

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 77124 of 2017

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AA/859/2017 dated 17.08.2017 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Customs (Port)

: Appellant

Custom House, 15/1, Strand Road,
Kolkata – 700 001

VERSUS

M/s. Stats Speciality Products Private Limited

: Respondent

13/1, Dinanath Chatterjee Street,
Kolkata – 700 058

APPEARANCE:

Shri Subrata Debnath, Authorized Representative for the Appellant-Revenue

None for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77573 / 2024

DATE OF HEARING / DECISION: 11.09.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Stats Speciality Products Private Limited,
13/1, Dinanath Chatterjee Street, Kolkata – 700 058
[hereinafter referred to as "Respondent"] filed a Bill of
Entry No. 9298449 dated 13.04.2017 against invoice
No. 6554709015 dated 06.04.2017 raised by
M/s. BASF South East Asia Pvt. Ltd., Singapore, for
clearance of goods declared and described as
mentioned under the table below, claiming
classification under Customs Tariff Item No.
23099090 for all the items under import:

Sl. No.	Description of Goods	Country of Origin	Net Weight (kg.)	Unit Value (USD/kg.)	Assessable Value (in INR)
1	Luavit E50 (Poultry Feed Supplement/additive) (not for human/medicinal use)	Germany	5000	5.7	18,96,931.50
2	Natuphos E5000G (Poultry Feed Supplement/additive) (not for human/medicinal use)	Germany	1600	5.25	5,59,095.60
	Total		6600		24,56,027.10

2. The Bill of Entry was self-assessed by the Respondent with duty @20% and 'Nil' additional duty on the basis of Sl. No. 106 of the Notification No. 12/2012-Cus dated 17.03.2012.

3. The assessing officer did not agree with the said classification and accordingly, re-assessed the Bill of Entry on 20.04.2017 classifying the goods viz. "Lutavit E50" under Customs Tariff Heading 2936 considering the same as 'Vitamin' and "Natuphos E5000 G" under Customs Tariff Heading 3507 considering the same as 'Enzyme' by referring to the C.B.E.C. Circular No. 188/22/96-CX. Dated 26.03.1996 and Circular No. 1/90-CX.1 dated 17.01.1990.

3.1. Aggrieved by the Assessment Order dated 02.05.2017 issued by the Deputy Commissioner of Customs, Appraising Group-II, Custom House, Kolkata – 700 001, the Respondent-importer filed an appeal before the Ld. Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata – 700 001. The Ld. Commissioner (Appeals) thereafter passed the Order-in-Appeal No.

KOL/CUS(PORT)/AA/859/2017 dated 17.08.2017 in respect of the goods imported vide Bill of Entry No. 9298449 dated 13.04.2017, wherein he has determined the classification of the goods imported under the said Bill of Entry as under: -

"26. In view of above, I confirm the classification of imported (i) Lutavit E 50 and (ii) Natuphos E 5000 G under heading 2309 setting aside the assessment of item Lutavit E 50 under heading 2936 and item Natuphos E 5000 G under heading 3507 done by Deputy Commissioner of Customs, GR II vide impugned order dt. 02.05.2017. The BE No. 9298449 dt. 13.04.2017 is re-assessed accordingly under sub-heading 2309 90 90 with the duty benefit under notification 12/2012 CUS dated 17.03.2012. Serial no. 106"

4. Aggrieved against the above order passed by the Ld. Commissioner (Appeals), the Revenue has preferred this appeal, on the following grounds: -

- (i) The Ld. Commissioner (Appeals) has not given any opportunity to the Department to be heard and hence, the impugned Order-in-Appeal has been passed in violation of the principles of natural justice.
- (ii) The Ld. Commissioner (Appeals) has observed that the practice of assessment of similar types of items has been going on for a considerable period throughout the country under heading 2309. The Revenue contends in this regard that the classification cannot be changed without following the procedure established by law. The submission of Revenue is that classification does not depend on practice, but on facts and settled laws.

(iii) In the present case, the goods imported by the Respondent viz. "Lutavit E50" is used for vitaminization of all types of feed and hence, it is appropriately classifiable as a vitamin.

