



आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:  
O O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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रजिस्टर्ड ऑफिस द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/117/BVR/2017	मूल आदेश सं / O.I.O. No. AC/JND/18/2017	दिनांक / Date 08-03-2017
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ख अपील आदेश संख्या (Order-in-Appeal No.):

**BHV-EXCUS-000-APP-251-2017-18**

आदेश का दिनांक / Date of Order:	28.03.2018	जारी करने की तारीख / Date of issue:	02.04.2018
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Passed by Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar.

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १६.११.२०१७ के साथ पठे बोर्ड ऑफिस आदेश सं. ०५/२०१७-एन.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री सुनील कुमार सिंह, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीनगर, को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९९४ की धारा ७५ के अंतर्गत दर्ज की गई अपीलों के सम्बन्ध में आदेश पारित करने के उद्देश्य से अपील प्राधिकरण के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar, has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

- ग अपर आयुक्त/सहायक आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जामनगर / गांधीधाम/ भावनगर द्वारा उपरोक्त आदेश से सृजित /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham/ Bhavnagar ;
- घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the **Appellants & Respondent** :-  
**M/s T. J. Agro Chemicals & Fertilizers P. Ltd., Survey No. 93/1, Dhoraji Road, Sakupur Dist. : Junagadh**

इस आदेश/आपील से संबंधित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल कर सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way:

- (A) वस्तु शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम १९९४ की धारा ८५ के अंतर्गत एवं वित्त अधिनियम, १९९४ की धारा ८६ के अंतर्गत निम्नलिखित आदेश की जा सकती है।  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (ii) कर्नाटक न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, नई दिल्ली, पोस्ट ब्लॉक नं. २, अरु के पैरम, नई दिल्ली, को की जानी चाहिए।  
The special Bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, Aru, Param, New Delhi in all matters relating to classification and valuation.
- (iii) अपील प्राधिकरण १९९४ की धारा ८५ के अंतर्गत एवं वस्तु शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की परिधि में केन्द्रीय प्राधिकरण, द्वितीय तल, बाहुमाली भवन असावा अहमदाबाद, अहमदाबाद को की जानी चाहिए।

To the West Regional Bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, Survey No. 25, Bahumali Bhawan, Asarwa Ahmedabad-380015 in case of appeals other than as mentioned in para (ii) above.

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- (iii) अपीलिय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001 के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियां में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलिय न्यायाधिकरण की शक्ति के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलिय न्यायाधिकरण की शक्ति स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलिय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) में अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियां में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलिय न्यायाधिकरण की शक्ति के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलिय न्यायाधिकरण की शक्ति स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत टैज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा संलग्न आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलिय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलिय प्राधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलिय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर भाग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवैट जमा की ली गई गलत राशि  
(iii) सेनवैट जमा नियमवाली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरम्भ से पूर्व किसी अपीलिय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगी।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall be before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन :

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi 110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के टूट (रिवेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of release of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयविधि पर या बाद में परित किए गए हैं। /

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन में साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रती संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the O.O and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /

यदि संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए। /

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त दरा से किया जाना चाहिए। इस लक्ष्य के होते हुए भी की लिखा पेटी कार्य से बचने के लिए यथास्थिति अपीलिय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order, in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if necessary fee of Rs. 100/- for each.

(E) यथासंश्लिखित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /

One copy of application or O.I.O, as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Act of 1975, as amended.

(F) सामान शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलिय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) इस अपीलिय प्राविचारी को अपील दाखिल करने से संबंधित व्यापक विस्तृत और नवीनतम प्रावधानों के लिए, अपीलिय विभाग की वेबसाइट [www.ceb.gov.in](http://www.ceb.gov.in) को देख सकते हैं। /

For the information, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.ceb.gov.in](http://www.ceb.gov.in)

## ORDER IN APPEAL

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The subject appeal no. 117/BVR/2017 is filed by M/s T. J. Agro Chemicals and Fertilizers Pvt. Ltd., Survey No. 93/1 (part), Dhoraji Road, Sukhpur, Junagadh - 362 003 (hereinafter referred to as 'the appellant') against Order in Original No. AC/JND/18/2017 dated 08.03.2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise, Junagadh (hereinafter referred to as 'adjudicating authority').

2. The facts of the case in brief are that the appellant had manufactured and cleared 'Soil Conditioner' under CETSH No. 31059090 of the Central Excise Tariff Act, 1985 (hereinafter CETA, 1985) by paying concessional / effective rate of duty @1% adv. in terms of Sr. No. 40 of Notification No. 1/2011-CE dated 1.3.2011. Subsequently, the said concessional rate of duty @ 1% adv. is continued to be available by virtue of Sr. No. 128 of Notification No. 12/2012-CE dated 17.03.2012, as amended. It appeared that in order to be eligible for effective rate of duty @ 1% adv., the excisable goods must satisfy the following tests:

- (a) The excisable goods should be correctly classifiable under Chapter 31 of First Schedule to the Central Excise Tariff Act, 1985; and
- (b) The excisable goods should be clearly used as fertilizer.

