CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL NO. 86529 OF 2022

(Arising out of Order-in-Appeal No. 246(Gr.IIA-B)/2022(JNCH)/Appeals dated 31.03.2022 passed by Commissioner of Customs (Appeals), Mumbai-II)

EXCEL CROP CARE LIMITED .... Appellant
(Now known as Sumitomo Chemical India Ltd.)
13/14, Aradhana IDC,
Near Virwani Industrial Estate,
Goregaon (E), Mumbai – 400 063

VERSUS

COMMISSIONER OF CUSTOMS, NHAVA SHEVA-I..... Respondent
Jawaharlal Nehru Custom House,
Nhava Sheva, Uran, Raigad-400707

APPEARANCE:
Ms. Shamita Patel, Advocate for the Appellant
Shri Rajiv Ranjan, Authorized Representative of the Department

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85040/2025

Date of Hearing: 14.01.2025
Date of Decision: 14.01.2025

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellants had filed 3 numbers of Bills of Entry (B/Es) before the Customs authorities at the port of import in respect of clearance of the imported goods declared as "Liquid Seaweed Concentrate (Crop Plus)". The said goods imported from USA were classified under Customs Tariff Item (CTI) 3101 0099. The B/Es filed by the appellants were self-assessed and the assessed duty declared therein was paid by the appellants and accordingly, the goods were cleared for home consumption. Subsequent to clearance of the imported goods, the Department had conducted a post audit and observed that the

imported goods i.e. Liquid Seaweed Concentrate (Crop Plus) is classifiable under CTI 3809 9340 and the concessional rate of Basic Customs duty claimed by the appellant under Serial No. 196 of Notification No. 12/2012-Cus. dated 17.03.2012 shall not be available. On the basis of such audit observation, the Department had issued a show-cause notice dated 19.05.2017, seeking for confirmation of the differential duty demand from the appellants. The matter arising out of the show-cause notice dated 19.05.2017 was adjudicated by the learned Additional Commissioner of Customs vide Order-in-Original dated 28.01.2020, wherein the classification claimed by the Department under CTI 3808 9340 was upheld and the differential duty demand along with interest was confirmed on the appellant and also penalty was imposed under Section 114A of the Customs Act, 1962. Being aggrieved against the said adjudication order dated 28.01.2020, the appellants had filed appeal before the learned Commissioner of Customs (Appeals), Mumbai-II, which was disposed of vide impugned order dated 31.03.2022, in upholding the original order and rejecting the appeal filed by the appellants. Feeling aggrieved with the impugned order dated 31.03.2022, the appellants have preferred this appeal before the Tribunal.

3. On examination of the case records, we find that in the Show-Cause Notice (SCN) dated 19.05.2017 at paragraph 4, the Department has stated that "Seaweed extract" is used as Liquid Organic Bio Fertilizer because of its organic micro nutrient, NPK and Natural Growth Hormones content such as Cytokinins, Alginic Acid, Mannitol, Gibberellins, Seaweed is used as Plant Growth Promoter for all kinds of plants. However, the proceedings were initiated in the said SCN to change the classification of the imported goods as "Plant Growth Regulator" under CTI 3808 9340 as mentioned in paragraph 5 therein. In support of change in classification of the imported goods, the SCN had not specifically assigned any reason as to why the classification of the said product was changed from CTI 3101 00 99to CTI 3808 9340. Further, we also find that in support of the classification of imported goods under CTI 3808 93 40,the authorities below have stated the reason that the said goods contains very negligible percentage of Nitrogen/Phosphorous/Potash (NPK) and micro nutrients and thus, the vital role played in respect of the imported goods is towards plant growth regulator and the same is appropriately be classified under CTI 3808 9340.

However, on perusal of the certificate of analysis available in the case file, we find that the said certificate had specifically stated the chemical composition of the goods as 'organic components derived from Ascophyllum nodosum seaweed as 28.000%' as also Nitrogen (N), Phosphorus (P_2O_5) and Soluble Potash (K_2O)as 9.8%. Since the majority of the components of the said goods constitute Fertilizers, the same cannot be termed as 'Plant Growth Regulator', in order to classify the same under CTI 3808 9340.

4. We find that the Larger Bench of the Tribunal in the case of *M/s P.I. Industries Ltd. (Formerly M/s Isagro (Asia) Agrochemicals Pvt. Ltd.); M/s Agro Pack, Shri Parth H. Patel Vs. Commissioner of Central Excise & Customs, Surat-II – 2024 (9) TMI 1655 – CESTAT AHMEDABAD (LB)* vide Interim Order No. 25-30/2024 dated 02.09.2024 has made the distinctive features between the Fertilizer and Plant Growth Regulator. The relevant paragraph in the said order is extracted herein below:-

> *"46. Fertilizers and plant growth regulators are both used in agriculture but serve different purposes. Fertilizers are substances added to the soil or plants to provide essential nutrients like nitrogen, phosphorus, and potassium that plants need to grow. They enhance soil fertility and promote plant growth by providing the necessary elements for healthy development. On the other hand, plant growth regulators are chemicals that influence plant growth and development by affecting physiological processes like cell division, elongation, and differentiation. They can regulate plant growth by promoting or inhibiting certain functions such as flowering, fruit setting, and root development. In a nutshell, fertilizers provide essential nutrients for plant growth, while plant growth regulators control specific aspects of plant growth and development."*

5. In the present case, since the chemical analysis report submitted by the Research and Development Unit of the manufacturer-exporter had confirmed that the composition would constitute as Fertilizer and as per the order of the Larger Bench of the Tribunal (supra), the imported goods cannot be considered as Plant Growth Regulator for classification under CTI 3808 9340.

6. In view of the above, we do not find any merits in the impugned order, insofar it has upheld the classification of the disputed product under CTI 3808 9340 and resultant confirmation of the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha