

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 86450 OF 2017

[Arising out of Order-in-Original No: NSK-EXCUS-001-COM-024-2017-17
dated 16th March 2017 passed by the Commissioner of Central Excise, Nashik.]

Nirmal Seeds Pvt Ltd

Gut no. 114&120, Betegaon Village
Mahagaon Road, Boisar East, Palghar – 401 501

... *Appellant*

versus

Commissioner of CGST & Central Excise

4th Floor, Navprabhat Chambers, Ranade Road
Dadar (West), Nashik – 400 028

...*Respondent*

WITH

EXCISE APPEAL NO: 89736 OF 2018

[Arising out of Order-in-Original No: NSK/CGST-CX/002/COM/2018-19 dated
16th September 2018 passed by the Commissioner of Central Excise, Nashik.]

Nirmal Seeds Pvt Ltd

Gut no. 114&120, Betegaon Village
Mahagaon Road, Boisar East, Palghar – 401 501

... *Appellant*

versus

Commissioner of CGST & Central Excise

4th Floor, Navprabhat Chambers, Ranade Road
Dadar (West), Nashik – 400 028

...*Respondent*

APPEARANCE:

Shri Gajendra Jain, Advocate with Shri Rajseh Ostwal, Advocate, for the appellants

Dr Hemant Kumar Tantia, Joint Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 87026-87027 /2025

DATE OF HEARING: 01/07/2025
DATE OF DECISION: 29/12/2025

PER: C J MATHEW

The appellant, M/s Nirmal Seeds Pvt Ltd, a manufacturer of ‘bio-organic products based on vegetable/plant extract’ and ‘organic product based on culture of micro-organisms’, segregates submissions on the dispute into three categories, as set out in the order¹ of Commissioner of Central Excise, Nashik demanding duties of central excise amounting to ₹ 36,15,27,746 under section 11A of Central Excise Act, 1944, along with interest thereon under section 11B of Central Excise Act, 1944, while imposing penalty of like amount under section 11C of Central Excise Act, 1944 for the period from September 2011 to March 2016 and in order² of Commissioner of CGST & Central Excise, Nashik demanding duties of central excise amounting to ₹ 8,94,12,824 under section 11A of Central Excise Act, 1944, along with interest thereon under section 11B of Central Excise Act, 1944, while imposing penalty under rule 26 of Central Excise Rules, 2002 for the period from April 2016 to July 2017, and the proceedings deal with these in the same manner. As the two appeals arise from identical circumstances for different periods of time, both

¹ [order-in-original no. NSK-EXCUS-001-COM-024-2017-17 dated 16th March 2017]

² [order-in-original no. NSK/CGST-CX/002/COM/2018-19 dated 16th September 2018]

are disposed off by this common order.

2. In all, 26 products were reclassified in the first adjudication with 22 of those in the second and, according to the adjudicating authorities, four of these were liable to duty at rate corresponding to tariff items below heading 3808 of Schedule to Central Excise Tariff Act, 1985 as 'plant growth regulators' and as 'pesticide/fungicide' against that corresponding to tariff items below heading 3101 of Schedule to Central Excise Tariff Act, 1985 as 'animal/vegetable fertilisers' claimed by the appellant as more apt while the remaining thirteen and nine were opined to be chargeable to rate of duty corresponding to tariff item below heading 3808 of Schedule to Central Excise Tariff Act, 1985 as 'pesticide/fungicide' and tariff item 3105 1000 of Schedule to Central Excise Tariff Act, 1985 as 'biofertiliser' against the claim of coverage as 'cultures of micro-organisms' corresponding to tariff item 3002 9030 of Schedule to Central Excise Tariff Act, 1985. In effect, demand of ₹ 33,47,11,749 and ₹ 8,44,24,758 stem from re-classification as 'plant growth regulators', ₹ 2,61,44,975 and ₹ 48,21,635 as 'pesticide/fungicide' and ₹ 6,71,022 and ₹ 1,66,433 as 'biofertilisers' respectively for the two periods. The appellant had not registered themselves under Central Excise Rules, 2002 on the premise that the goods manufactured by them, viz., 'animal/vegetable fertilizer' and 'cultures of micro-organisms' were exempted from duties of central excise.

