

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 22800 of 2014(Arising out of **Order-in-Appeal** No. 16 & 17/2014 (V-II) CE dated 16.06.2014 passed by
Commissioner of Central Excise, Customs & Service Tax (Appeals), Visakhapatnam)**M/s KPR Fertilizers Ltd.,**8-256, Tata Nagar,
Balabhadrapuram,
East Godavari District,
Andhra Pradesh – 533 343.

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APPELLANT*VERSUS***Commissioner of Central Excise****Visakhapatnam - II**Central Excise Building,
Port Area,
Visakhapatnam,
Andhra Pradesh – 530 035.

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RESPONDENT**AND****Excise Appeal No. 22801 of 2014**(Arising out of **Order-in-Appeal** No. 16 & 17/2014 (V-II) CE dated 16.06.2014 passed by
Commissioner of Central Excise, Customs & Service Tax (Appeals), Visakhapatnam)**M/s KPR Fertilizers Ltd.,**8-256, Tata Nagar,
Balabhadrapuram,
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APPELLANT*VERSUS***Commissioner of Central Excise****Visakhapatnam - II**Central Excise Building,
Port Area,
Visakhapatnam,
Andhra Pradesh – 530 035.

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RESPONDENT**APPEARANCE:**

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.

Shri V. Srikanth Rao, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)****FINAL ORDER No. A/30463-30464/2025**

Date of Hearing: 29.07.2025

Date of Decision: 11.11.2025

[ORDER PER: A.K. JYOTISHI]

M/s KPR Fertilizers Ltd., (hereinafter referred to as appellant) are in
 appeal against the Order-in-Appeal No. 16 & 17/2014 (V-II) CE dated

16.06.2014, whereby, the Commissioner (Appeals) has, inter alia, held that there is no infirmity in the impugned order, in so far as classification is concerned, however, he has set aside penalty.

2. The issue, in brief, is that the appellants are engaged in manufacture of, inter alia, Insecticides, Plant Growth Regulators, Bio-fertilizer etc., cleared as Micronutrient Fertilizers (MNF) classifying it as fertilizer under CETH 3105 9090 in terms of Notification 4/2006-CE dated 01.03.2006 and Notification No. 1/2011-CE dated 01.03.2011, whereas, the Department felt that the same would appropriately classifiable under CETH 3808 as Micronutrients are not fertilizers hence cannot fall under Chapter 31. The main ground taken for holding the same as Plant Growth Regulator (PGR) is that in terms of Chapter Note 6 to Chapter 31, these products get excluded from Chapter 31 of the Central Excise Tariff Act 1985. The Adjudicating Authority has tried to make a distinction between the impugned goods i.e. MNF and the PGR, relying on various technical literature, Board Circulars, etc., and the fact that in the absence of micro nutrients like Nitrogen (N), Phosphorous (P), or Potassium (K) as an essential elements, as also the fact that these impugned goods were functioning like PGR, held it's appropriate classification under Chapter Head 3808 9340. The Commissioner (Appeals) has relied on the judgment of the Hon'ble Supreme Court in the case of Karnataka Agro Chemical Vs Commissioner of Central Excise, Bangalore [2012 (281) ELT 607 (Tri-Bang)], where, the order of the Tribunal was remanded back by the Hon'ble Supreme Court. He emphasized the fact that the Tribunal had, prima facie, held that a mere presence of small quantities of nitrogen does not get it covered under Chapter Note 6 of Chapter 31.

3. Learned Advocate for the appellant has mainly relied on the fact that the original demand covering period 2007-2011 on this issue had travelled

up to Tribunal, where, the Tribunal vide its order No. A/30091/2022 dated 15.09.2022, reported as KPR Fertilizers Ltd., Vs CCE, Visakhapatnam [2022 (9) TMI 738 – CESTAT-Hyderabad], set aside the demand rejecting the classification adopted by the Department for said micro nutrient. He further submits that there are catena of judgments from Co-ordinate Benches holding that micro nutrients fertilizers and micro nutrients cannot be classified as PGR. He has relied on the following judgments:

- a) Shivashakthi Bio Technologies Ltd., Vs CCE, Hyderabad [2019 (20) GSTI 243 (Tri-Hyd)]
- b) CCE, Hyderabad-IV Vs Aries Agrovat Industries Ltd., [2017 (7) GSTL 317 (Tri-Hyd)]
- c) San Industry Vs CCE, Hyderabad [2018 (11) GSTL 320 (Tri-Hyd)]
- d) Valagro Biosciences Pvt Ltd., Vs CCE, Hyderabad [2020 (3) TMI 908 (CESTAT – Hyd)]
- e) Hindustan Agro Insecticides, Sovereign Agro Products Pvt Ltd., Vs CCE, Guntur [2017 (7) TMI 846 (CESTAT -Hyd)]

This view has been further supported by the decision of the Co-ordinate Benches in the following cases:

- a) Goldmuhor Agrochem & Feeds Ltd., Vs CCE, Kolhapur [2022 (8) TMI 103 (CESTAT – Mumbai)]
- b) Caress Industries Vs CCE, Salem [2021 (9) TMI 72 (CESTAT-Chennai)]
- c) Transpek Industry Ltd., Vs CCE, Vadodara [2008 (5) TMI 170 (CESTAT – Ahmedabad)]

He has also relied on the fact that Board, vide Circular No. 1022/10/2016-CX dated 06.04.2016, clarified that micro nutrients cannot be treated as PGR and they are to be classified under CETH 3105, as other fertilizers, if they contain 'N', 'P', 'K' or otherwise under CETH 3825, if identified separately as nutrients. He has also relied on the Hon'ble Supreme Court's judgment in the case of Ranadey Micronutrients Vs Collector of Central Excise [1996 (87) ELT

19 (SC)] holding that micro nutrients has to be classified as fertilizers only. He also submitted that a view taken in the show cause notice that as per Chapter Note 6 of Chapter 31, N or P or K shall be an essential constituent, means majority and since the goods contain nutrient in majority, they would not fall under any heading of Chapter 31, is not correct. He has relied on certain judgments as under in support that essential does not mean substantial and the presence of N, P and K in the mixed micro nutrient fertilizers cleared by the appellant are essential for the nutrients to apply on the plants as held by the Tribunal in the following cases:

- a) Ciba India Ltd., Vs Commissioner of Customs, Chennai [2009 (237) ELT 207 (Tri-Chennai)]
- b) Commissioner of Customs (Imports), Chennai Vs SLV Fertichem [2018 (363) ELT 847 (Tri-Chennai)]

He has also relied on the fact that reliance placed on the Supreme Court's order remanding the matter in the case of Karnataka Agro Chemical, supra, is misplaced, since in that case, Hon'ble Court held that deliberate addition of nitrogen in a miniscule quantity does not make them fertilizers, whereas, in the case of the appellant, there is no doubt that fertilizing elements, without which nutrient cannot be applied to the plants, were present as per the Chemical Examiner reports itself. Further, the Supreme Court in the said remand order clearly held that PGRs do not contain N, P and K and they are organic compounds other than nutrients. He further submits that the goods are being sold by the appellant as a mixture of micro nutrient fertilizers and not as a plant growth regulator.

- 4. Learned AR re-iterates the findings of the Commissioner (Appeals) upholding the classification.
- 5. Heard both the sides and perused the records.

6. The short question for determination is whether impugned goods being manufactured and cleared as MNF, is fertilizers and hence falling under CETH 3105 or is PGR falling under CETH 3808. Before entering into merit, we find that these appeals are periodical in nature and the original demand pertaining to the period from 2007-2011 was finally decided by the Hyderabad Bench of Tribunal vide it's Final Order No. A/30091/2022 dated 15.09.2022. We find that in this case, the issue whether the micro nutrient manufactured by the appellant can be considered as PGR or otherwise was examined by the Tribunal. The Tribunal took into account Chapter Note 6 of Chapter 31 which, inter alia, provides that "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 fertilizing elements nitrogen, phosphorous and potassium". They also took into account the CBEC Circular dated 06.04.2016. The Tribunal considered the composition of the impugned goods, which consisted of nitrogen and phosphorous. The Bench also considered the argument of the Revenue that though these elements are present, they were not essential and therefore these would not fall under Chapter 31. The relevant para of the judgment is cited below:

16. We also find that the alternative submission by the learned Authorized Representative, that the correct classification should be determined by this Tribunal regardless of the fact that such proposition was not in the show cause notice, is clearly not sustainable. One of the basic principles of natural justice is that "no man shall be condemned unheard". If the proposal is to classify the goods under a different tariff heading than one proposed in the show cause notice, a show cause notice must be issued and adequate opportunity should be provided to the appellant to explain why such classification should not be adopted.

17. We further find that the formulations as presented before us and discussed above clearly show that the assessee's products indeed, had Nitrogen or Phosphorous or Potassium or more than one of these three as an ingredient in them. The argument of the learned Authorized Representative is that although they were present in these formulations they were not essential. We do not find any basis to hold as to which of these elements in the products are essential and which are not. It is his submissions that they were only chelating agents. We find nothing in the Chapter note 6 to Chapter 31 which says that Nitrogen, Phosphorous & Potassium cannot be part of chelating agents or the chelating

agents are not essential ingredients. We do not find any reason to go merely by the assertion of the learned Authorized Representative in this regard. Since one of these elements is available, the classification of the goods under Chapter heading 3105 is clearly sustainable. The alternative classification as plant growth regulators is not sustainable.

7. We also find force in the judgment cited by the appellant in support that essential does not mean substantial, as being considered by the Department. There is no doubt that the Chemical Examiner in his report dated 19.07.2010 has reported that there is presence of Nitrogen, Phosphorous and Potassium in micro nutrient samples manufactured by the appellant.

8. Therefore, we find that the entire issue has already been considered by the Bench in the case referred, supra, while dealing the original demand and after taking into account various submissions, as also Statutory provisions, came to the conclusion that impugned goods cannot be considered as Plant Growth Regulator and would be treated as fertilizers only, keeping in view the Chapter not 6. Therefore, we find that the issue is already settled and therefore respectfully following the said judgment, we find that the order of the Commissioner (Appeals) cannot be sustained to the extent appealed against and is accordingly set aside to that extent.

9. Appeals are allowed.

(Pronounced in open court on 11.11.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)