

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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 75945 of 2018

(Arising out of Order-in-Original No. 21/COMMR/CGST & CX/KOL/NORTH/2017-18 dated 28.11.2017 passed by the Commissioner of C.G.ST. & C.X., Kolkata North, G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Total Agri Care Concern Private Limited : Appellant
Jessore Road, Pratapnagar, Ganadipayan,
North 24 Parganas, West Bengal, PIN – 743 263

VERSUS

Commissioner of C.G.S.T. and Central Excise : Respondent
Kolkata North Commissionerate,
G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road,
Kolkata, West Bengal, PIN – 700 107

WITH

Excise Appeal No. 75955 of 2018

(Arising out of Order-in-Original No. 29/COMMR/CGST & CE/HWH/Adjn/2017-18 dated 26.12.2017 passed by the Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Total Agri Care Concern Private Limited : Appellant
3/2/A, WBIIDC Road, Birshibpur, Kulgachia,
Howrah, West Bengal, PIN – 711 316

VERSUS

Commissioner of C.G.S.T. and Central Excise : Respondent
Howrah Commissionerate,
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata, West Bengal, PIN – 700 001

AND

Excise Appeal No. 75956 of 2018

(Arising out of Order-in-Original No. 29/COMMR/CGST & CE/HWH/Adjn/2017-18 dated 26.12.2017 passed by the Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Mihir Dey, Managing Director, : Appellant
M/s. Total Agri Care Concern Private Limited
3/2/A, WBIIDC Road, Birshibpur, Kulgachia,
Howrah, West Bengal, PIN – 711 316

VERSUS

Commissioner of C.G.S.T. and Central Excise : Respondent
Howrah Commissionerate,
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata, West Bengal, PIN – 700 001

APPEARANCE:

Shri Shovendu Banerjee, Advocate, for the Appellant

Shri S.K. Dikshit, Authorized Representative, for the Respondent

CORAM:

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

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

FINAL ORDER NOS. 77504-77506 / 2025

DATE OF HEARING: 24.09.2025

DATE OF DECISION: 26.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Excise Appeal No. 75945 of 2018 has been filed by M/s. Total Agri Concern Private Limited against the demand of central excise duty of Rs.3,48,78,169/-, along with interest, and imposition of penalty of Rs.3,48,78,169/- under Section 11AC of the Central Excise Act, 1944 vide the Order-in-Original No. 21/COMMR/CGST & CX/KOL/NORTH/2017-18 dated 28.11.2017 passed by the Ld. Commissioner of C.G.ST. & C.X., Kolkata North, G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107.

1.1. **Excise Appeal Nos. 75955 and 75956 of 2018** have been filed by M/s. Total Agri Concern Private Limited and Shri Mihir Dey, its Managing Director, respectively, challenging the demand of central excise duty of Rs.2,99,21,838/-, along with interest and imposition of penalty of Rs.2,99,21,838/- under Section 11AC of the said Act as well as the imposition of personal penalty of Rs.2,00,00,000/- under Rule 26(1) of the Central Excise Rules, 2002 read with Section 174 of the Central Goods and Services Tax Act, 2017, vide the Order-in-Original No. 29/COMMR/CGST & CE/HWH/Adjn/2017-18 dated

26.12.2017 passed by the Ld. Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Road, Kolkata – 700 001.

2. The facts of the case are that M/s Total Agri Care Concern Pvt. Ltd. (herein after referred as the appellant) is a company engaged in the manufacture of agricultural inputs such as Bio-fertilisers, Chemical Fertilisers, Micronutrients, Multi-micronutrients, Plant Growth Regulators (PGRs), and Pesticides/Fungicides. These products are used by farmers to improve soil fertility, crop yield, and agricultural productivity. The appellants are having two manufacturing units. One is at Jessore Road, Pratapnagar, Ganadipayan, North 24 Parganas and the other is at Uluberia Industrial Growth Centre, 3/2/A, WBIIDC Road, Birshibpur, Kulgachia, Howrah. They have obtained Central Excise Registration No. AABCT9400HEM002 on 08.01.2016 for Uluberia Unit, and obtained Central Excise Registration No. AABCT9400HEM001 on 16.11.2015 for Habra Unit.

2.1. In the plant at Uluberia, (TACCPL-II), the appellant are engaged in manufacture of various products namely, Totocare MMSA, Bollm-F, Diamond, Toto Fine-XP, Zincum-C, Ultrafert, Total B-20+, Toto Root, ACE, etc. For manufacture of such finished goods, they use raw materials like Alphox 200, Amino Acid, Ammonium Molybdate, Amonium Sulphate, Pentahydrate, Calcium Carbonate, Copper Sulphate, Cobult Chloride, EDTA, Dolomite N:P:K. Magnesium Sulphate, Sodium Carbonate etc. For production of finished products these raw materials are simply mixed as per specified specification(formula) and

proportion in a mixture machine and then finished products are packed in different packages.

2.2. In the plant located at Jessore Road, Pratapnagar, Ganadipayan, North 24 Parganas, the appellant manufactures the same products, inter alia in addition to one more product by the name of 'Biostar Plus' which is a bio fertiliser.