3. It is settled law that, in disrupting classification claimed by a manufacturer, the onus rests on central excise authorities to not just establish the primacy of the substituting classification but also fitment, on its own, of the classification proposed in proceedings under Central Excise Act, 1944. The Hon'ble Supreme Court in *Hindustan Ferodo Ltd v. Collector of Central Excise [1997 (89) ELT 16 (SC)]*, has held that

'It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.'

and, in *HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh [2006 (197) ELT 324 (SC)]*. that

'This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue.'

Consequently, it is the conformity of the findings with this rule of engagement that we concern ourselves with.

4. The bulk of the dispute is about two products, of unarguably

plant and animal source, viz. 'blue green algae', 'seaweed' and 'multi-bacteria', that, according to the impugned order, are 'plant growth regulators' burdened with appropriate duty liability. 'Plant growth regulators' are a much misunderstood expression among central excise authorities and not for want of technical awareness but concerned that the 'innate unfairness', of 'overlap' with 'fertilizers' that, for obvious reasons, are exempted from indirect tax levy, may be taken advantage of. This urge for 'revenue maximizing' is compounded, no less, by lack of clarity on intent in charging duty on 'plant grant regulators' and the disaggregation from the broad nomenclature of 'fertiliser' despite circular³ of Central Board of Excise & Customs (CBEC) purporting to. It cannot be lost sight of that chapter 31 of Schedule to Central Excise Tariff Act, 1985 is deliberate deviation from the norm of classification without reference to 'use', and universally followed, despite any article therein amenable to conformity with description elsewhere in the Schedule to Central Excise Tariff Act, 1985. The foundation for this selective exclusion lies in the practicality of 'fertilizing is what a fertilizer does' and consequent exemption. Likewise is the placement of articles as 'pharmaceuticals' which is, generally, adjunct to fertilizers in making food available to teeming millions. A clarification or adjudication that is not structured on this fundamental paradox is not acceptable authority for displacement of an article from 'fertilizer' to

³ [circular no. 1022/10/2016-CX dated 6th April 2016]

another category.

5. Learned Counsel informed that twelve of the products have been classified as 'bio fertilizers' chargeable to duty corresponding to tariff item 3105 1000 of Schedule to Central Excise Tariff Act, 1985 four have been classified as 'plant growth regulators' chargeable to duty corresponding to tariff item 3808 9340 of Schedule to Central Excise Tariff Act, 1985 two as 'bio-insecticides' chargeable to duty corresponding to tariff item 3808 9199 of Schedule to Central Excise Tariff Act, 1985, eight as 'bio-fungicides' chargeable to duty corresponding to tariff item 3808 9090 of Schedule to Central Excise Tariff Act, 1985 and five as 'bio-pesticides' chargeable to duty corresponding to tariff item 3808 9990 of Schedule to Central Excise Tariff Act, 1985.

6. Learned Authorized Representative contends that from the labels, brochures, ingredients and usage it would appear that Bio packup Dextrose, Bhuparis PSB, Bhuparis AB, Bhuparis RB, Bhuprais AZP, Draksha Sanjivani, Dalib Sanjivani, Bhuparis DB, Composting kit, Paripurna and Garden Samrat are 'bio-fertilisers' chargeable to duty at the rate corresponding to tariff 3105 of Schedule to Central Excise Tariff Act, 1985 as these were sold in package having gross weight not exceeding 10 kg. He contended that Bio-power, Bio-force, Berrylon and Berrythorn contain gibberellic acid

and photo hormone which renders these to be plant growth regulators and, even if manufactured by use of seaweed extract and blue-green algae and contain nutrients, are not animal or vegetable fertilizers. He contended that aminoacid and phytohormones promoting cell division, root elongation and fruit set promotion and that the adjudicating authority considered these to be eco-friendly plant growth regulators manufactured by substituting synthetic hormones. He further submitted that Bhuparis Tricho, Bhuparis Pseudomonas, Bio Sanjivani, Granet, Jasper, Trident, Emerald, Marvel, Bio Prahar and Nirmal Biokit are bio-pesticides and not cultures of micro-organisms. According to him, their end use as pesticide is evident from marking as for pathogen and pest control on the packing and brochures.

