

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

REGIONAL BENCH - COURT NO. - I

**Excise Appeal No. 28361 of 2013**(Arising out of **Order-in-Appeal** No.13/2013 (V-II) CE dated 25.09.2013 passed by  
Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

**M/s Biomax Nutrisciences** .. **APPELLANT**  
**India Pvt Ltd.,**  
Ethakota, Ravulapalem,  
East Godavari District,  
Andhra Pradesh - 533 238.

*VERSUS*

**Commissioner Of Central Excise** .. **RESPONDENT**  
**And Service Tax**  
**Visakhapatnam - II**  
Central Excise Building,  
Port Area,  
Visakhapatnam,  
Andhra Pradesh - 530 035.

**WITH****Excise Appeal No. 31077 of 2016**(Arising out of **Order-in-Appeal** No. VIZ-EXCUS-002-APP-039-16-17 dated 27.07.2016  
passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

**M/s Biomax Nutrisciences** .. **APPELLANT**  
**India Pvt Ltd.,**  
Ethakota, Ravulapalem,  
East Godavari District,  
Andhra Pradesh - 533 238.

*VERSUS*

**Commissioner Of Central Excise** .. **RESPONDENT**  
**And Service Tax**  
**Visakhapatnam - I**  
Port Area,  
Visakhapatnam,  
Andhra Pradesh - 530 035.

**WITH****Excise Appeal No. 30351 of 2017**(Arising out of **Order-in-Appeal** Nos.VIZ-EXCUS-002-APP-082 to 084-16-17 dated  
28.11.2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals),  
Visakhapatnam)

**M/s Biomax Nutrisciences** .. **APPELLANT**  
**India Pvt Ltd.,**  
Ethakota, Ravulapalem,  
East Godavari District,  
Andhra Pradesh - 533 238.

*VERSUS*

**Commissioner Of Central Excise** .. **RESPONDENT**  
**And Service Tax**  
**Visakhapatnam - II**  
Port Area,  
Visakhapatnam,  
Andhra Pradesh - 530 035.

**WITH****Excise Appeal No. 30352 of 2017**

(Arising out of **Order-in-Appeal** Nos. VIZ-EXCUS-002-APP-082 to 084-16-17 dated 28.11.2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

**M/s Biomax Nutrisciences**

..

**APPELLANT****India Pvt Ltd.,**

Ethakota, Ravulapalem,  
East Godavari District,  
Andhra Pradesh – 533 238.

*VERSUS***Commissioner Of Central Excise**

..

**RESPONDENT****And Service Tax****Visakhapatnam - II**

Port Area,  
Visakhapatnam,  
Andhra Pradesh – 530 035.

**AND****Excise Appeal No. 30353 of 2017**

(Arising out of **Order-in-Appeal** Nos. VIZ-EXCUS-002-APP-082 to 084-16-17 dated 28.11.2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

**M/s Biomax Nutrisciences**

..

**APPELLANT****India Pvt Ltd.,**

Ethakota, Ravulapalem,  
East Godavari District,  
Andhra Pradesh – 533 238.

*VERSUS***Commissioner Of Central Excise**

..

**RESPONDENT****And Service Tax****Visakhapatnam - II**

Port Area,  
Visakhapatnam,  
Andhra Pradesh – 530 035.

**APPEARANCE:**

Shri R. Raghavendra Rao, Advocate for the Appellant.

Shri K. Raji Reddy, 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/30483-30487/2025**

Date of Hearing:18.11.2025

Date of Decision:18.11.2025

**[ORDER PER: A.K. JYOTISHI]**

M/s Biomax Nutrisciences India Private Ltd., (hereinafter referred to as appellant) are in appeal against the orders of the Commissioner (Appeals),

whereby, the demand on Di Calcium Phosphate(Animal Feed Grade) has been confirmed.

2. The appellants are manufacturing Die Calcium Phosphate (DCP) (AFG) classified under 2309 9090 attracting NIL rate of duty. The Department felt that DCP made out of Rock Phosphate would not be covered under Heading 2309 9090, but will be covered under Heading 2835 2500 and accordingly duty was demanded for the period starting from November 2010 to till March 2014, by way of several show cause notices, which were confirmed by the original Adjudicating Authority and later on, in appeal upheld against the appellant by the Commissioner (Appeals).

3. Learned Advocate submits that this issue is no longer res-integra as the Government has issued Section 11C notification vide Notification No. 4/2016-CE(NT) dated 12.02.2016 covering the period commencing on the first day of February 2008 and ending with the first day of February 2014. Therefore, there will be no need to pay any duty on the DCP made out of Rock Phosphate during this period in terms of the said notification. He further submits that for the period beyond this also Government has already issued another Notification No. 3/2014-CE dated 03.02.2014 exempting the product. Therefore, DCP made out of Rock Phosphate would stand exempted from 01.02.2008 till 01.02.2014, and even for the intervening period of one day, he submits that there are clear judgments in support that said period would also be covered under the exemption and no duty required to be paid even for said one day gap i.e. first of February 2014. He has relied on the Hon'ble Supreme Court decision in the case of W.P.I.L. Ltd., Vs Commissioner of Central Excise, Meerut, UP [2005 (181) ELT 359 (SC)].

4. Learned AR on the other hand, reiterates the findings of the Commissioner (Appeals) and also highlights that in relation to appeal no. 31077/2016 and subsequent appeals, the benefit of Section 11C notification was denied on the grounds that Section 11C notification cannot be given retrospective effect when a show cause notice has already been issued, relying on the judgment in the case of Connaught Plaza [2012 (286) ELT 321 (SC)].

5. Heard both the sides and perused the records.

6. We find that short question for determination is whether Section 11C notification, supra, is applicable to the appellant for the period for which the demands have been raised and upheld or otherwise. We find that there is a specific period covered in the 11C notification and there is also a specific notification covering exemption available to the impugned good beyond said period, thus both in terms of 11C and as well as exemption notification, supra, there could not have been any demand of duty during the said period. The observation of the Commissioner (Appeals) relying on the judgment in the case of Connaught Plaza, supra, is also not applicable as is apparent from the Board's letter dated 25.08.2014 to the Special Counsel, Government of India, whereby, it was clarified that the Hon'ble Supreme Court in the said judgment had merely made an observation on the contention by the appellant's advocate and did not pass any judgement on the exemption under Section 11C, as such. Therefore, the reliance placed by the Commissioner (Appeals) on this judgment is mis-placed and no duty is leviable or payable during the period covered under the Section 11C notification irrespective of the fact whether the SCN was issued or otherwise. We also find force in the judgment cited by the Advocate for the intervening period of one day and we find that even for that one day, no duty will be leviable and it will remain exempted. Overall, for the entire

period covered under these 5 appeals, no demand can be sustained in view of both Section 11C notification as well as exemption notification dated 03.02.2014. In essence, therefore, the orders of the Commissioner (Appeals) cannot be sustained and therefore set aside.

7. Appeals are allowed.

(Dictated and pronounced in open court on)

**(A.K. JYOTISHI)**  
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**