2.3. The appellant manufactured finished goods which can be broadly categorized under four different categories namely, mineral or chemical fertilizer, Micronutrient / Multi-Micronutrient, Plant Growth Regulator and Pesticides / Fungicide. Prior to 01.01.2016, the appellant were of the view that the various products manufactured by them were fertilizers classifiable under Chapter 31 of the Central Excise Tariff and hence not chargeable to central excise duty. Accordingly, they did not charge any excise duty from their customers.

2.4. Officers of DGCEI, Kolkata Zonal Unit were of the view that the products manufactured by the appellant are chargeable to central excise duty as the same are micronutrients, micronutrient mixtures, Plant Growth regulators, etc., falling under Chapter 28, 29, 38 of the Central Excise Tariff, as the case may be.

2.5. On the basis of the above observation, on 03.02.2016, the officers of DGCEI conducted a search operation at the factories, office and other related premises of the appellant. During the course of search, the officers recovered and seized various records for their further investigation, which included two exercise books where ingredients of various products of the appellant-company were recorded.

2.6. On completion of investigation, separate Show Cause Notices were issued to both the companies of the appellant inter alia demanding central excise duty, as under: -

- Show Cause Notice F. No. 20/KZU/KOL/Gr.D/16/2813 dated 05.05.2017 has been issued inter alia demanding of total Central Excise duty to the extent of Rs.3,48,78,169/-, along with interest and penalty. The principal allegations in the Notice are as under:
 - (a) Misclassification of products as fertilizers instead of under Chapters 28/29/38 as Micronutrients, Multi-micronutrients, Plant Growth Regulators or Fungicides
 - (b) Suppression of facts by not obtaining registration before November 2015.
 - (c) Misdeclaration of specific products like NECTAR, TOTOZYME, BIOSTAR PLUS and TV-100.
 - (d) Non-maintenance of excise records for the earlier period.
 - (e) Intent to evade payment of duty.

- Show Cause Notice F.No.20/KZU/KOL/Gr.D/16 /2818 dated 05.05.2017 has been issued inter alia demanding of total Central Excise duty to the extent of Rs.2,99,21,838/-, along with interest and penalty. The principal allegations in the Notice are as under:
 - (a) Misclassification of products such as Totoroot, ACE and BLOOM F as fertilisers under Heading 3105 instead of under Heading 3808 as Plant Growth Regulators.

- (b) Suppression of facts by not obtaining registration before 06.01.2016 and not paying excise duty.
- (c) Misdeclaration of the nature of products to project them as fertilisers.
- (d) Non-maintenance of excise records for the earlier period.
- (e) Intent to evade payment of duty by keeping clearances outside the ambit of excise.

2.7. On adjudication, the Id. adjudicating authority confirmed the demands of central excise duty demanded in the said notices vide the impugned orders, along with interest. Penalty equivalent to the duties confirmed have also been imposed, along with a personal penalty on the Managing Director of the appellant-company.

2.8. Aggrieved by the confirmation of the duty, interest and imposition of penalties, the appellants have filed these appeals.

3. The Ld. Counsel appearing on behalf of the appellants herein has made the following submissions: -

- (i) The appellant submits that in both the units together they mainly manufacture products such as Biostar Fish, Biostar Gold, Biostar Tea, Lithobor Soil Application, Magnesium Sulphate, Neem Gold, Neem Green, Totals Manganese, Toto Flower Plus, Totocare MMFS, Tolocare MMSA+, Toto Flower Gold, TV-100, Sukrish; they were under the bona fide belief that the products manufactured by them are agricultural fertilisers and micronutrients and the same are

exempted from payment of central excise duty. Competitors across India followed the same practice. However, when some competitors took registration and started paying 1% duty under Chapter 31, the appellant-company too obtained registration on 06.01.2016 and began paying duty.

- (ii) The appellant submits that CBEC has issued the Circular No. 1022/10/2016-CX dated 06.04.2016 to resolve long-standing disputes on classification of micronutrients and Plant Growth Regulators. The officers of DGCEI has applied the Circular retrospectively and demanded central excise duty on the past clearances effected during the period. In this regard, the appellant submits that the 2016 Circular expressly rescinded earlier circulars and introduced new guidelines. It admitted classification of micronutrients remained a disputed area until 2016. Thus, the appellant submits that applying it retrospectively is perverse.
- (iii) In this regard, the appellant relied upon the decision of the Hon'ble Supreme Court in *Karnataka Agro Chemicals [2008 (227) ELT 12 (SC)]*, wherein it has been held that despite earlier circulars, disputes continued. Further, the Tribunal in *Aries Agrovat [2017 (7) GSTL 317]* also noted CBEC's admission that disputes persisted. Thus, the appellant submits that the 2016 Circular cannot be treated as retrospective.
- (iv) The appellant also relied upon the decisions in the cases of *Suchitra Components [2007 (208) ELT 321 (SC)]* and *Nakamichi Techo [2017*

(352) *ELT 216 (Tri-Del.)*], wherein it has been held that circulars cannot operate retrospectively.