7. Learned Counsel for appellants drew our attention to several decisions of the Tribunal and, in particular, to the order in *Commissioner of Central Excise, Mumbai-II v. Aries Agro-vet Industries Ltd [2018 SCC Online CESTAT 5885]* on the exclusion of such goods from plant growth regulators. He further contended that this decision also assigned primacy to registration under Fertilizer Control Order and with Central Insecticides Board as determinant of classification as proposed by appellants and adopted in adjudication respectively.

8. One of the key takeaways from the decision in *re Aries Agro-vet Industries Ltd* and like orders of the Tribunal is that 'plant growth

regulators’, with its lack of clarity, cannot be acceptable substitute for descriptions that, otherwise, describe a disputed product. The core of that decision was that products are to be considered as ‘fertilizers’ upon meeting criteria of presence of ‘nitrogen’, ‘phosphorous’ and ‘potassium’, in combinations, suffices for retention as fertilizer and that ‘fertilisers’, with its special significance for food production, is determined, contrary to conventional wisdom of ‘as presented’, by intended use and that registration under the domain legislation clinches coverage.

9. Insecticides, having significant role in food production and, like fertilisers, rely upon primacy accorded to use for classification and registration under the special law enacted for control of insecticides is a necessary requirement for coverage as pesticide.

10. In *re Aries Agro-vet Industries Ltd*, it was held that

‘4. Though Learned Senior Counsel may be anguished by our choosing to describe the impugned goods as chemicals we believe that it may not be a cause of cavil. For that is what ‘fertilisers’ are and our choice is amply justified given that the rival classifications lie within section VI of the First Schedule of the Central Excise Tariff Act, 1985, i.e. PRODUCTS OF THE CHEMICAL AND ALLIED INDUSTRIES. Yet, ‘fertilisers’ are privileged enough to warrant an entire separate chapter in this section of the Schedule. We can posit that this is not without design. Fertilisers are critical to national policy formulation across the globe for its contribution to agriculture which is

indispensable as the plant kingdom alone is capable of generating its own food and providing sustenance to the animal kingdom not being blessed with the wherewithal to do so. And in the complexity of that very schedule lies the discord.

5. *The dispute traces its origin to the adoption of the new tariff in 1985 with its comprehensive enumeration – this is apparent in the decisions cited before us. The new system afforded the advantage of re-engineering the tax structure but, in the process, the certainty of intent of government that was manifest in the preceding regime had to be sacrificed. Despite the cause, and perpetuation, of the dispute being apparent, little effort was made by the executive to resolve the ambiguity. That resolution could have been tailor-made for, and restricted to, these chemicals used, again indisputably, for sustenance of agricultural productivity. This policy inertia is made even more glaring in the ambivalence of its instructions. We have only to consider circulars no. 26/90-CX dated 24th May 1990 and no. 79/79/94-CX dated 21st November 1994 of Central Board of Excise & Customs that prompted the Hon'ble Supreme Court to lay down an important rule in *Ranadey Micronutrients v. Collector of Central Excise* [1996 (87) ELT 19 (SC)] while disapproving of the attempt by the executive to distance itself from the latter of the two. Thus we take note that the conflict was allowed to fester when a simple statement of intention could have been articulated to restrict or broaden the scope of chapter 31 of the Schedule to the Central Excise Tariff Act, 1985.*

6. *There is no judicial precedent to fall back on. Probably out of deference to the criticality of agricultural policy and the role, as well as responsibility, of the executive, decisions have preferred to accord primary to circulars and instructions. Unfortunately, in anticipation of accountability on the qualified assertion in these executive clarifications enable lower*

authorities to rely upon the adjurements to initiate recoveries that are unable to survive the first stage of adjudication. It would appear that the efforts are aimed at classification that obtains higher rate rather than the rate appropriate to fitment within the description in the Schedule.

