

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, MUMBAI  
REGIONAL BENCH  
COURT No. 5**

**Excise Appeal No. 89273 of 2013**

(Arising out of Order-in-Original No. 19/NG/COMMR/Th-II/2013 dated 26.07.2013 passed by the Commissioner of Central Excise, Thane-II)

**Emil Pharmaceutical Industries Pvt. Ltd.**

**Appellant**

Plot No. N-50, MIDC, Tarapur,  
Boisar, Dist. Thane 401 506.

Vs.

**Commissioner of Central Excise, Thane-II**

**Respondent**

3<sup>rd</sup> Floor, Navprabhat Chambers, Ranade Road,  
Dadar (W), Mumbai 400 028.

Appearance:

Shri S.S. Gupta, C.A., for the Appellant

Shri Vinod S. Chettiparambil, Assistant Commissioner, Authorised  
Representative for Respondent

**CORAM:**

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

Date of Hearing: 18.10.2024

Date of Decision: 12.12.2024

**FINAL ORDER NO. 87452/2024**

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant was engaged in the manufacture of excisable goods viz. pharmaceutical products falling under Heading No. 3003 and animal feed supplements falling under Heading No. 2309 of First Schedule to Central Excise Tariff Act, 1985. The animal feed supplements manufactured by the appellant are having various names such as Mifex Oral Suspension, Sancal Vert Forete, Sancal Pet 200 ml, Gold Boost Tonic, Vetoliv etc. Appellant is clearing animal feed supplements by classifying the same under Heading 2309 of Central Excise Tariff Act, 1985. Chapter note of Chapter 23 reads "Heading 2309 includes "products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original

material other than vegetable waste, vegetable residues and by-products of such processing.” During the period of dispute, effective rate of duty for goods falling under Heading 2309 was nil. It appeared to Revenue that from the composition of the animal feed supplements which contains ingredients such as calcium, magnesium, phosphorus, vitamin B12 and vitamin D3, the same should get classified under Heading 3003 or 3004 of Schedule to Central Excise Tariff Act, 1985 depending on whether put up in major doses for retail sale or otherwise and shall attract appropriate central excise duty. Therefore, a show cause notice dated 29.03.2013 was issued to the appellant stating that the goods under question are *prima facie* classifiable under Heading 2309 and 3003 or 3004 and, therefore, by applying General Rules for Interpretation of First Schedule to Central Excise Tariff Act, 1985, they should be classified under Heading 3003 or 3004 and through the said show cause notice, central excise duty applicable to Heading 3003/3004 of Rs.1,66,27,016/- was demanded by invoking extended period of limitation provided under the provisions to sub-section (1) of Section 11A of Central Excise Act, 1944 for the period upto 07.04.2011 and for the period after 08.04.2011 by invoking sub-section (4) of Section 11A of Central Excise Act, 1944. The period for which the above stated demand was raised was for the financial year 2008-09 to 2011-12. Appellant contested the said show cause notice by stating that the products manufactured by the appellant were classified under Tariff Item No. 23099090 of First Schedule to Central Excise Tariff Act, 1985 because they were used as animal feed supplements and that the onus is on Revenue to show that the said products were medicaments for their being classified under Chapter Heading 3003 or 3004 of the said Schedule as held by Hon’ble Supreme Court in the case of Puma Ayurvedic Herbal (P) Ltd. vs. Commissioner of Central Excise, Nagpur reported at 2006 (196) ELT 3 (SC). Appellant further submitted before the original authority that medicaments require drug licence issued by FAD under Drugs and Cosmetics Act, 1940 and such licences are to be displayed on the labels of the manufactured medicaments and the said case is not with the animal feed supplements manufactured by them and, therefore, the goods in question