Product-Specific Submissions

3.1. Detailed Submissions on 'ACE'

- (i) The adjudicating authority wrongly classified the product ACE under Chapter 3808 as a Plant Growth Regulator. This classification is unsustainable for the following reasons:
- (ii) ACE is essentially a micronutrient preparation containing trace elements such as Zinc, Boron, and Iron, intended to supplement soil fertility and correct deficiencies. These are nutrients, not regulators.
- (iii) As per the Fertiliser Control Order (FCO), micronutrients fall within the ambit of fertilisers, not PGRs. Thus, classification under Chapter 31 is proper.
- (iv) Applying the 'essential character' test under the General Interpretative Rules, ACE derives its essential character from the nutrient content, not from incidental traces of plant growth substances. Therefore, ACE must be classified under Heading 3105.
- (v) The Hon'ble Supreme Court in *Karnataka Agro Chemicals [2008 (227) ELT 12 (SC)]* recognised that micronutrient products should not be automatically treated as PGRs. The adjudicating authority ignored this settled law.
- (vi) Market perception supports classification as a fertiliser. Dealer certificates and invoices submitted show ACE is bought and sold as a fertiliser supplement, not as a regulator.

- (vii) The test report relied upon was inconclusive and did not establish the presence of effective concentrations of hormones or regulators. Reliance on such reports is misplaced.

3.2. Detailed Submissions on 'BLOOM F'

- (i) The adjudicating authority classified BLOOM F under Chapter 3808 as a Plant Growth Regulator. This finding is erroneous for the following reasons:
- (ii) BLOOM F is formulated with nutrients and organic substances that enhance flowering. It is a growth promoter that aids natural physiological processes, not a regulator that alters them.
- (iii) The essential function of BLOOM F is nutritional support. The presence of natural plant extracts or auxin-like substances in negligible amounts does not change its character into a regulator.
- (iv) In *Northern Minerals Ltd. v. CCE [2001 (131) ELT 355 (Tri-Del.)]*, it was held that mere presence of auxins does not make a product a PGR. Similarly, in *Jayashree Rasayan Udyog Ltd. v. CCE [2015 (316) ELT 338 (Tri.)]*, the Tribunal distinguished between growth promoters and growth regulators.
- (v) Market evidence shows BLOOM F is perceived as a fertiliser supplement to enhance flowering, not a PGR. Dealer certificates confirm its use in agriculture as a promoter.
- (vi) The adjudicating authority ignored these submissions and passed a non-speaking order. Such omission amounts to denial of natural justice.

3.3 Detailed Submissions on 'Totoroot'

- (i) The adjudicating authority classified Totoroot as a Plant Growth Regulator under Heading 3808. This classification is unsustainable for the following reasons:
- (ii) Totoroot is a bio-fertiliser-based product promoting root initiation and growth. It aids the natural processes of root development, without altering, inhibiting, or regulating plant physiology.
- (iii) The adjudicating authority equated promotion with regulation, which is legally incorrect. A Plant Growth Promoter (PGP) like Totoroot supports plant processes; a PGR alters or regulates them. This distinction has been recognised in several judicial pronouncements:
 - *Northern Minerals Ltd. v. CCE, 2001 (131) ELT 355 (Tri-Del.)* – held that mere presence of auxins does not classify a product as a PGR.
 - *Leeds Kem v. CCE, 2001 (129) ELT 548 (Tri.)* – essential character of a product governs classification, not incidental presence of chemicals.
 - *Jayashree Rasayan Udyog Ltd. v. CCE, 2015 (316) ELT 338 (Tri.)* – distinguished growth promoters from regulators.
- (iv) Market perception and dealer certificates show Totoroot is a fertiliser product used to enhance rooting, not a PGR. The adjudicating authority ignored this vital evidence.
- (v) The test reports relied upon were inconclusive and did not establish PGR characteristics

3.4. Detailed submissions on 'Biostar Plus'

- (i) The adjudicating authority wrongly classified Biostar Plus as a micronutrient mixture under Tariff Heading 3824 instead of as a bio-fertilizer under Heading 3101.
- (ii) The test report relied upon was inconclusive and admitted that the laboratory was not equipped to test bio-fertilizers, recommending forwarding to an Agricultural Research Institute. This crucial advice was ignored.
- (iii) Test report described Biostar Plus as: 'an organic material based on Carboxylic Acid functional group coated/treated on inorganic substance (Carbonate, Calcium, Magnesium, Iron).
- (iv) The organic base is Humic Acid and Humus, derived from biodegraded organic matter. Carrier is Dolomite/Bentonite granules, used widely in the bio-fertilizer industry.
- (v) Insignificant traces of Ca, Mg, Fe are inherent in the carrier material, not deliberately added. Such incidental presence cannot determine classification.
- (vi) As per law, classification is based on the predominant ingredient conferring essential character.
- (vii) Essential character here is given by Humic Acid and Super Potassium Humate. well-recognized bio-fertilizers. Presence of potassium, one of the three primary plant nutrients (NPK), firmly places the product in Chapter 31 (Fertilizers) under Heading 3101.
- (viii) SCN did not specify which micronutrients were mixed or cite the exact 8-digit sub-heading under CETA, 1985. This violates natural justice

since classification must be precise before duty can be demanded under Sec. 2(d) of the Act. The adjudicating authority himself failed to identify which specific micronutrients exist in the product. Fatal defect: classification cannot be sustained when the very basis (micronutrient mixture) is unsupported by evidence.

