

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court – I

Customs Appeal No. 1337 of 2012

(Arising out of OIA No. 07/2012 (V) CH dt.21.03.2012 passed by Commissioner (Appeals),
Customs, Central Excise & Service Tax, Visakhapatnam)

Commissioner of Customs

Visakhapatnam - CUS

4th Floor, Customs House, Port Area,
Visakhapatnam, AP – 530 035

.....Appellant

VERSUS

Coromandel Fertilizers Ltd

Sardar Patel Road, Coromandel House,
Secunderabad – 500 003

.....Respondent

Appearance

Shri M. Anukathir Surya, AR for the Appellant.
Shri Ch. Sumanth, Advocate for the Respondent.

Coram:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30403/2023

Date of Hearing: 01.11.2023

Date of Decision: 01.11.2023

[Order per: A.K. JYOTISHI]

The issue involved in this Appeal filed by the Revenue is whether the product i.e., EDTA Zinc 12%, imported by the Respondent under Bill of Entry No.552944 dated 05.06.2009, would correctly fall under CTH 3105 9090, with exemption from CVD vide Notification No. 04/2006-CE dated 01.03.2006 or it would fall under CTH 2921 2100 and thereby, not entitled to the CVD exemption, by considering the said product as "Ethylenediamine and its salts".

2. The Respondent imported EDTA Zinc 12% classifying it under CTH 3105 9090. However, the Department classified the goods under CTH 2921 2100 and also denied CVD exemption by considering the same as "Ethylenediamine and its salts". Aggrieved by the said assessment, the Respondent preferred an Appeal to Commissioner (Appeals), who remanded the matter back to the assessing officer, who in turn again passed a speaking Order without considering the requested classification by the Respondent.

3. The Respondent preferred an Appeal against the OIO No.232/2011 dated 05.08.2011 before the Commissioner (Appeals), who held that the item EDTA Zinc 12% is classifiable under CTH 3105 9090 and was also entitled to exemption notification No. 04/2006-CE. While deciding the classification, the Commissioner (Appeals) had relied mainly on the fact that the product in question is not a separate chemically defined compound, and there is no evidence to the contrary that addition of Zinc & Nitrogen in the manufacturing process was deliberate. He also took into account the fact that lower authority was not correct in holding end-use of the product being not relevant to classify the product as fertilizer and also noted that during the manufacture of the item, there is a deliberate addition of Zinc and Nitrogen to EDTA and hence it is not a separate chemically defined compound and therefore, not classifiable under Chapter 29. He further noted that EDTA Zinc 12% contains 6.5% Nitrogen by weight and since Chapter Note 6 of Chapter 31 does not specify any minimum content of fertilizing element to be present to make it an essential constituent, therefore, it merits classification under Chapter 31 as other fertilizer.

4. Against this Order of the Commissioner (Appeals), the Revenue has preferred an Appeal before this Tribunal. The main grounds taken by the Revenue are that EDTA Zinc 12% is a separate chemically defined compound i.e., an organo metallic complex compound and that organo metallic complex compound is a co-ordination compound, consisting of acyclic amino acids and Zinc complex, in conjunction with a disodium salt, which is nothing but a Oxygen function amino compound and therefore, appropriately covered under CTH 2922 4990. They have also relied on US Trade Commissioner ruling and Harmonized Tariff Schedule to support that the compound "Zinc disodium Ethylenediaminetetraacetate salt" (Zn-EDTA) is also known as Sequestrene Na₂Zn, which is used as fertilizer ingredient. It is also a chemical compound satisfying Note 1(a), Note 4 and Note 5(c)(3) to Chapter 29. According to Revenue, the product's chemical formula is C₁₀H₁₂ZnN₂Na₂O₈. They have also relied on Chapter Note 6 to Chapter 31 which states that for the purpose of classification under CTH 3105, the goods should contain as an essential constituent, one of the fertilizing elements i.e., N, P, K and even though the product contains Nitrogen up to 6.5%, it is not an essential constituent since the product is aimed at providing Zinc, which is a micronutrient to the plant. They have also relied on classification given by WCO Secretariat, wherein, it was indicated that "with regard to the term 'essential constituent' used in Note 6 to Chapter 31, the term should be interpreted that certain amounts of

Nitrogen, Phosphorus and Potassium element are present in a form of which it can be released into soil as nutrient carriers that are NH_4 , NH_3 , NO_3 , NO for Nitrogen H_2PO_4 , HPO_4 for Phosphorus and K , K salts for Potassium. Following this, Nitrogen presented in EDTA as a chelating agent cannot be regarded as 'essential constituent' referred to in Note 6 to Chapter 31 since the element is not in a form of a nutrient carrier."

5. Heard both sides and perused the records.

6. The main issue, which is to be decided, is whether the product in question is a separate chemically defined compound or otherwise and if not whether it will fall under Chapter 31 as "other fertilizer" or otherwise. The Respondents have taken us through the manufacturing process, as also expert opinion from Ex-principal scientist and head division of soil science and agricultural chemistry, Indian Institute of Horticultural Research (ICAR, Government of India). The manufacturing process involves three basic raw materials i.e., EDTA acid, ZnO & NaOH . They are reacted together and thereafter, passed through filtration, concentration, etc., to get finished product. The composition of the finished product is as under:

- i) Zinc contents – 12% minimum
- ii) Nitrogen contents – 5.4% minimum
- iii) Water contents – 8% maximum
- iv) Water insoluble – 0.05 maximum

7. According to the manufacture, this is not a single chemical compound of known structure and in fact, it is a product, which is a mixture of several compounds obtained after a series of processes. It is also clarified that Zin-EDTA 12%, is agriculture grade and that the process would clearly show that there has been a deliberate addition of 12% of Zinc and 6.5% of Nitrogen in order to facilitate uptake of these nutrients in the most efficient manner. The Nitrogen in the EDTA Zinc 12% is not an impurity and it has been deliberately added to get the resultant product.

8. They have also produced a Certificate issued by Akzo Nobel Functional Chemicals BV, Netherlands, wherein, it has been clarified that E-Zn-12, which is basically Zinc salt of EDTA, should be considered as mixture. It goes on to add that international studies have shown that once the micronutrient has been delivered to the plant system, the EDTA degrades to a mixture of Nitrogen containing degradation compounds as glycine, iminodiacetic acid (IDA), etc.,

which are even more bio-degradable than EDTA itself and after this, Nitrogen is available for admission to the plant to promote plant growth.

9. The Respondent has also relied on various judgments which are as follows:

- a) CIBA India Ltd vs CC, Chennai [2009 (237) ELT 207 (Tri-Chennai)]
- b) CCE & ST, Hyd-IV vs Aries Agrovat Industries Ltd [2017 (7) GSTL 317 (Tri-Hyd)]
- c) CC (Exports), Chennai vs SLV Fertichem [2018 (363) ELT 847 (Tri-Chennai)]
- d) Hindustan Agro Insecticides vs CCE & ST, Guntur [2017 (7) TMI 846 (Tri-Hyd)]
- e) Caress Industries vs CGST & CE, Salem [2018 (9) TMI 248 (Tri-Chennai)]
- f) Caress Industries vs CGST & CE, Salem [2018 (9) TMI 72 (Tri-Chennai)]
- g) Assam Company Ltd vs CC, Calcutta [2001 (133) ELT 110 (Tri-Kolkata)]

