CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89537 OF 2013

[Arising out of Order-in-Appeal No: 822 (GR.IIB)/2013(JNCH)/IMP-621 dated 29th August 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Tata Chemicals Ltd
24 Homi Modi Street, Mumbai – 400001 … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Viswanathan, Shri Akhilesh Kangzia and Ms Madhura Khandekar, Advocates for the appellant

Shri Ram Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86754/2025

DATE OF HEARING: 01/05/2025
DATE OF DECISION: 31/10/2025

PER: C J MATHEW

The limited issue in this dispute arising from order[1] of

[1] [order-in-appeal no. 822 (GR.IIB)/2013(JNCH)/IMP-621 dated 29th August 2013]

Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II, and resting squarely on facts, is scope of notification[2] (at serial no. 63), as amended[3] with effect from 1st March 2011. The impugned order found no reason to interfere with the order of the original authority charging them to duty liability of ₹ 26,50,377 under section 28 of Customs Act, 1962, along with interest of ₹ 2,15,584 under section 28AB and section 28AA of Customs Act, 1962, as well as confiscation of goods valued at ₹ 21,64,24,656.63 under section 111(o) of Customs Act, 1962 while imposing penalty of ₹ 28,65,916 on the appellant M/s Tata Chemicals Ltd.

2. The appellant had imported 'calcium nitrate', 'bentonite sulphur', 'mono potassium phosphate', 'potassium sulphate' and 'NPK fertilisers' against 51 bills of entry between 1st March 2011 and 12th March 2012 on which duty liability under section 3(1) of Customs Tariff Act, 1975 had not been discharged upon claim of eligibility to the above notification. On facts, it is common ground that the appellant had traded in the imported goods which was claimed to have been used thereafter in manufacture of fertilizer. Though the record of proceedings before the lower authorities bespeak otherwise, the claim of the appellant herein is that the bills of entry were all endorsed with 'after clearance, the same will be used as manure/fertiliser' and that the

---

[2] [no. 4/2006-CE dated 1st March 2006]
[3] [notification no. 4/2011-CE dated 1st March 2011]

appropriate licence under Fertiliser (Control) Order, 1985 was held by them. It is also common ground that the lower authorities have proceeded on the assumption that, unless the imported goods were utilized in the manufacture of 'other fertilisers', entitlement to the said notification could not be extended.

3. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

4. It is not in doubt that the goods imported by the appellant during the period in dispute had been traded by them. We are at loss to appreciate the view of the lower authorities that goods, unimpeachably classifiable in chapter 31 of First Schedule to Customs Tariff Act, 1975, were entitled to the exemption only to the extent of deployment in manufacture of other fertilisers. A plain reading of the said notification renders all goods, except those specifically excluded, to be entitled to 'nil' rate of duty. The exclusion contained in the said notification is qualified by the expression 'clearly not to be used' and, thereby, disentitlement to the claim of such exemption would have to be established by customs authorities on evidence that it would unfailingly be apparent that the goods were not to be used in the manufacture of other fertilisers. There is no such evidence on record. The deployment of the expression 'clearly' implies that neither vague suspicion nor eliminated probability would suffice and it would have to be apparent

that the goods so imported would be for purposes other than in the manufacture of fertilisers.

5. It would also appear that it was juxtaposition of the exemption available prior to 1st March 2011 with partially erased condition thereafter that inspired this line of thinking. In the unamended version, goods which were clearly not to be used as fertilisers or in the manufacture of other fertilisers would not be entitled to exemption while all others would be. The discard of the first in the amended notification did not restrict the scope of the exemption to such as intended for use in the manufacture of other fertilisers but narrowed scope of exclusion to such as were clearly not to be used in the manufacture of other fertilisers. In other words, the notification exempted all goods falling under chapter 31 of Customs Tariff Act, 1975 from the burden of additional duties of customs except where it could clearly have been shown as not intended for use in the manufacture of other fertilisers. Consequently, the exclusion was limited to such goods as were imported but not for use in the manufacture of other fertilisers and to no other.

6. In view of the above we find that the scope of the notification had not been properly appreciated by the lower authorities. On the basis of submission of facts as recorded by the lower authorities, we are, however, unable to conclude if the imports effected by the appellant

were covered by the exclusion or not.

7. In the light of the above elucidation, it would be appropriate for the matter to be considered afresh for which purpose we set aside the impugned order and restore the show cause notice before the original authority for a fresh decision in the light of proper interpretation of the said notification and facts as brought out in submissions of the appellant herein.

8. Appeal disposed off in the above terms.

(Order pronounced in the open court on 31/10/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*