- (ix) The list of micronutrients under Schedule 1, Part-A, Sl. 1(f) of the Fertiliser Control Order (FCO), 1985 includes only specific compounds like Zinc Sulphate, Borax, Ferrous Sulphate, etc. Constituents of Biostar Plus does not match any of these items or their mixtures. Thus, it cannot be classified as a micronutrient mixture under Heading 3824.
- (x) Certificates from distributors/dealers submitted during adjudication show Biostar Plus is marketed and used as a bio-fertilizer. This commercial understanding supports Heading 3101. The adjudicating authority ignored these documents, rendering the order non-speaking and violative of natural justice.
- (xi) Department applied concessional duty @6% for the product Biostar Plus considering it as a micronutrient / multi-micronutrient as per Notif. 16/2016-CE but failed to notice that only items under FCO Schedule 1, Part A, Sl. 1(f) qualified for the same, which evidently did not include any of the active ingredients of the product Biostar Plus. Thus, it may kindly be seen that Biostar Plus was is not a micronutrient/multi-micronutrient nor was it covered under FCO Schedule 1, Part A, Sl. 1(f) as sought to be made out in the SCN and confirmed in the OIO.

- (xii) The admitted constituent of Biostar Plus clearly indicated that the combination clearly fell in the category of bio-stimulant. Certificates obtained from the Ministry of Agriculture and Farmers Welfare, Govt. of India, New-Delhi and Deputy Director of Agriculture (Manures and Fertilizers), Govt. of West Bengal certifying that the product, Biostar Plus, is a bio-stimulant are attached herewith.
- (xiii) Report itself stated: 'Actual use may be ascertained. Laboratory is not equipped to test bio-fertilizers. No further tests were conducted at agricultural research institutes as recommended. Thus, reliance on such an incomplete report is perverse
- (xiv) Thus, classification of Biostar Plus under Heading 3101 (Bio-fertilizer, Nil duty) is proper and requires to be upheld.

3.5. Detailed submissions on 'Totozyme'

- (i) Classification of the product TOTOZYME under tariff heading 3103 with 1% adv. rate of duty as adopted by the Id. adjudicating authority, is bad in law and not sustainable on account of the following:
- (ii) For that, the classification of the product TOTOZYME under tariff heading 3103 with 1% rate of duty and consequential demand of Rs. 49,661/- reworked and confirmed by the Ld. Adjudicating authority is totally beyond the scope of the Show cause notice;
- (iii) classification of the product TOTOZYME under tariff heading 3103 has been made without affording any opportunity to us to rebut the same;

- (iv) Super potassium Humate is the main and dominant ingredient of the product, which is a well-known Bio fertilizer, and accordingly, the product ought to have been classified as bio-fertiliser under heading no 3101.
- (v) Reliance on an incomplete and inconclusive test report to arrive at the present conclusion was bad in law. Presence of phosphate and absence of potassium in the product are disputed. Further test suggested not conducted nor any market verification made as proposed.

3.6. The Ld. Counsel for the appellant also submits that the impugned Order-in-Original is a verbatim reproduction of the allegations contained in the SCN; that this shows absence of independent application of mind, which is a sine qua non of quasi-judicial adjudication. He submits that the impugned Order-in-Original relies heavily on the Circular 2016 in the same words, without addressing the appellant's argument that the Circular cannot apply retrospectively. He refers to the decision rendered by the Hon'ble Supreme Court in *Union of India v. Mohan Lal Capoor*, AIR 1974 SC 87, wherein it was held that non-speaking orders that merely echo show cause notices are unsustainable. Further, the appellant submits that the adjudicating authority introduced new grounds such as 'suppression of ingredients' not mentioned in the SCN. He submits that it is settled law that adjudication cannot travel beyond the scope of the Show Cause Notice and in support of this contention, he relied on the decision in the case of *Commissioner of C.Ex. v. Ballarpur Industries Ltd. [2007 (215) ELT 489 (SC)]*. Thus, the Ld. Counsel for the appellant submits that the similarity between the Show Cause Notice and findings establishes that the impugned

order is non-speaking, mechanical, and unsustainable in law.

3.7. Submissions on Limitation

The Ld. Counsel for the appellant has also made the following submissions on limitation: -

- (i) The impugned order demands central excise duty for the period 2012-13 to 2016-17, but it is based solely on Circular 2016. Therefore, demand before 06.04.2016 is time-barred. In support of this view, the appellant relied on the decisions of the Hon'ble Apex Court rulings in the cases of *Padmini Products [1989 (43) ELT 195 (S.C.)]*, *Cosmic Dye Chemical [1995 (75) E.L.T. 721 (S.C.)]* and *Uniworth Textiles [2013 (288) E.L.T. 161 (S.C.)]* wherein it has been held that invoking extended period of limitation requires wilful suppression, which is absent in this case.
- (ii) Further, that the entire demand has been worked out from the records disclosed by them. Thus, the appellant submits that the bulk of demand (2012-2016) is unsustainable on limitation.