(iv) The product viz. "Natuphos E5000 G" is an enzyme and not an animal feed and thus, the classification adopted by the Ld. Commissioner (Appeals) in the impugned order is legally unsustainable.

4.1. The Ld. Commissioner (Appeals) has *inter alia* relied upon the following case-laws submitted by the Respondent in support of re-classification of the goods in the impugned order, by which it has been held that the imported goods are animal feed supplement consisting of one or more vitamins and thus re-assessed the same under the heading 2309: -

- *Collector of Central Excise, Bangalore v. Tetragon Chemie P. Ltd. [2001 (132) E.L.T. 525 (S.C.)]*
- *Chokhani Pharma Vet v. Commissioner of Customs, Mumbai [2001 (134) E.L.T. 101 (Tri. - Mumbai)]*
- *Collector of Customs, Bombay v. Avet Chemicals [2001 (137) E.L.T. 1304 (Tri. - LB)]*
- *Commissioner of Central Excise, ACC, Mumbai v. Primal Healthcare Limited [2004 (178) E.L.T. 487 (Tri. - Mumbai)]*

4.2. In this regard, the contention of Revenue is that the above case-law are distinguishable because the goods imported by the Respondent are vitamins and enzyme, which are specifically classifiable under the chapter headings 2936 and 3507 respectively; hence, the above case-laws relied upon by the Respondent are not applicable to this case.

5. Accordingly, the Revenue prays for setting aside the impugned Order-in-Appeal dated 17.08.2017 and uphold the classification of the goods determined by the assessing officer.

6. None appeared for the Respondent. Heard the Ld. Authorized Representative for the Revenue and perused all connected documents.

7. We observe that the C.B.I.C. has issued the Instruction No. 34/2022 in F. No.401/92/2022-Cus-III dated 30.12.2022, citing O.M. No. L-110102(2)/2/2016-Trade (E-246) dated 21.12.2022 issued by the Department of Animal Husbandry and Dairying (DAHD) enclosing a consolidated list of animal feed additives, premix and feed supplements for import into India. It is observed from the above instructions that Vitamin E 50% Feed Grade (Lutavit E50, in this case) and Phytase 5000 (Natuphos E5000 G, in this case), both goods have been considered as animal feed additives and premixes by the Department of Animal Husbandry and Dairying (DAHD) and they are figuring in the consolidated list of animal feed additives, premix and feed supplements enclosed therein. Thus, we find that goods imported by the Respondent have been categorized as animal feed by the Departmental of Animal Husbandry and Dairying under the Ministry of Fisheries, Animal Husbandry and Dairying, who are the appropriate authority to consider the nature and characteristics of these goods. Accordingly, we hold that the evidence available on record indicate that the goods imported by the Respondent viz. "Lutavit E50" and "Natuphos E5000 G" are animal feed supplements and the same are appropriately classifiable under chapter heading 2309 of the Customs Tariff Act.

7.1. It is observed that the Ld. Commissioner (Appeals) has given a categorical finding regarding the classification of the goods under chapter heading 2309, in paragraphs 8 to 25 of the impugned order. We fully agree with the findings of the Ld. Commissioner (Appeals) and we do not find any reason to disagree with the same. Accordingly, we uphold the classification of both the goods under the chapter heading 2309 as animal feed supplements, as classified in the impugned order passed by the Ld. Commissioner (Appeals).

7.2. We also observe that a similar view has been taken by this Bench in the case of *Indian Trading Bureau Pvt. Ltd. &ors. v. Commissioner of Customs (Port), Kolkata [Final Order Nos. 75088-75096 of 2024 dated 23.01.2024 in Customs Appeal No. 75196-75199/2021 &ors. – CESTAT, Kolkata]*, wherein similar goods were held to be classifiable under the chapter heading 2309.

8. In view of the above discussion and by following the ratio of the decision cited *supra*, we uphold the impugned order passed by the Ld. Commissioner (Appeals) and reject the appeal filed by the Revenue.

(Operative part of the order was pronounced in open court)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)