CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

S.No.	Appeal No.	Appellant	Respondent	Impugned Order No. & Date
1.	E/27052/2013	Shivashakthi Bio Planteec Limited	CCEC&ST, Hyderabad-I	O-I-O No. 3/2013-(CE)-Commr, dt. 18.03.2013 passed by CCCE&ST, Hyderabad-I-
2.	E/27061/2013	N Srinivasa Rao, Director, Shivshakthi Bio Planteec Ltd.	.do.	.do.
3.	E/22958/2014	Shivashakthi Bio Technologies Limited	.do.	O-I-O No. HYD-EXCUS-001-COM-005-14-15, dated 05.06.2014 passed by CCCE&ST, Hyderabad-I
4.	E/22959/2014	N Sreenivasa Rao, Director, Shivashakthi Bio Technologies Limited	.do.	.do.

Appearance
Shri Y. Srinivasa Reddy, Advocate for the appellant
Shri Arun Kumar, Dy. Commissioner/AR for the respondent

Coram:
Hon'ble Mr M V RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr MADHU MOHAN DAMODAR, MEMBER(TECHNICAL)

Date of Hearing: 31.01.2018
Date of Decision: 31.01.2018

FINAL ORDER No. A/30480 – 30483/2018

[Order per: M V Ravindran, Member (Judicial)]

1. All these appeals are directed against Orders-in-Original No. 3/2013-(CE)-Commr, dt. 18.03.2013 and HYD-EXCUS-001-COM-005-14-15, dated

05.06.2014. Since all the appeals are raising the same issue, they are being disposed of by a common order.

2. The issue that falls for consideration in these appeals is whether the appellant Shivashakthi Bio Planteec Limited is required to discharge duty on micronutrient fertilisers for the period July 2007 to March 2013 or otherwise; is required to discharge duty on repacking of single micronutrients for the period April 2011 to March 2012 or otherwise and whether penalties have to be imposed on the appellants for the same.

3. Undisputedly, during the period July 2007 to March 2013, appellant had manufactured micronutrient fertilisers and sought classification under chapter heading 3105. The said classification was disputed by Revenue, as it is the view of the authorities that the product would merit classification under chapter heading 3808. Coming to such a conclusion, show cause notices were issued for the demand of duty. The said show cause notices were adjudicated and the adjudicating authority after following due process of law, confirmed the demands raised with interest and imposed penalty on the main appellant as well as individuals. As regards the demand of duty on single micronutrient, the adjudicating has held that extended period was correctly invoked and repacking of micronutrients from larger pack to smaller pack to manufacture and are classifiable under chapter heading No. 2833 and 2840. On this ground also he confirmed the demands with interest and imposed penalties.

4. Ld. Counsel submits that as regards classification of micronutrient fertilisers, this Bench in the case of CCE, Hyderabad vs. Aries Agrovet Industries Limited [2017-TIOL-2635-CESTAT-Hyd] and Hindustan Agro Insecticides and others [2017-TIOL-3145-CESTAT-HYD] has held that classification of micronutrient fertilisers would fall under chapter heading 3105 and set aside the demands raised in those appeals. It is his submission that the same ratio will apply in the case in hand. It is his further submission that as regards the demands raised on repacking of single micronutrient, appellants were under bonafide belief that the said activity of repacking will not amount to manufacture and did not discharge the duty liability as they have received single micronutrients from the manufacturers without payment of duty. He would submit that CBEC circular during the relevant period clarifies that there is no specific heading in tariff for classification of micronutrients, hence the demands raised be set aside.

5. Ld. DR reiterates the findings of the lower authorities.

6. As regards the demands raised on micronutrient fertilisers in appeals No. E/27052/2013 and E/22958/2014, we find that a similar issue in respect of other assessees i.e. Hindustan Agro Insecticides and Aries Agrovet Industries Limited were decided by this Bench in favour of the assessee holding that the said micronutrient fertilisers would fall under chapter heading No. 3105. Respectfully following the same, we set aside

the demands confirmed on Shivashakthi Bio Planteec Limited and Shivashakthi Bio Technologies Limited in these two appeals, consequently interest liability and penalty stands vacated. Appeals No. E/27061/2013 and E/22959/2014 being filed by the individual Directors against penalty imposed in relation to the demand of duty on micronutrient fertilisers, also stands allowed as on merits we have held that no demand of the duty can be confirmed against the main appellant. These two appeals for setting aside the personal penalties are allowed.

7. In appeal No. E/27052/2013, the issue of demand of duty on repacking of single micronutrients, classifying them under chapter 28 of Central Excise Tariff as chargeable duty seems to be correct and in consonance of the law. The chapter note 28 specifically indicates that repacking and re-receiving from larger packs to smaller packs would amount to manufacture. We do not find any reason to interfere in the impugned order which upholds the activity of repacking as deemed manufactured. However, we find that the demands which have been confirmed are by invoking the extended period against appellant. In our considered view, appellant would have been entertaining a bonafide belief as to the repacking would not amount to manufacture and no excise duty is payable as the larger pack which were procured by the was cleared by manufacturers without discharging excise duty as non excisable and repacked products being same are also non excisable. This bonafide belief needs to be accepted. Accordingly in this appeal, the demand which has

been confirmed by invoking the extended period, needs to be set aside. The demand within the limited period for this activity of repacking needs to be upheld alongwith interest. Since the issue involved in this case is of interpretation of the chapter notes for classification, we find that there is no necessity to visit the appellant with any penalties. The penalties are set aside.

8. Appeals stands disposed of as indicated herein above.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(MADHU MOHAN DAMODAR) **MEMBER (TECHNICAL)**	**(M V RAVINDRAN)** **MEMBER (JUDICIAL)**

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