17165735		2121685

YEAR 2014-15						
Sr. No.	PRODUCTION	UNIT	QTY	AMOUNT	RATE OF DUTY	DUTY
1	TRICODERMA VIRIDE 1% WP	KG	12987	2868801	12.36	354584
2	Mix Neem Oil	LTR	191	82533	12.36	10201
3	AD THIRUM 100 GM	KG	140	43046	12.36	5320
4	CARBENDAZIM +MANCOZEB 100GM	KG	762.5	519299	12.36	64185
5	CARBENDAZIM +MANCOZEB 250 GM	KG	508	330943	12.36	40905
6	CARBENDAZIM+MANCOZEB 500 GM	KG	1494.5	896233	12.36	110774
7	TOTAL			4740855		585970

YEAR 2015-16						
Sr. No.	PRODUCTS	UNIT	QTY	AMOUNT	RATE OF DUTY	DUTY
1	TRICODERMA VIRIDE 1% WP	KG	8481.2	2831307	12.5	353913
2	TRICODERMA HERZINIUM 1KG	KG	394	48297	12.5	6037
3	TRICODERMA HERZINIUM-500 GM	KG	225.5	29026	12.5	3628
4	METARHIZIUM-500 GM	KG	55126	12.5	6891	5
5	AD ZYME 10 KG	KG	25410	722152	12.5	90269
6	AD ZYME 50 KG	KG	12850	365197	12.5	45650
7	MIX NEEM OIL	LTR	2615	1181169	12.5	147646
	TOTAL			5232274		654034

YEAR 2016-17						
1	AD ZYME	KG	6750	1197000	12.5	149625
	TOTAL			1197000		149625

YEAR 2017-18 (UPTO JUNE 2017)						
SR. NO.	PRODUCTS	UNIT	QTY	AMOUNT	RATE OF DUTY	DUTY
1	Mix Neem Oil	LT	124.5	38623	12.5	4828
2	TRICODERMA VIRID 1% WP-ADVANCE POWER	KG	0	3612420	12.5	451553
				3651043	12.5	456380

18. The matter needs to be remanded the Commissioner only for the purpose of calculation.

19. In view of the above, we partly allow the **Appeal no. 52232 of 2019** filed by ACCIPL restricting the demand in respect of the SCN 27.12.2017 to the normal period of limitation and setting aside entire penalty under section 11AC of the Act. Rest of the order is upheld. **Appeal No. 52233 of 2019** filed by ABTIARI and **appeal No. 52371 OF 2019** filed by Shri Ashish Tiwari are dismissed.

[Order pronounced on **14/10/2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)