7. *This Schedule is not a doomsday book; it is also not a manifesto for the chemical or fertiliser industry. It is the creation of a global body of experts that has been adopted as a tool to promulgate duty rates for different articles or goods. With the objective being limited to the determining of the tariff applicable to various goods between competing headings, extensive scientific or industrial research is not a requisite for the task.*

8. *We, therefore, propose to refer to the voluminous literature placed before us only if unavoidable. The submissions of Learned Authorised Representative are that presence of the principal agents - nitrogen, phosphorous and potassium - in various combinations, is the primary qualification for placement in chapter 31 of the Schedule and that presence, without functional relevance, should not suffice. It is contented that in the impugned goods, none of these three elements are essential to the function. According to Learned Authorized Representative, commercial literature of the respondent, pertinent to the products in question, gives the lie to the finding of the adjudicating authority that the packaging is bereft of any indication of intended use as 'plant growth regulator'.*

9. *There is no dispute that the three products are 'micronutrients'. It is also clear that 'micronutrient' is not a specific entry in the Schedule. Therein lies the nub: owing to privileged treatment accorded to 'fertilizers', manufacturers would prefer to classify 'micronutrients' as 'fertilisers' with Revenue preferring to deny them that privilege. The dispute is not about the fitment of the description of the goods over the*

description in the Schedule and is characterised by culling out aspects of rival descriptions, circulars and judicial decisions to suit the claims on the rate to be adopted. Considering the unwillingness of the executive to notify its intentions and our conclusion that it is not the conformity with the description that has led to the dissonance, we take it upon ourselves to go to the root of the issue.

10. *In addition to a patient hearing accorded to both sides, we have considered the literature made available to us during the hearing. Before proceeding to render our decision, it is necessary to ponder over the importance of fertilising agents, the scheme of the Schedule of the Tariff, the manner in which classification is mandated to be undertaken, the scope of the circulars on the subject and, not the least, the precedent decisions.*

11. *Plant life is critical to the existence of living world; the single distinguishing feature of the fundamental dichotomous grouping of living world is the absence of ability to generate food in the life process of the animal kingdom. Animals feed upon other animals and plants but animal life would have been extinct in the absence of plant life which is blessed with the capacity of photosynthesis. Plants deploy resources available around them at three levels. Hydrogen, carbon and oxygen are drawn from air and water while the fertilizing agents are drawn from the soil. These consist of major and minor fertilizers with nitrogen, phosphorous and potassium being the former. The correction of deficiency in, or the enrichment of, any of these is remedied by human intervention. Thus fertilizers are essential for survival of the eco-system and are, deservedly, bestowed with hallowed status in policy formulation all over the world. To the extent that 'micronutrients' are 'fertilizers', denial of that privilege imperils the very sustainability of human life.*

12. *A scientific and rational tariff bears the distinct advantage of easy formulation of duty structure for insertion against the appropriate heading without exhaustive inventorising. Coupled with exemptions notified under section 5A of Central Excise Act, 1944, the government is thus enabled to implement its tax policy. Manufacturers are also enabled to ascertain the classification that their products would best fit – and extending to goods that are yet to be thought of, or engineered by, human ingenuity. The range, and the limitation thereof, necessitates certain rules for fitment that have evolved by consensus.*