3.8. Penalty and Interest

3.8.1 It is the appellant's submission that for imposition of penalty under Section 11AC of the Act mens rea is mandatorily required; there is no evidence of wilful suppression exists in this case. They have relied on the case of *Uniflex Cables [2011 (271) ELT 161 (SC)]*, wherein the Hon'ble Supreme Court has held that penalty is not imposable in interpretational disputes; that a similar view has been taken in the cases of *Dhillon Oils & Fats [2015 (316)*

ELT 242 (P&H)]; that the ingredients for imposition of penalty under Rule 26(1) of the Central Excise Rules, 2002 on Shri Mihir Dey, Managing Director of the company, are also absent in this case. Therefore, it is contended that the penalties and consequential interest are unsustainable.

3.9. Denial of Natural Justice

3.9.1 It is also the appellant's case that out of 20 test reports, only 12 were furnished; requests for the balance were ignored. It is submitted that proceeding without disclosure deprived the appellant of defence opportunity. In this regard, the appellant also contends that non-supply of relied-upon documents vitiates adjudication; that the impugned Order-in-Original suffers from this fatal defect.

Refund of amount paid under protest

4. In view of the above submissions, the Ld. Counsel appearing on behalf of the appellants prays for setting aside the demands of central excise duty, along with interest and penalties confirmed in the impugned orders and allowing the appeals filed by them.

4.1. It has been further submitted by the appellant that they had paid an amount of Rs.20 lakh in respect of the Kolkata Commissionerate [Excise Appeal No. 75945 of 2018] and an amount of Rs.40 lakh in respect of the Howrah Commissionerate [Excise Appeal Nos. 75955 and 75956 of 2018], under protest, during investigation. Thus, the appellant prays for refund of these amounts paid by them under protest.

5. The Ld. Authorized Representative of the Revenue has reiterated the findings in the impugned orders. He prayed for rejection of the instant appeals.

6. Heard both sides and perused the appeal records.

7. We observe that the main allegation in these appeals is misclassification of products such as ACE, BLOOM F, Totoroot, Biostar Plus and Totozyme manufactured by the appellants; the appellants considered the products ACE, BLOOM F and Totoroot as fertilisers and classified the same under the CETH 3105, whereas, the impugned orders have considered these products as Plant Growth Regulators classifiable under the CETH 3808. The product Biostar Plus has been classified by the adjudicating authority as a micronutrient mixture under CETH 3824 which the appellant has classified as a bio-fertilizer under CETH 3101; in respect of the product Totozyme, the adjudicating authority has adopted the classification under tariff heading 3103.

7.1. The main ground raised by the appellant against the reclassification of the goods manufactured by them is retrospective application of the Circular 1022/10/2016-CX dated 06.04.2016. we observe that classification of micronutrients and Plant Growth Regulators is a dispute going on many years. To resolve the long-standing disputes, Board has issued the Circular dated 06.04.2016. We observe that the 2016 Circular expressly rescinded earlier Circulars and introduced new guidelines. It admitted classification of micronutrients remained a disputed area until 2016. Thus, we are of the view that the said Circular can be applied prospectively. In the impugned orders, we find that the Ld. adjudicating authority has applied

this Circular retrospectively for the past period and confirmed the demand of central excise duty for the period from 2012-13 to 2016-17, which is legally not permissible.

7.2. In support of the above view, we rely on the decision of the Hon'ble Supreme Court in *Karnataka Agro Chemicals [2008 (227) ELT 12 (SC)]*, wherein it has been held that such clarificatory Circulars cannot be applied retrospectively. We also observe that the same view has been taken by Tribunal in the case of *Commr. Of C.Ex. & S.T., Hyderabad-IV v. Aries Agrovet [2017 (7) GSTL 317 (Tri. – Hyd.)]*. In this regard, we also rely upon the decisions in the cases of *Suchitra Components [2007 (208) ELT 321 (SC)]* and *Nakamichi Techo [2017 (352) ELT 216 (Tri-Del.)]*, wherein it has been held that circulars cannot operate retrospectively.

7.3. Thus, by relying on the decisions referred supra, we hold that the 2016 Circular cannot be applied to demand duty retrospectively. Accordingly, we are of the view that the demands of central excise duty confirmed in the impugned orders by applying the 2016 Circular retrospectively, are not sustainable. Thus, we hold that the demands confirmed in the impugned orders are liable to be set aside on this ground itself.

8. Regarding the merits of the classification, we observe that Bio fertilisers and micronutrients used as fertilizers are classifiable under the CETH 3105, whereas, Plant Growth Regulators are classifiable under the CETH 3808. We have examined the major products and it's appropriate classification, as below:

Classification of the product 'ACE'