10. In the case of CIBA India Ltd (supra), the Tribunal held that explanatory note to Chapter 29 clearly states that separate chemically defined compound containing other substances deliberately added during or after the manufacture are excluded from Chapter 29 and the product in dispute contains Zinc, Magnesium, Iron, which is deliberately added and therefore, the item would fall under CTH 3105 90. In the case of Caress Industries (supra), the Tribunal held that the micronutrient mixtures are classifiable under CTH 3105 90 as 'other fertilizer' and not as a 'plant growth regulator'. Relying on the CBEC Circular No. 1022/10/2016-CX dated 06.04.2016, the Tribunal, in the case of Aries Agrovat Industries Ltd (supra), wherein the Assessee was manufacturing 'LEO brand chelated Zinc', found the item to be more appropriately classifiable under CTH 3105 and not as micronutrient under Chapter 38. Assessee's reliance on Caress Industries (supra), covers an item, which is chelated Zinc at 12% EDTA. The manufacturing process is almost similar to what the imported goods had undergone and after going through various possible classifications, came to the conclusion that it is appropriately classifiable under Chapter 31.

11. We have perused the provisions under Chapter 29 & Chapter 31. Note 1 to Chapter 29 provides for inclusion of separate chemically defined organic compound, whether or not containing impurities, whereas, Chapter 31 provides for exclusion of separate chemically defined compounds (other than those answering to the descriptions in Note 2(a), 3(a), 4(a) or 5 below). Therefore, the first issue to be decided is whether the product in question can be

considered as separate chemically defined compound as Revenue is arguing or otherwise. From the manufacturing process, as well as expert opinion, it is apparent that Nitrogen is added deliberately in the process simultaneously, along with Zinc Oxide, as also EDTA acid. Therefore, Nitrogen is not an in situ development rather it is part of the manufacturing process and Nitrogen remains in the product even after the reaction is over, as confirmed by the test report of the final product. Therefore, even if it is a micronutrient or plant growth regulator essential for providing Zn, since it also contains fertilizing element i.e., Nitrogen also, it would be more appropriately classifiable as 'other fertilizers'.

12. Chapter Note 6 emphasizes that the heading applies only to a product of a kind use as fertilizer and containing as an essential constituent, at least one of the fertilizing agents i.e., N or P or K. In the present case, the essential constituents are Zinc (12% Minimum) & Nitrogen (5.4% Minimum). Therefore, it cannot be said that Nitrogen is not an essential constituent in the product, by virtue of its presence in the product. The next issue would be whether it is used as fertilizer or otherwise or whether it is intended to be used as fertilizer or otherwise. Admittedly, it is an agriculture grade product, where the Revenue has also provided the IS standard meant for agriculture grade Zinc-EDTA. IS standard for chelated Zinc for agricultural use (IS 13921:1994), inter alia, provides for certain minimum requirements of Zinc i.e., 12% which is satisfied in this case. Similarly, the Fertilizer (Control) Order also classifies chelated Zinc i.e., Zn-EDTA, as micronutrient, where the minimum content should be 2%. Therefore, when the chelated Zinc is treated as fertilizer or micronutrient and when the same is also having 'other fertilizing component' like Nitrogen in substantial proportion (here 6.5%), this needs to be classified as micronutrient fertilizer or other fertilizer in terms of Chapter Note 6 to Chapter 31.

13. The Commissioner (Appeals) has taken into account the composition, the production process and the intended use as fertilizer, as also certain case laws to come to the conclusion that the product is rightly classifiable under CTH 3105 as "Other fertilizers". Therefore, he has found that the product of a kind used as fertilizer and is also containing as an essential constituent, at least one fertilizing element i.e., Nitrogen (6.5% by weight) and that the Chapter Note to Chapter 31 does not specify any minimum content of the fertilizing element, which needs to be present to make it an essential constituent. He has also relied on the judgment of Hon'ble Supreme Court in the case of CCE, Bangalore

vs Karnataka Agro Chemicals [2008 (227) ELT 123 (SC)] to arrive at the conclusion that the product in question is a micronutrient fertilizer.

14. Therefore, we find that the Commissioner (Appeals) had rightly decided the classification of EDTA Zinc 12% under CTH 3105 9090. Accordingly, we find no merit in interfering with the Impugned Order.

15. Appeal is dismissed.

(Operative part of the Order was pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)