were not medicaments classifiable under Heading 3003 or 3004 of the said Schedule. Appellant also relied on CBEC circular No. 188/22/96-CX dated 23.06.1996 and stated that the product even if contains vitamins and minerals, the same would fall under Chapter Heading 2302 if such vitamins and minerals help in homogenous dispersion and mixing of the active substances in the compound feed. Appellant further contended that the issue was no more *res integra* and was covered by decision of this Tribunal in the case of Dabur India Ltd. reported at 2005 (183) ELT 432 (Tri.-Del.). Learned original authority through the impugned order has held that the appellant had relied on the decision in Dabur India Ltd. but the facts in the case of Dabur India Ltd. and the present case are different because in the case of Dabur India Ltd. the classification was sought on the basis of CRCL report and in the present case no such report exists. He further stated that the labels of the products indicate that they are to be administered in measured doses and, therefore, he has held the same to be classifiable under Chapter Heading 3004 of First Schedule to Central Excise Tariff Act, 1985 and confirmed the demand raised and imposed equal penalty. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that the issue is no more *res integra* and settled in favour of the appellant through this Tribunal order in the case of Dabur India Ltd. (supra) and the said decision in the case of Dabur India Ltd. was affirmed by Hon'ble Supreme Court as reported at 2015 (5) TMI 701 – Supreme Court with the title of citation as Commissioner of Central Excise, Jaipur Versus M/s. Dabur India Ltd. He has further submitted that the said decision was in respect of classification of animal feed supplements which are to be under Heading 2302 of the said Schedule or under Heading 3003 of the said Schedule. He has further clarified that before restructuring of Chapter Headings, Heading 2302 was the heading which was further split into 2202, 2309 when the classification was expanded from six digits to eight digits. He has submitted that in the said order, this Tribunal has held that the animal feed supplements were used for growth treatment, maintaining and

removing certain deficiencies from the animals and safeguarding their health and they were held to be classifiable under Heading 2302 which is now restructured to 2309 and the said decision of the Tribunal was affirmed by Hon'ble Supreme Court. He has further submitted that it was held by Hon'ble Supreme Court in para 8 of their ruling in the case of Puma Ayurvedic Herbal (P) Ltd. vs. Commissioner of Central Excise, Nagpur reported at 2006 (196) ELT 3 (SC) that "it is settled law that burden of showing correct classification lies on the Revenue". Further he has submitted that the appellant has searched Pharmacopoeia and found that there is separate British Pharmacopoeia and Indian Pharmacopoeia Volume IV for veterinary medicines. The said Pharmacopoeia gives index of the active ingredients which are used in veterinary medicines. The product under dispute mainly contains calcium, magnesium, phosphorus, vitamin B12 and vitamin D3 and certain microbial culture and the same are not specified in the index in British Pharmacopoeia and Indian Pharmacopoeia except few salts of calcium and few salts of calcium which are specified therein are in injectable form. He has, therefore, contended that the goods manufactured by the appellant are not covered as medicines. He has, therefore, further argued that in view of the fact that the said goods are not requiring FDA licence for manufacture and the same are not prescribed medicines for curing any diseases, the same should be classified under Heading 2309 as claimed by the appellant.

3. Heard the learned AR who has reiterated the findings of the original authority.

4. We have carefully gone through the records and submissions. We note that the subject goods are having nutrient supplements which do not find any mention in British Pharmacopoeia or Indian Pharmacopoeia and which are not prescribed by veterinary doctors for cure of any ailment and that though the doses are prescribed, that does not mean that they are medicaments. We find that the original authority has in para 20 of his order-in-original impugned before us, has rejected the applicability of this Tribunal's decision in the case of Dabur India Ltd. (supra) only for the reason that in the case of Dabur India

Ltd. laboratory report was available and in the present case laboratory report is not there. Such ground for holding that the finding of this Tribunal in the case of Dabur India Ltd. are not applicable in the present case is not sustainable. We find that Hon'ble Supreme Court in the case of Puma Ayurvedic Herbal (P) Ltd. in para 8 had held that the burden to show correct classification lies on Revenue. We find that Revenue has not discharged such burden in the present case. We find that right from the initial stages of dispute, appellant has been claiming that the issue is no more *res integra* and settled in favour of the appellant through final order of this Tribunal in the case of Dabur India Ltd. In the said decision, similar products were held to be animal feed supplements. We note that the said decision of this Tribunal was affirmed by Hon'ble Supreme Court in the case of Commissioner of Central Excise, Jaipur vs M/s. Dabur India Ltd. reported at 2015 (5) TMI 701 – Supreme Court. For the above stated reasons, we hold that the classification adopted by the appellant under Heading 2309 and under Tariff Item No.23099090 is appropriate classification for animal feed supplements.

5. We, therefore, set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 12.12.2024)

**(Anil G. Shakkarwar)**  
**Member (Technical)**

**(Dr. Suvendu Kumar Pati)**  
**Member (Judicial)**

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