8.1. We observe that the adjudicating authority has classified the product ACE under Chapter 3808 as a Plant Growth Regulator. In this regard, we find that 'ACE' is essentially a micronutrient preparation containing trace elements such as Zinc, Boron, and Iron, intended to supplement soil fertility and correct deficiencies. These are nutrients, not regulators. As per the Fertiliser Control Order (FCO), micronutrients fall within the ambit of fertilisers, not PGRs. We also agree with the submission made by the appellant that market perception supports classification of ACE as a fertiliser. Dealer certificates and invoices submitted show ACE is bought and sold as a fertiliser supplement, not as a regulator. Thus, we find that classification of the product ACE under Chapter 31 is proper. Applying the 'essential character' test under the General Interpretative Rules, ACE derives its essential character from the nutrient content, not from incidental traces of plant growth substances. The test report relied upon was inconclusive and did not establish the presence of effective concentrations of hormones or regulators. Reliance on such reports is misplaced. We refer to the decision of the Hon'ble Supreme Court in *Karnataka Agro Chemicals [2008 (227) ELT 12 (SC)]* which recognised that micronutrient products should not be automatically treated as PGRs. We observe that the Ld. adjudicating authority has ignored this settled law. Therefore, we find that ACE is appropriately classifiable under the Heading 3105.

Classification of the product 'BLOOM F'

8.2. It is seen that the Ld. adjudicating authority classified BLOOM F under Chapter 3808 as a Plant Growth Regulator. It is observed that the said BLOOM F is formulated with nutrients and organic substances that enhance flowering. It is a growth promoter that aids natural physiological processes and not a regulator that alters them. The essential function of BLOOM F is nutritional support. The presence of natural plant extracts or auxin-like substances in negligible amounts does not change its character into a regulator. Market evidence shows BLOOM F is perceived as a fertiliser supplement to enhance flowering, not a PGR. Dealer certificates confirm its use in agriculture as a promoter. It is pertinent to refer to the decision in the case of *Northern Minerals Ltd. v. CCE, 2001 (131) ELT 355 (Tri-Del.)*, wherein it was held that mere presence of auxins does not make a product a PGR. Similarly, in *Jayashree Rasayan Udyog Ltd. v. CCE [2015 (316) ELT 338 (Tri.)]*, the Tribunal distinguished between growth promoters and growth regulators. Therefore, we find that BLOOM F is appropriately classifiable under the Heading 3105.

Classification of the product 'Totoroot'

8.3. We find that the Ld. adjudicating authority has classified Totoroot as a Plant Growth Regulator under Heading 3808. In this regard, we take note of the fact that Totoroot is a bio-fertiliser-based product promoting root initiation and growth. It aids the natural processes of root development, without altering, inhibiting, or regulating plant physiology. We observe that the Ld. adjudicating authority has equated promotion with regulation, which is legally

incorrect. A Plant Growth Promoter (PGP) like Totoroot supports plant processes; a PGR alters or regulates them. This distinction has been recognised in several judicial pronouncements. *We again refer to the decision in Northern Minerals Ltd. v. CCE [2001 (131) ELT 355 (Tri-Del.)]* which has held that mere presence of auxins does not classify a product as a PGR. In the case of *Leeds Kem v. CCE [2001 (129) ELT 548 (Tri.)]*, it has been held that the essential character of a product governs classification, not incidental presence of chemicals. In the case of *Jayashree Rasayan Udyog Ltd. v. CCE, [2015 (316) ELT 338 (Tri.)]*, the Tribunal has distinguished growth promoters from regulators. We observe that market perception and dealer certificates show Totoroot is a fertiliser product used to enhance rooting, not a PGR. The test reports relied upon were inconclusive and did not establish PGR characteristics. Thus, we do not find any merit in the classification adopted by the Id. adjudicating authority in this regard.

Classification of the product 'Biostar Plus'

8.4. In respect of 'Biostar Plus', the Id. adjudicating authority has classified the same as a micronutrient mixture under Tariff Heading 3824. It is the appellant's submission that BioStar Plus is a bio-fertilizer classifiable under the Heading 3101. In this regard, we find the test report relied upon to be inconclusive as the laboratory was not equipped to test bio-fertilizers, recommending forwarding to an Agricultural Research Institute. This crucial advice was ignored. The Test report described Biostar Plus as: 'an organic material based on Carboxylic Acid functional group coated/treated on inorganic substance (Carbonate, Calcium, Magnesium, Iron)

The organic base is Humic Acid and Humus, derived from biodegraded organic matter. Carrier is Dolomite/Bentonite granules, used widely in the bio-fertilizer industry. Insignificant traces of Ca, Mg, Fe are inherent in the carrier material, not deliberately added. We are of the view that such incidental presence cannot determine classification. We agree with the submission made that as per law, classification is based on the predominant ingredient conferring essential character. Essential character here, in this context, is given by Humic Acid and Super Potassium Humate, which are well-recognized bio-fertilizers. Presence of potassium, one of the three primary plant nutrients (NPK), firmly places the product in Chapter 31 (Fertilizers) under Heading 3101. In this connection, we find that the list of micronutrients under Schedule 1, Part-A, Sl. 1(f) of the Fertiliser Control Order (FCO), 1985 includes only specific compounds like Zinc Sulphate, Borax, Ferrous Sulphate, etc. Constituents of Biostar Plus does not match any of these items or their mixtures. Thus, it fortifies the stand of the appellant that the same cannot be classified as a micronutrient mixture under Heading 3824. Furthermore, certificates from distributors/dealers submitted during adjudication show Biostar Plus is marketed and used as a bio-fertilizer. This commercial understanding supports Heading 3101. The adjudicating authority ignored these documents, rendering the order non-speaking and violative of natural justice. We have also gone through the Certificates obtained from the Ministry of Agriculture and Farmers Welfare, Govt. of India, New-Delhi and Deputy Director of Agriculture (Manures and Fertilizers), Govt. of West Bengal which indicate that the combination clearly fell in the category of

bio-stimulant. Moreover, no further tests were conducted at agricultural research institutes as recommended and thus, reliance on such a report is not proper. Thus, we find merit in the classification of Biostar Plus under Heading 3101.

Classification of the product 'Totozyme'

8.5. We find that classification of the product Totozyme has been adopted by the Id. adjudicating authority under tariff heading 3103 with 1% adv. rate of duty. In this regard, we find force in the appellant's submission that Super Potassium Humate is the main and dominant ingredient of the product, which is a well-known Bio fertilizer, and accordingly, the product ought to have been classified as bio-fertiliser under heading no 3101. It is also relevant to mention that reliance on an incomplete and inconclusive test report to arrive at the present conclusion is bad in law. Further test suggested was not conducted nor any market verification as proposed was made. Thus, the classification adopted by the Id. adjudicating authority in the impugned order on this count is unsustainable.

8.6. We find that in support of their submissions on the classification of the above said products being under Chapter 31, the appellants have cited the decision in case of *Commissioner Of C.Ex. & S.T., Hyderabad-IV v. Aries Agrovet [2017 (7) GSTL 317 (Tri. - Hyd.)]*, the Tribunal at Hyderabad has dealt with a similar issue. The relevant observations of the Bench in the said case are reproduced below: -

"8. We find that on the imbroglio with respect to the classification of 'Micronutrients,' the CBEC themselves have been changing their stance thereon over the years. In a Circular No. 79/79/94-CX, dated 21-11-1994, the Board modified earlier Circular No. 26/90-CX.3, dated 26-6-1990 (which had advised

appropriate classification of 'Micronutrients' under Heading No. 38.08 as 'Plant Growth Regulator') and clarified that "Micronutrients listed under Sr. No. 1(F) of Schedule 1 part (A) of the Fertiliser (Control) Order, 1985 and their mixture (with or without N, P, K) as notified by the Central Government or a State Government would be appropriately classifiable under Heading No. 31.05 as "Other Fertilizers".

8.2 Subsequent to the Supreme Court's judgment in the case of Ranadey Micronutrients [[1996 \(87\) E.L.T. 19](#) (S.C.)], Board re-examined the matter and issued another Circular No. 392/25/98-CX, dated 19-5-1998. Referring to the HSN Explanatory Notes, Board advised therein as follows:

Fertilisers are materials added to soil and, sometimes to foliage to supply nutrients to sustain plants and promote their abundant and fruitful growth. The elements that constitute these plant foods are divided into three classes - (1) Primary-Nitrogen (N), Phosphorous (P) and Potassium (K), (2) Secondary - Calcium (Ca), Magnesium (Mg) and Sulphur (S), and (3) Minor or so called micronutrients - Iron (Fe), Manganese (Mn), Copper (Cu), Zinc (Zn), Boron (B) and Molybdenum (Mo). However, for the purpose of classification of micronutrients as 'Other Fertilizers' in Heading 31.05 of CET, the scope of the term 'Other Fertilizers' has to be determined in the light of Note 6 of Chapter 31. Further, the specific exclusion of separate chemically defined compounds as laid down in the HSN Explanatory Notes to Heading 3105.90, must also be borne in mind. If the micronutrient is a separate chemically defined compound, it will be classifiable under Chapter 28/29. If not so, and if in accordance with Note 8 to Chapter 31, it contains N, P or K, it will be classifiable under Chapter Heading 31.

8.3 In the cases before us, proceedings have been initiated by department referring to these circulars and alleging that Nitrogen is present in the impugned goods of the respondents in smaller quantity only, in the form of diamine and the goods will not function as nutrients since Nitrogen present does not function as a nitrogenous fertilizer as nitrogen is not released. Department also took the view that the impugned goods are one or more combination of micronutrients such as compound of

zinc, boron, manganese, etc., which are required in smaller quantities to regulate plant growth to alter life process of the plant so as to accelerate growth yield and improve quality and hence the products are classifiable as plant growth regulators under Chapter 38.08 only. We find that the same arguments have been put forth by the department in the grounds of appeal.

8.4 For better understanding of various contending classifications, the CETA Heading Nos. 38.08 and 3105 are reproduced below :

CETH 38.08

"Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant growth regulators, disinfectants and similar products put up in form or packings for retail sale or as preparations on articles (for example, sulphur-treated bands, wicks and candles and fly-papers).

CETH 31.05

Mineral or chemical fertilisers, containing two or three of the fertiliser elements, nitrogen, phosphorous and potassium; other fertilisers".

