IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 24/04/2017.
DATE OF DECISION : 24/04/2017.

Excise Appeals No. 1940 and 2074 of 2010

[Arising out of the Order-in-Appeal No. 199/(KKG)/CE/JPR-II/2010 dated 01/04/2010 and No. 211/(KKG)/CE/JPR-II/2010 dated 16/04/2010 both passed by The Commissioner (Appeals), Central Excise – II, Jaipur.]

M/s Rupali Chemicals — Appellant

Versus

CCE, Jaipur — Respondent

Appearance

Ms. Rinki Arora, Advocate – for the appellant.

Shri H.C. Saini, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53101-53102/2017 Dated : 24/04/2017

Per. B. Ravichandran :-

These two appeals are on the same issue and hence, they are taken up together. The appellants are engaged in the manufacture of Magnesium Sulphate. The dispute in the present appeals relates to correct classification of the product under Central Excise Tariff and their eligibility to exemption as

Fertilizer/Micronutrient. The appellants manufactured Magnesium Sulphate by reaction of Magnesium Carbonate/oxide with Sulphuric Acid. The process of manufacture as narrated in the impugned order is not in dispute. The final product that emerges is Magnesium Sulphate in crystal form. The Revenue held that the classification would be under Central Excise Tariff Heading 2833.90 (prior to 28/02/2005) and under Heading 283321.00 (after 28/02/2005). The appellants claimed classification under Central Excise Tariff Heading 3105 as "other fertilizers". The lower Authorities held the product under consideration cannot be classified under Chapter 31, as the impugned goods do not contain any one of the fertilizing element – Nitrogen, Phosphorous or potassium. The product is nothing but chemical compound which is correctly classified under Chapter 28 as in organic chemical compound.

2. We have heard both the sides and perused the appeal records. The impugned order relied on Note 6 of Chapter 31 which states as below :-

> "For the purpose of heading 3105, the term "other fertilizers" applies only to products of a kind used as fertilizers and containing, as an essential constituent, at least one of the fertilizing elements nitrogen, phosphorus or potassium".

3. Admittedly Magnesium Sulphate does not contain nitrogen, phosphorous or potassium. As classified by the Board vide their

Circular dated 19/05/1998, to classify Micronutrient as 'other fertilizer' in heading 3105, the scope of the term 'other fertilizer' has to be determined in the light of Note 6 of the said Chapter. If the micronutrient is a separate classified compound, it will be classified under Chapter 28/29. Further, we also note that the Board vide Circular dated 06/04/2016 again clarified on the classification of micronutrient. It is stated that in trade parlance sale of micronutrient as "micronutrient fertilizer" would not lead to classification thereof under Chapter 31 as fertilizers for the purposes of Central Excise Tariff. For classification under Chapter 31, at least one of the elements, mainly nitrogen, phosphorous or potassium should be an essential component of the fertilizer as per note 6 of Chapter 31. It was further clarified there is no specific heading in the tariff for classification of micronutrient. However, where the micronutrient is a separate chemically defined compound, it will be classifiable under the heading for that chemically defined compound, under Chapter 28 or Chapter 29. For example, some of the Sulphate of Micronutrient are specifically covered under Central Excise Tariff Heading 2833.

4. The learned Counsel pleaded that they are covered by Fertilizer Control Order and also in their clearance invoices they are naming the product as fertilizer. We find these facts are not relevant to decide the classification under Central Excise Tariff, which should be in terms of the wordings of tariff entries readwith relevant chapter notes. As already explained above,

Magnesium Sulphate being a defined inorganic chemical not having any fertilizing element, is correctly classifiable under Chapter 28.

5. The learned Counsel also pleaded limitation. We note as recorded in the impugned order, the statutory ER-1 returns for the period April 2000 to March 2005 have not been filed by the appellant. It is only after the Department insisted during verification of details in May 2006, the appellants filed all the returns. The appellants claimed to have filed returns earlier. However, the lower Authorities recorded that there is no evidence that they were filing any returns during the relevant time. On claim regarding registration made by the appellant, we have seen the registration in form R-2. The said registration stipulates Magnesium Sulphate Micronutrient fertilizer for the purpose of procurement of excisable goods used for special industrial purpose under erstwhile Rule 192. In any case registration certificate was issued by the Department, based on the application made by the appellant, before starting the manufacture. This by itself does not decide the correct classification of the product. In respect of repeat show cause notice for subsequent period, we find no justification for invoking provisions of Section 11A (1) proviso, for extended period and also for imposing penalty under Section 11AC of the Central Excise Act, 1944. Accordingly, the penalty under Section 11AC

imposed in subsequent proceedings is set aside. Except for this modification, the appeals are otherwise dismissed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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