13. *On examination of the Schedule, we note that ‘fertilizers’ and ‘pharmaceuticals’ are favoured enough to merit separate chapters on their own, justified by their importance for the human race. At the same time, they, being chemicals, are ensconced in section VI of the Schedule to the Central Excise Tariff Act, 1985, i.e. PRODUCTS OF CHEMICAL AND ALLIED INDUSTRIES – reflecting strict adherence to the arrangement of goods in the Schedule. The section, commencing with organic chemicals and inorganic chemicals, recognises that ‘fertilizers’ and ‘pharmaceuticals’ may fall under either and acknowledges that they are to be distinguished from their doppelganger in the other two chapters. Though, the Hon’ble Supreme Court has held in Commissioner of Central Excise v. Mannampalakkal Rubber Latex Works [2007 (217) ELT 161 (SC)] that, in ascertainment of classification, intended use cannot normally be a determining factor, specific qualification in the particular heading or in the notes to the chapter or section are deviation sanctified by law. Again, as per rule 1 of General Rules for Interpretation of the First Schedule of the Central Excise Tariff Act, 1985, though titles of sections or chapters have no legal standing, they do, assuredly, act as guidance for ascertainment. The statutory carving out of some chemicals, coupled with the titles assigned to chapter 30 and chapter 31, evidences the legislative intent to*

sanctify use as the determinant. This ascertainment is further facilitated by the regulatory mechanism, under central and/or state legislation, for 'fertilizer' and 'pharmaceutical' industry. Statutory authorities administer these regulations and, while we concur with Revenue that jurisdiction assigned over some chemicals to these regulators should not, generally, influence the classification, that very jurisdiction indicates the use.

14. Of no less import are the notes in chapter 31, of which note 1(b) excludes separate chemically defined compounds but with the qualification

'other than those answering to the descriptions in Note 2(a), 3(a), 4(a) and 5 below'

implying that where the use is unambiguous, its twin heading in another chapter merits discarding. These notes refer to 'mineral or chemical fertilizers' distinguished by the presence of primary element, viz., nitrogenous, phosphatic or pottasic, in combination, besides 'ammonium dihydrogen orthosphate' and 'diammonium hydrogen orthophosphate'. From a straight reading of the relevant notes, it would appear that classification as 'fertilizer' is merited on clearance of goods specified in the referred notes pertaining to heading 3102, 3103 and 3104 cleared in bulk packing, even if these may find fitment in other chapters. From the remaining sub-notes pertaining to these headings, it is apparent that these are the only compounds where such ambivalence exists owing to specific description elsewhere whereas chapter 31 may contain only a generic description. The individual identification of two compounds in note 5 as classifiable in chapter 31 does not exclude others which answer to the description in heading 3105. Learned Authorized Representative places heavy emphasis on note 6, i.e.

'For the purposes of heading 3105, the term "other fertilisers" applies only to products of a kind used as fertilizers and

containing, as an essential constituent, at least one of the fertilising elements nitrogen, phosphorous or potassium.'

to contend that the impugned goods are separately defined compounds and, not being 'fertilizer', in the absence of nitrogen, phosphorous or potassium, must not be accorded the privilege due to 'fertilizers.' According to him, this was the very error that the adjudicating authority was led into. It was further contended that this exclusion could not have been overcome, as the adjudicating authority did, by retaining an incorrect classification even where the alternative proposed was not in compliance with the General Rules for Interpretation of the First Schedule of the Central Excise Tariff Act, 1985. The adjudicating authority, after considering the allegations in the show cause notice against acceptance of the declared classification and the finding of non-applicability of the proposed classification, did resort to rule 4 of General Rules for Interpretation of the First Schedule of the Central Excise Tariff Act, 1985, viz.,

'Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are akin.'

15. *We are unable to approve of the proposition made on behalf of Revenue that the classification claimed should have been rejected. Rejection of a claimed classification is not an end in itself as duty liability can be computed only after application of the rate legislated by Parliament to the appropriate value. Such application will require ascertainment of the rate and a plethora of judgements have squarely placed the onus at the doorstep of tax authorities to determine a rate if not satisfied with a claim for a particular rate. We refer to the decision of the Hon'ble Supreme Court in Hindustan Ferodo Ltd v. Commissioner of Central Excise [1997 (89) ELT 16 (SC)] and in HPL Chemicals v. Commissioner of Central Excise, Chandigarh [2006 (197) ELT 324 (SC)]. Having made ourselves clear on this point, we do not,*

at this stage, examine the merit of adopting rule 4 supra to which we shall address ourselves presently.

16. *Four circulars issued by Central Board of Excise & Customs are relevant to this proceeding. Having considered the importance of the products, it was thought fit, in circular no. 26/90-CX dated 26th June 1990, that 'micronutrient' should be classified as 'plant growth regulator' under heading 3808 of First Schedule of the Central Excise Tariff Act, 1985. On reconsideration, in circular no. 79/79/94-CX dated 21st November 1994, it was advised that 'micronutrients' listed in Fertiliser (Control) Order, 1985, and whether containing nitrogen, phosphorous or potassium or not, should be classified under heading 3105 of the First Schedule to the Central Excise Tariff Act, 1985; apparently, the wisdom of the regulatory authority in bringing 'micronutrients' under regulatory control was sufficient to consider these as fertilizers for classification. When this latter was sought to be disowned, as having been invalidated by being contrary to law, leading to disapproval by the Hon'ble Supreme Court, in re Ranadey Micronutrients, of the denial of classification as 'fertilizer', the view was again altered in circular no. 392/25/98-CX dated 19th May 1998 to classify 'micronutrients' as 'other fertilizers' in heading 3105 of the First Schedule of the Central Excise Tariff Act, 1985 to conform with note 6 in chapter 31 of the First Schedule. This circular, while not excluding coverage of 'micronutrients' under the broad heading of 'other fertilizers', required the field authorities to ascertain if these were 'separate chemically defined component' and, if not, to be subjected to ascertainment of the presence of the primary elements, before allowing classification as 'other fertilizers.' Even here, the confusion is palpable for the circular requires such goods, as are found to be 'separate chemically defined compounds, to be classified under chapter 28 or 29 as organic or inorganic chemicals. Obviously, it does not envisage*

the classification now espoused by Learned Authorized Representative.

17. *Learned Authorized Representative and Learned Senior Counsel invited our attention to circular no. 1022/10/2016-CX dated 6th April 2016 which, having rescinded all the above referred circulars, went on to instruct field authorities to classify 'micronutrients' as 'other fertilizers' only if the three macronutrients are essential to the goods and to classify under chapter 28 or 29 if these were 'separate chemically defined compounds'; it is abundantly clear that these are not 'plant growth regulators'. There are inconsistencies, however, in this sample of distilled wisdom. Highlighting the extending of concessional rate of duty for 'micronutrients' under chapter 28, 29 and 38 that are also covered by Fertilizer (Control) Order, 1985, there is an explicit denial of relevance to the said order in determining classification. This is contrary to the law laid down by the Hon'ble High Court of Calcutta in *Naffar Chandra Jute Mills Ltd v. Assistant Commissioner of Central Excise* [1993 (66) ELT 574 (Cal)] and by the Hon'ble Supreme Court in *Maestro Motors Ltd* [2004 (174) ELT 289 (SC)] requiring that the same rules of interpretation should apply to the classification as well as for coverage in exemption notification. The reference to Fertilizer (Control) Order, 1985 in the exemption notification should apply equally to classification as 'fertilizers' especially in conjunction with note 6 of chapter 31 of First Schedule of the Central Excise Tariff Act, 1985. In paragraph 5, the circular overlooks its own instruction in paragraph 2.3 to direct classification under residual heading 3824 as 'chemical products not elsewhere specified' if these micronutrients be composed only of trace elements. This instruction to classify 'micronutrients' under the residual sub-heading 3824 90 of a residual chapter 38 of the First Schedule to the Central Excise Tariff Act, 1985 runs counter to the statutory mandate to assign classification with reference to*

notes of chapter and sections in rule 1 of the General Rules for Interpretation of the First Schedule of the Central Excise Tariff Act, 1985; note 1(a) of chapter 38 clearly excludes separate chemically defined compounds, barring a few, from coverage under this chapter and, if 'micronutrients' are not fertilizers, they are to be classified on merit based on their composition. The decisions of the Tribunal in Rajasthan Synthetic Industries Ltd v. Collector of Central Excise [1989 (42) ELT 24 (Tribunal)] and of the Hon'ble High Court of Bombay in Subash Photographics v. Union of India [1992 (62) ELT 270 (Bom)] leave no room for doubt on this score. The impugned goods will have to be classified under section 28 or 29 if they be separate chemically defined compounds. Consequently, considering the nature of heading 3808 of the First Schedule of the Central Excise Tariff Act, 1985, it would appear that unless intended use of the goods is markedly inherent in commercial nomenclature, classification will have to be restricted to chapter 28 or 29.

18. *In re Ranadey Micronutrients, though the dispute pertained to classification as 'other fertilizers' claimed by the manufacturer on the basis of the circular of 1994, the Hon'ble Supreme Court was called upon to adjudge on the propriety of disowning of a circular by the Central Board of Excise & Customs. According to Learned Authorized Representative, the Hon'ble Supreme Court in Commissioner of Central Excise v. Karnataka Agro Chemicals [2008 (227) ELT 12 (SC)], had accorded a finality to the dispute by holding that 'micronutrients', which do not contain any one of the three macronutrients, was liable to duty as 'plant growth regulators' and that the remand to original authority was merely to ascertain the threshold of presence of macronutrients for qualification as essential. Learned Senior Counsel urged us to follow the decision of Hyderabad bench of the Tribunal in Commissioner of Central Excise & Service Tax, Hyderabad-IV v. Aries Agrovvet Industries*

Ltd [Final order no.30767-30768/2017 dated 19th June 2017] confirming the very same goods under heading 3105 of the First Schedule to the Central Excise Tariff Act, 1985. We find ourselves unable to agree with the far-fetched proposition of Learned Authorized Representative; the decision of the Hon'ble Supreme Court in re Karnataka Agro Chemicals Ltd, by remanding the matter for a decision on the extent to which composition of micronutrient would determine essentiality to the metal, has concurred with the Tribunal that note 6 of chapter 31 in the First Schedule cannot be interpreted to exclude classification under heading 3105 and has not endorsed the circular of Central Board of Excise & Customs on classification as 'plant growth regulator.' The observations that Learned Authorized Representative highlighted to presage approval of the stand of Revenue is nothing but reiteration of the view of the Hon'ble Supreme Court in re Ranadey Micronutrients that the circular would prevail unless its validity was in doubt. We have expressed ourselves sufficiently on the credibility of these circulars.

19. *With this trove of knowledge, we turn to 'plant growth regulators.' Plants gather nutrients from air, water and soil. These, in normal circumstances, may be sufficient for normal growth of, and yield, from plants. While air and water are not within the power of humankind to replicate or relocate, enrichment of deficient soil is. This is where macronutrients, comprising of nitrogen, phosphorous and potassium, in various chemically defined compounds supplied through fertilizers, are important. Micronutrients in trace quantity also remedy deficiency of such soil. These are administered by adapting the metal element with a chelate to attach a chemical that would either prevent the alkalinity of soil from rendering a 'micronutrient' insoluble and unusable by the plant or overcome imperviousness of foliage that blocks assimilation of the*

'micronutrient.' A chelate does not alter the essential character of the 'micronutrient' as a metal nutrient needed by plants. Such chemically modified metals, denominated as coordinating complex compounds, have widespread use in various delivery systems in the pharmaceutical or metallurgical industries but in the agricultural sector when these are designated as chelate. The chemical used for engineering the chelate contains nitrogen; indeed, without that nitrogen it would not be able to provide the barrier necessary for impeding insolubility of the metal. The contention of Learned Authorized Representative that, being chemical compounds, the impugned goods are not classifiable under chapter 31 of First Schedule to Central Excise Tariff Act, 1985 is out of accord with our finding on the scope of exclusion of 'separate chemically defined compounds' supra.

20. *'Micronutrients' manufactured in factories are, in our opinion, 'fertilizers', both by use as reflected in Fertilizer (Control) Order, 1985 and the deficiency that is sought to be remedied by their addition to the soil or by foliage application. The chelated metal that is designated as 'micronutrient' requires nitrogen to be such. The test results relied upon by Learned Authorized Representative is not conclusive on the absence of nitrogen and, from the contents of the report, it would appear that the test was limited to ascertainment of conformity with declaration of ingredients on the product itself. That may explain the want of the test memo and test report in the appeal filed by Revenue. Notwithstanding the argument of Learned Authorized Representative that the decision of the Tribunal in the respondent's own case at Hyderabad, which for want of benefit of the decision of the Hon'ble Supreme Court is not good law, considering the extent of finality in the said judgement noted supra by us and our finding on the existence, nay, essentiality of nitrogen in any 'micronutrient', we cannot but be in agreement with the Hyderabad bench.*

21. *The circular of Central Board of Excise & Customs issued in 2016 has discarded the earlier advice to classify 'micronutrients' as 'plant growth regulators.' And not without reason. 'Plant growth regulators' are hormones. Plants lack glands that produce hormones; cells themselves can be induced to produce hormones but these are not sufficient to engineer the growth of a plant in a desired way. Hormones are signalling molecules that direct a cell to act in a particular manner. Hence these regulators, grouped as 'plant growth promoters' (auxins, gibberellins and cytokinins) and 'inhibitors' (abscisic acid and ethylene), are not essential for plants but are a means for human interference in normal plant growth distinct from nutrient enrichment. As regulators are not nutrients, 'plant growth regulators' does not include 'micronutrients'. In accordance with our findings on the scope of classification under heading 3808 of First Schedule to the Central Excise Tariff Act, 1985, 'plant growth regulators' are such as may be generically described elsewhere but are made available as 'plant growth regulator' by the manufacturer and are subject to such regulation as such specific products are bound, under particular statutes, to comply with.*

22. *Therefore, we may sum up our findings thus:*

- i. *'Micronutrients' and 'macronutrients' are required for agriculture as fertilizers. In classifying them thus, it is the intended use that must prevail as inferred from the scheme of Schedule. 'Micronutrients' are not 'plant growth regulators'. With the notices proposing classification of the products as 'plant growth regulators', the proceedings against respondent fails on this count alone.*

- ii. *To the extent that these are enumerated with reference to note 2 of chapter 31, the specific compounds of nitrogen, phosphorous and potassium, even if not designated as 'fertilizer' would be classifiable in chapter 31 along any others described as 'fertilizer' except those under heading 3105, with the exception of the compound specified in note 5, and those containing any one of the three primary fertilizing elements. The notes in the chapter are not intended to restrict classification in chapter 31 when intended for use as 'fertilizer' unless specifically and deliberately excluded by the notes of the chapter.*
- iii. *The circulars and precedent judgements, save the decision of the Tribunal in the dispute of the respondent themselves, have not examined the classification and scope of heading 3105 of First Schedule of Central Excise Tariff Act, 1985.*
- iv. *The presence of nitrogen in chelates is sufficient to bring it within the ambit of heading 3105 of First Schedule of the Central Excise Tariff Act, 1985 owing to its indispensability despite the negligibility of the quantity. Classification under heading 3105 claimed by the manufacturer cannot be denied to them.'*

11. The principles espoused above establish the exemption accorded to fertilisers and pharmaceuticals. The appellant has claimed coverage only upon issue of notice and, in terms of the decisions of the Hon'ble Supreme Court *supra*, it is for the tax authorities to establish not only primacy of the substituting description but fitment

in every sense for a start. That onus has not been discharged. Indeed, as can be seen from the impugned order, potential for coverage among the descriptions eligible for exemption has not been categorically denied.

12. For the above reasons, the impugned order is set aside to allow the appeals.

(Order pronounced in the open court on 29/12/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*