2.1 During scrutiny of quarterly returns (ER-8) filed by the appellant and necessary correspondence made with appellant by Range Superintendent, it was revealed that the appellant had manufactured and cleared '**Soil Conditioner**' classifying the same under CETSH No. 31059090 as "other fertilizer" and availed concessional rate of CENVAT @1% adv. in terms of Sr. No. 40 of Notification No. 01/2011-CE dated 01.03.2011 and subsequently in terms of Sr. No. 128 of Notification No. 12/2012-CE dated 17.03.2012. From the clarification given by the appellant, it was observed that they had classified 'Soil Conditioner' under said CETSH as "other fertilizer" based on Chapter Note 6 of Chapter 31 of CETA, 1985 on the ground that the same contained fertilizing elements viz. Nitrogen, Phosphorus and Potassium. It was found that the appellant had wrongly classified the said product as 'other fertilizer' as the same was not defined under Clause 2(h) of Fertilizer Control Order, 1985 and hence, not governed under the said Order. Further, it was also noticed that there was no authority regulating manufacture/ sale of the said item like Licensing, drawal of sample by the statutory regulatory authority, price fixation, etc. and that

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packing Bags of the said item, marked with "Soil Conditioner" and "Jamin Sudharak".

2.2.1 It is, therefore, alleged that 'Soil Conditioner' was not a fertilizer because in order to classify a product under heading 3105 as "other fertilizers", the same must be a product of a kind used as fertilizer and must contain specified fertilizing elements viz. nitrogen, phosphorus or potassium as an essential constituent. As the appellant could not prove that the said item was clearly used as fertilizer and fertilizing elements are used in soil conditioner as an essential constituent, they were not eligible for concessional rate of duty under Notification No. 01/2011-CE (Sr. No. 40) and subsequently under Notification No. 12/2012-CE (Sl. No. 128). Further, it was observed that the appellant had willfully mis-stated facts and contravened the statutory provisions so as to avail inadmissible benefit of concessional rate of duty @ 1% adv. under said Notifications and accordingly made short payment of central excise duty of Rs.3,61,827/-. As the appellant appeared to have short-paid / evaded aforesaid Central Excise duty by reason of willful mis-statement and contravention of provisions of Section 3 of Central Excise Act, 1944 (hereinafter CEA, 1944) and rules framed under CEA, 1944 with intent to evade payment of duty, extended period of five years was invocable in terms of Section 11A(4) of CEA, 1944 for recovery of the aforesaid short-paid / evaded amount of Central Excise Duty along with appropriate interest as per provisions of Section 11AA of Central Excise Act, 1944. Further, appellant's aforesaid act of omission and commission, willful mis-statement and contravention of the statutory provisions with intent to evade payment of duty, made themselves liable for penalty under Section 11AC of CEA, 1944.

3. Accordingly, show cause notice was issued to the appellant proposing denial of concessional rate of duty @1% under Notification No. 1/2011-CE (Sl. No.40) and subsequently under Notification No. 12/2012-CE (Sl. No. 128) availed by them in respect of clearance of 'Soil Conditioner'. The SCN also proposed recovery of short payment of duty of Rs.3,61,827/- under the proviso to Section 11A(1) [now Section 11A(4)] of the CEA, 1944 with interest and penal action under Rule 27 of CER-02 and under Section 11AC of the CEA, 1944.

4. The said show cause notice was adjudicated by the adjudicating authority vide impugned order wherein he denied the benefit of concessional rate of duty @ 1% for 'Soil Conditioner'. He also confirmed the demand of Rs.3,61,827/- with interest and imposed penalties, as proposed in the show cause notice.

5. Being aggrieved, the appellant filed the present appeal on the following grounds:

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- (i) Soil Conditioner is correctly eligible for concessional rate of duty @ 1% as all three fertilizing elements viz. N.P. and K are present in the said item. Further, the test result of 'Soil Conditioner' clearly show all three fertilizing elements viz. N, P and K are contained in substantial portion in the 'Soil Conditioner'. However, the adjudicating authority has neither disagreed with the said test result nor placed on record any contrary evidence to prove that Soil Conditioner does not contain the said specified fertilizing elements as an essential constituent. Further the adjudicating authority has also failed to state if 'Soil Conditioner' is not 'other fertilizer', what would be the correct classification of the said item. By acting in this manner, he has disputed eligibility of 'Soil Conditioner' for concessional rate of duty with pro-revenue and biased approach.
  - (ii) The adjudicating authority has also overlooked the clarification issued by the CBEC under Cir. No. 1022/10/2016-CX dated 6.4.2016. The appellant has also placed reliance upon case law - Ramcides Chemicals Pvt. Ltd. vs CCE-2016 (3) TMI 1043-CESTAT-Chennai and stated that order passed by the adjudicating authority regarding 'Soil Conditioner' deserves to be set aside.
  - (iii) Confirming the demand beyond one year period is time barred and also illegal as there was no suppression of facts on the part of the appellant and all the facts were well within the knowledge of the department right from the stage of obtaining Central Excise stage of obtaining central excise registration to the filing of periodical returns. Hence, demand of Rs.12,903/- was required to be confirmed for the normal period of one year i.e. from 26.01.2015 to 25.01.2016 i.e. the date of issue of SCN.
  - (iv) The adjudicating authority at para 23 of the impugned Order confirmed the demand by denying the benefit of Notification No. 12/2012-CE (Sl. No. 128) and he has not disputed eligibility of Soil Conditioner for concessional rate of duty cleared under Notification No. 1/2011-CE (Sl. No. 40) and hence demand of duty of

*Signature*

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Rs.1,63,318/- confirmed by the adjudicating authority without basis of law deserves to be set aside.

- (v) The appellant has submitted that they have acted in bona fide manner and there is no mis-statement whatsoever as alleged in SCN as the issues involved interpretation of law and hence adjudicating authority ought to have dropped proposal for penal action under Section 11AC of the Act.
- (vi) The appellant stated that they had correctly filed periodical return in Form ER-8, strictly in conformity with the statutory provisions under Rule 12 of the CER-02 as both products viz. viz. Magnesium Sulphate and Soil Conditioner were cleared under concessional rate of duty @ 1% adv. in terms of the Notification No. 12/2012-CE and therefore, they were not liable to penal action under Rule 27 of CER-02.

6. Personal hearing in the matter was held on 22.03.2018, which was attended by Shri Jatin Mehta, authorized person of the appellant. He appeared and reiterated the grounds of the appeal. He pleaded that AC could not sustain the charge of wilful mis-statement in their part.

7. I find that the appellant has already paid entire amount of disputed duty with interest and penalty, hence no further deposit is required to be made by them under Section 35F(i) of the Central Excise Act, 1944

8. I have carefully gone through the impugned order passed by adjudicating authority, the submission made by the appellant in the appeal memorandum as well as by the authorized person at the time of personal hearing. I find that the limited issue to be decided is 'whether the product 'Soil Conditioner' was classifiable under CETSH No.31059090 of the CETA, 1985 and whether concessional rate of duty @1% adv was available to this product, under Notification No.1/2011-CE (Sl. No.40) dated 1.3.2011 and subsequently under 12/2012-CE (Sl. No.128) dated 17.03.2012. If not, then whether larger period was correctly invoked by adjudicating authority in the present case and also whether penalties have correctly been imposed on them.

9. Regarding the issue whether 'Soil Conditioner' would be classifiable under CETSH No. 31059090 as 'other fertilizer', it is observed that the adjudicating authority, while confirming the demand of Rs.3,61,827/- by

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rejecting the classification of 'Soil Conditioner' as 'other fertilizer' under CETSH 31059090 and also by denying the benefit of concessional rate of duty @1% adv. under Notification No. 12/2012-CE (Sl. No.128), has held that in order to claim classification of 'Soil Conditioner' as 'other fertilizer' under CETSH No. 3105 9090, the appellant was required to prove that the specified fertilizing elements were used as an essential constituent in the manufacture of 'Soil Conditioner', which they failed to prove in -light of concrete and tangible evidences. The appellant, in their Appeal Memorandum, has submitted that 'Soil Conditioner' is correctly eligible for concessional rate of duty @ 1% as all three fertilizing elements viz. N.P. and K are present in substantial portion in the said item. They have relied on Test Report of Soil Conditioner, submitted by them to department, and also on the CBEC under Cir. No. 1022/10/2016-CX dated 6.4.2016.

9.1 It is observed from the Test Report submitted by the appellant to the department that the product 'Soil Conditioner' basically contained Nitrogen (N)- 1.50%, Potassium (K)- 0.96%, Phosphorus (P)- 5.37% and Calcium (Ca)- 6% etc. Hence, it is observed from this Test Report that the product 'Soil Conditioner' contained Nitrogen, Phosphorus and Potassium as an essential constituent providing the essential character to the product to classify the same as 'other fertilizer' under CETH 3105. It is further observed that CBEC vide Circular No. 1022/10/2016-CX dated 6.4.2016 has also clarified that for the purpose of classification of any product as 'other fertilizer', chapter note 6 of Chapter 31 is relevant which provides that the term 'other fertilizer' applies only to products of a kind used as fertilizer and contain, as an essential constituent, at least one of the element nitrogen, phosphorus or potassium. In the present case, as evident from Test Report, the product "Soil Conditioner" contains Phosphorus (P)- 5.37%, Nitrogen (N)-1.50%, and Potassium (K)- 0.96%, which clearly establishes that the said product i.e. 'Soil Conditioner' contained Nitrogen (N), Phosphorus (P) and Potassium (K) as essential constituent to qualify the said product as 'other fertilizer'. It is observed that the adjudicating authority has failed to give any logical finding supported by tangible evidence for rejecting the classification of 'Soil Conditioner' under CETSH No. 31059090 of the CETA, 1985. Before framing charge of mis-classification in the show cause notice, the department should have drawn samples of the disputed product and got it to be tested in Government Laboratory for arriving at correct classification of the product, however, it is observed that no such exercise was carried out by the department. In absence of such a crucial evidence, the Test Report submitted by the appellant becomes the decisive factor in the present case and according to the said Test Report, the 'Soil Conditioner' contains



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Nitrogen, Phosphorus and Potassium as essential constituents and hence qualify the said product as 'other fertilizer'. Further, there is force in the submission of the appellant that the adjudicating authority failed to suggest the correct classification of 'Soil Conditioner' if it was not 'other fertilizer'. I find that except holding that the product 'Soil Conditioner' was not classifiable under CETSH No. 31059090 as 'other fertilizer', the adjudicating authority has not suggested the correct classification of the disputed product.

10. In view of above discussion and based on the Test Report, submitted by appellant, CBEC Circular No. 1022/10/2016-CX dated 6.4.2016 and Hon'ble CESTAT's decision in the case of Ramcides Chemicals Pvt. Ltd. vs CCE, I hold that the said product i.e. 'Soil Conditioner', containing Nitrogen (N), Phosphorus (P) and Potassium (K) as essential constituents, single or combination, qualifies as 'other fertilizer' and accordingly merits classification under CETSH No. 31059090 of the CETA, 1985. I also hold that the said product 'Soil Conditioner' is eligible for concessional rate of duty @ 1% adv. under Notification No.1/2011-CE (Sl. No.40) dated 1.3.2011 and subsequently under Notification No. 12/2012-CE (Sl. No.128). Accordingly, I set aside the impugned order and allow the appeal of the appellant.

11. Since, the appeal has been allowed on merit, I hold that there is no need to discuss the other issue viz. applicability of issue of invocation of larger period in the present case. Hence, I do not give any findings on the same. Further, I also set aside the penalty imposed vide impugned order

12. It is also observed that the appellant in their Appeal Memorandum has stated that the adjudicating authority has not disputed eligibility of Soil Conditioner for concessional rate of duty cleared by them under Notification No.1/2011-CE (Sl. No.40), the differential duty of Rs.1,63,318/-, confirmed in the impugned order without basis of law is deserved to be set aside. In this regard, it is noticed that adjudicating authority has committed serious error in the impugned order. The show cause notice was issued to the appellant proposing denial of concessional rate of duty @1% under Notification No. 1/2011-CE (Sl. No.40) and subsequently under Notification No. 12/2012-CE (Sl. No.128) availed by them in respect of clearance of 'Soil Conditioner'. However, while deciding the issue, the adjudicating authority has made discussion and findings only to the extent of the eligibility of concessional rate of duty under Notification No. 12/2012-CE (Sl. No.128). Since, no discussion has been made with regards to eligibility of concessional rate of duty under Notification

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No.1/2011-CE (Sl. No.40), otherwise also, the part demand of Rs.1,63,318/-, raised on account of this notification, deserves to be set-aside. 102

13. In view of the foregoing discussion and findings, I allow the appeal filed by the appellant.

14. The appeal filed by the appellant stands disposed of in above terms.

*Sunil Singh* 28.3.18  
(Sunil Kumar Singh)  
Commissioner (Appeals)/  
Commissioner,  
CGST & Central Excise,  
Gandhinagar

**By Regd. Post AD**

F. No.: V2/117/BVR/2017

Date:28.03.2018

To,

M/s. T. J. Agro Chemicals and Fertilizer Pvt. Ltd.,  
Survey No.93/1 (Part), Dhoraji Road,  
Sukhpur,  
Juagadh- 362 003.

Copy to:

- (1) The Chief Commissioner, CGST & Central Excise, Ahmedabad.
- (2) The Commissioner (Appeals), CGST & Central Excise, Rajkot.
- (3) The Commissioner, CGST & Central Excise, Bhavnagar
- (4) The Assistant Commissioner, CGST & C. Ex., Division Junagadh
- (5) The Assistant Commissioner (Systems), CGST, Rajkot.
- (6) The Superintendent, CGST & Central Excise, AR-Junagadh.
- (7) PA to Commissioner of CGST & Central Excise, Gandhinagar.
- (8) Guard file.