8.5 The HSN notes for these tariff headings will be very useful for determining the correct classification. Entry No. 38.08 is in fact is grouped in chapter for "Miscellaneous Chemical Products". Under the Heading 38.08, which includes Plant Growth Regulators', it is indicated that the heading covers anti-sprouting products and Plant Growth Regulators' intended to inhibit or promote physiological process in plants. It is interesting to note that Plant Growth Regulators are grouped along with other insecticides, fungicides, herbicides and disinfectants, all of which are intended to "destroy pathogenic germs, insects, mosses and moulds, weeds, pests and achieve their results as given in the notes by nerve poisoning, stomach poisoning by asphyxiation or by odour etc.". From the data on plant growth regulators submitted by the appellant, we find that at least in some parts of the world, they are regulated as pesticides. Discernibly, micronutrients which are admittedly for promoting only growth and health of plant cannot logically find a place in this heading.

8.6 It is interesting to note that C.B.E. & C. found it necessary to issue yet one more Circular No. 1022/10/2016-CX, dated 6-4-2016, on the very issue of classification of micronutrients, plant growth regulators, etc. In the first para itself, the circular acknowledges that the issue of classification of these items remain a disputed area in Central Excise. On the basis of opinion obtained from Indian Agricultural Research Institute (IARI), Central Excise Tariff explanatory notes, nature, usage, etc., the C.B.E. & C. has clarified, inter alia, that micronutrients are essential nutrients and required in small quantities for the normal growth and development of plants containing elements like iron, Manganese, Zinc, Copper, Boron, Molybdenum, Nickel, etc. Board has also acknowledged that these micronutrients are sold in the market as micronutrient fertiliser. It has, however, clarified that for classification under Chapter 31, at least one of the elements viz; Nitrogen, phosphorous or potassium should be an essential constituent of the fertiliser. Board has also clearly differentiated plant growth regulators as "organic compound other than nutrients which affect the physiological process of growth and development in plants." Board has further clarified, in para 6 therein, that its past circulars on the subject, viz; dated 21-11-1994 and 19-5-1998 are rescinded and that classification of micronutrients, etc., shall be governed by the present circulars.

8.7 As per the aforesaid C.B.E. & C. Circular dated 6-4-2016, plant growth regulators are defined as organic compounds other than nutrients that affect the physiological processes in plants, by hormonal action in promoting inhibiting or modifying growth and development. On the other hand, micronutrients, as explained in the very same circular, are essential nutrients, like iron, Manganese, Zinc, Copper, Boron etc., that are required in small quantities for the normal growth and development of plants. Micronutrients thus cannot modify inhibit retard the growth of plants like plant growth regulators, they only promote normal growth.

8.8 Applying the above findings, it clearly emerges that the impugned products definitely do contain more than one of the essential nutrients listed in the circular, they have also contain recognisable

percentage of nitrogen. This being so, the disputed items are certainly micronutrients. In view of presence of nitrogen, and also considering that they are mixtures and not separate chemically defined compounds, the said goods would therefore come under the ambit of micronutrient fertilisers and will then required to be classified as in "other fertilisers" in CETH 31.05."

8.7. A similar view has also been expressed in the case of *KPR Fertilizers Ltd. v. Commissioner of Cus., C.Ex. & S.T., Visakhapatnam-II* [2023 (384) E.L.T. 216 (Tri. – Hyd.)]. The relevant paragraph of the said order reads thus: -

"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."

8.8. By relying on the decisions cited supra, we are of the view that the products manufactured by the appellant are appropriately classifiable under Chapter 31.

9. As the demands of central excise duty confirmed in the impugned orders by applying the 2016 Circular retrospectively are not sustainable, as observed in paragraph 7.3 of this Order (*supra*), we do not find any justification in the demand of interest or imposition of penalties on the appellant-company vide the impugned orders and accordingly, the same are set aside.

9.1. For the same reasons, we also do not find any merit in the imposition of penalty on Shri Mihir Dey, Managing Director under Rule 26(1) of the Central Excise Rules, 2002. For imposition of personal penalty on any person under Rule 26(1) of the Central Excise Rules, 2002, the element of *mens rea* had to be necessarily established so far as that person is concerned. However, no positive and/or cogent evidence was adduced by the revenue to show that the said appellant had resorted to or indulged in deliberate evasion of excise duty. Accordingly, the penalty imposed on Shri Mihir Dey is also set aside.

10. We also take note of the appellant's contention that the amount of Rs.20 lakh paid by them in respect of the Kolkata Commissionerate and the amount of Rs.40 lakh paid by them in respect of the Howrah Commissionerate, under protest during investigation, are to be refunded to them. The demands against the appellants itself have been found to be unsustainable, as observed hereinabove. As the said amounts have been paid by the appellants during the course of investigation, we consider the said amounts to be a deposit and the same are liable to be refunded to the appellants. However, the issue of unjust enrichment is to be tested before sanction of refund to the appellants.

11. In view of the above findings, we pass the following order:

- (i) We hold that the demands of central excise duty confirmed in the impugned orders by applying the 2016 Circular retrospectively are not sustainable and accordingly, we set aside the same.
- (ii) As the demands are not sustainable, the question of demanding interest or imposing penalties does not arise.
- (iii) The penalty imposed on Shri Mihir Dey, Managing Director of the appellant-company is also set aside.

12. The appeals are disposed of in the above manner, with consequential reliefs, if any, as per law.

(Order pronounced in the open court on **26.09.2025**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd