

GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.



ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/ 2025/15
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/07)

Date **22** 09.2025

Name and address of the appellant	:	<i>M/s. Jivagro Limited,</i> Plot No.3133 to 3139, c/o P I Industries Limited, GIDC Panoli, Bharuch, Gujarat-394115
GSTIN of the appellant	:	24AAECJ7119A1Z1
Jurisdictional Office	:	(Center) Commissionerate-Vadodara-II, Division-XI Panoli, Range-II
Advance Ruling No. and Date	:	GUJ/GAAR/R/2023/24, dated 30.06.2023
Date of appeal	:	09.08.2023
Date of Personal Hearing	:	25.06.2025
Present for the appellant	:	Shri Ashok Dhingra (Advocate), Shri Divyang Thakkar

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (for short - 'CGST Act, 2017' and the 'GGST Act, 2017') are '*pari materia*' and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. Jivagro Limited., (for short - 'appellant') against the Advance Ruling No. GUJ/GAAR/R/2023/24, dated 30.06.2023.

3. Briefly, the appellant is engaged in manufacture, import, export, wholesale, retail sale and distribution of Agro Chemicals, Bio-Control, Agri-Inputs and Bio-Stimulants, including Rapigro Liquid as well as Rapigro Granules (collectively "Rapigro").

4. The appellant has further stated that M/s. Isagro (Asia) Agrochemicals P Ltd [for short – M/s. Isagro] merged with P I Industries Ltd & the B2C vertical of



M/s. Isagro was transferred to M/s Jivagro Limited. Prior to this merger, M/s. Isagro was engaged in the manufacture of the product **Rapigro** & was classifying it under HSN 3507 of CETA '85. It is the appellant's case that though they are clearing Rapigro by classifying it under HSN 3507, however, now they feel that the product merits classification under CTH 3101/3105 and, on this premise, had approached the GAAR¹ seeking a ruling on the below mentioned questions *viz*

- (i) Classification of Rapigro under the Customs Tariff Act, 1975;
- (ii) Classification of Rapigro under the Central Goods & Services Tax Act, 2017;
- (iii) Rate of tax payable on Rapigro.

5. GAAR, post admittance & personal hearing, pronounced its impugned ruling vide Advance Ruling No. GUJ/GAAR/R/2023/24 dated 30.6.2023 wherein it was held as under:

- (i) The classification of *Rapigro* under the Customs Tariff Act, 1975 and under the Central Goods & Services Tax Act, 2017 will be under 38089340, as a 'plant growth regulator'.
- (ii) The rate of tax applicable on *Rapigro* is 18% [9% CGST and 9% SGST] as per Sl. No. 87, Schedule III, notification No. 1/2017-CT(Rate) dated 28.6.2017.

6. The below mentioned findings, led the GAAR to arrive at the aforementioned ruling, *viz*

- a) that while fertilizer promotes the growth of plant for increased harvest, the PGRs² work on specific areas resulting in modified growth or even retardation of certain growth;
- b) that as far as classification under TI 3507 is concerned, the applicant has himself given reasons as to why it is not classifiable under 3507;
- c) that during personal hearing, appellant was specifically asked to disclose what was the addition in step 5 of the manufacturing process mentioned as 'organic nutrients obtained through fermentation' which they failed to disclose;
- d) the appellant has not specifically pointed out as to how the product Rapigro would fall under the description 'Others' ie CTH 31010099;
- e) as they failed to disclose the constituents added in step 5 as mentioned in process flow chart, it is difficult to exclude this product from classification as a PGR falling in chapter 3805.
- f) ongoing through the analytical composition provided by the applicant there is no mention or inclusion of secondary or micro nutrients, for the product to fall under fertilizers; further, the analytical composition does not lead to the conclusion that Nitrogen, Phosphorus or Potassium is the constituent giving essential character to the product Rapigro;

¹ Gujarat Authority for Advance Ruling

² plant growth regulators



- g) in terms of the Circular dated 6.4.2016, PGRs are defined as organic compounds other than nutrients that affect the physiological processes of growth and development in plants when applied in low concentration. The technical bulletin of the product states that the rate of application of RAPIGRO, is only 2 ml/ltr water or 200 ml/acre, meaning thereby that such low quantity of formulation is only required, of which the active ingredient will be considerably very negligible, the reason being that the formulation will also include active ingredient along with the filler. This leads to the conclusion that the product is effective in very low concentration.
- h) the characteristics of RAPIGRO *inter-alia* clearly state that it reduces the vegetative growth period without any deleterious effect on the overall duration of the productive phase of plant.

7. Aggrieved, the appellant is before the GAAAR³, against the impugned ruling, dated 30.6.2023, raising the following averments, *viz*

- a) that GAAR took various extraneous considerations into account, which have no bearing on the classification of Rapigro;
- b) that the appellant cannot force M/s. Sowbhagya, to disclose proprietary information in respect of CPH liquid;
- c) that the appellant is not party to any dispute of classification of Rapigro in the past;
- d) that once the product is notified as fertilizer under FCO & bio-stimulant and protein hydrolysates the same cannot be treated as PGR under chapter 3808; that they would like to rely on the judgement in the case of Vasu Pharmaceutical⁴;
- e) for a product to be covered under PGR it needs to have at least promoters or other hypothetical growth substances & inhibitors;
- f) that they would like to rely on the case of Leeds Kem⁵;
- g) that for classification of the product as PGR under 3808, in terms of note 1(a)(2), of chapter 38, the product should be separately defined chemical element or compound & should be put up in forms or packaging for retail sale or as preparations or articles; that in case of Rapigro it is not a separately defined chemical element or compound & hence the same cannot be covered under chapter 38;
- h) that CPH liquid is obtained from vegetable protein which is maize protein technically called Gluten by hydrolysis process and is of vegetable origin and contains nitrogen & other growth elements & hence is classifiable under heading 3101;
- i) that the label of Rapigro shows that it is being marketed as a bio-stimulant & even farmers purchase Rapigro for its fertilizing properties;
- j) that since Rapigro is not separately chemically defined compound, it cannot be treated as PGR & is, therefore, correctly classifiable under 3101 0099;
- k) that classification cannot be changed at the recipient's end.

³ Gujarat Appellate Authority for Advance Ruling

⁴ 2017 (350) ELT 166

⁵ 2001 (134) ELT 294



8. Personal hearing in the matter was held on 21.1.2025, wherein Shri Ashok Dhingra, Advocate, Ms. Sonia Gupta (Advocate) and Shri Divyang Thakker appeared on behalf of the appellant and reiterated the submissions made in the appeal.

8.1 Because of the change in Member (Centre), fresh personal hearing was held on 25.6.2025, wherein Shri Ashok Dhingra, Advocate and Shri Divyang Thakker, appeared on behalf of the appellant and reiterated the submissions made in the appeal and also submitted a compilation consisting of below mentioned test reports and case laws *viz*

- a) Certificate of Analysis, dated 17.9.2011 & 26.9.2011 of Rapigro issued by Doctors' Analytical Laboratories Private Limited;
- b) Test Report by SGS of Rapigro ,dated 30.8.2012;
- c) Test Report No. 40/BP/14-15 dated 12.5.2014 of the National Institute of Plant Management;
- d) Test Report No. NRI/2014/5/430 dated 15.5.2014 of the National Research Centre for Grapes of the Indian Council of Agricultural Research, Pune;
- e) Test Report No. PFT/Analysis/14-15/21, dated 28.8.2014 of the Institute of Pesticide Formulation Technology (IPFT);
- f) Test Report No. 4/7, dated 19.11.2014 of the Plant Pathology of the Indian Agricultural Research Institute, New Delhi;
- g) OIO No. 16/2006(ADC), dated 10.10.2006 passed by the ADC, Customs and Central Excise, Hyderabad-III Commissionerate, Hyderabad;
- i) Northland Industries [1988 (37) ELT 229 (Tri.)]
- j) Hamdard (Wakf) Laboratories [1999 (113) ELT 20 (SC)]
- k) Vardhman Fertilizers & Seeds Private Limited [2017 (345) ELT 560 (Tri.)]
- l) Solufeed Plant Product & Services Limited [2018 (364) ELT 999 (Tri.)]
- m) GB Agro Industries - [2022 (57) GSTL 393 (AAAR-Guj.)]
- n) Criyagen Agri & Biotech Private Limited- [2023 (74) GSTL 241 (AAAR - Kar.)]
- o) Northern Minerals Limited - [2001 (131) ELT 355 (Tri.)]
- p) Northern Minerals - [2003 (156) ELT A161 (SC)]
- q) Safex Chemicals India Limited - [2017 (7) GSTL 234 (Tri.)]
- r) Jai Shree Rasayan Udyog Limited - [2015 (316) ELT 338 (T)]
- s) Leeds Kem - [2001 (134) ELT 294 (Tri.)]
- t) PI Industries Limited vide Interim Order No. 25-30/2024. dated 2.9.2024
- u) PI Industries Limited [Final Order No. 13047-13052/2024. dated 5.12.2024].

FINDINGS

9. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made at the time of personal hearing, the Advance Ruling given by the GAAR and other materials available on record.

10. The controversy revolves around classification of the appellant's product 'Rapigro'. The competing HSN entries, as recorded by the GAAR in its impugned ruling dated 30.6.2023, are HSNs 3101, 3507 and 3808. Paragraph 19 of the impugned ruling lays down the dispute and is reproduced below for ease of reference:

*19. M/s. Jivagro Limited has stated that that they are manufacturing & supplying the product **Rapigro** under TI 3507 since December 2021. The applicant now feels that their product falls under 31010099. An interesting observation that needs a mention is the rate of GST under the various competing entries viz*

Sr. No.	Tariff Item (TI)	Rate of GST	Remarks
1	3101	5%	The applicant now wants Rapigro to be classified under this TI.
2	3507	18%	The applicant and its predecessor M/s. Isagro, was classifying the product Rapigro under this TI.
3	3808	18%	Department in the earlier rounds of classification dispute had ordered classification of Rapigro under this TI.

11. The first averment raised by the appellant is that GAAR took various extraneous considerations into account, which have no bearing on the classification of Rapigro; that the appellant cannot force M/s. Sowbhagya, to disclose proprietary information in respect of CPH liquid; that the appellant is not party to any dispute of classification of Rapigro in the past. The findings recorded by the GAAR in its impugned ruling, is as under, viz.

20. *The GST rate of both TI 3507 and 3808 being 18%, possibly could be the reason for the applicant seeking a ruling proposing classification under TI 3101, which, as is evident, was never in contention in the past as far as the classification of **Rapigro** is concerned.*



21. Be that as it may, we now take up the classification of **Rapigro**. The dispute primarily is whether the product is a fertilizer as claimed by the applicant or a plant growth regulator. We note that there is only a fine distinction between 'fertilizer' and a 'plant growth regulator'. While fertilizer is generally for promoting the growth of plant or crop for desired increased harvest, the plant growth regulators work on specific areas resulting in modified growth or even retardation of certain growth. We find that as far as classification under TI 3507 is concerned, the applicant has himself in depth provided the reasoning as to why **Rapigro** would not fall within the ambit of TI 3507. The department has since years been requesting/informing their predecessor [M/s. Isagro] that **Rapigro** is not classifiable under TI 3507. The explanatory notes which we have reproduced above, clearly state that enzymes are organic substances produced by living cells & have the property of causing & regulating specific chemical reactions inside or outside living cells without themselves undergoing any change in their chemical structure.

22. As per the manufacturing process, applicant purchases CPH [Cereal Protein Hydrolysate] liquid from M/s. Sowbhagya Bioitech P Ltd, Hyderabad [for short – M/s. Sowbhagya]. The applicant, thereafter sends this CPH liquid to M/s. RP Chemtech, Ankleshwar, for converting it into **Rapigro** Liquid by adding DM water to the said CPH liquid and also manufacturing **Rapigro** granules through heating process. The applicant has also provided a process flow chart, [refer para 2.3 of the application], undertaken by M/s. Sowbhagya to obtain CPH liquid.

23. During the course of personal hearing, applicant was specifically asked as to what was the addition in step 5 of the process flow chart reproduced in para 2.3 of the application mentioned as 'organic nutrients obtained through fermentation'. The applicant has shied away from clarifying the same & has once again forwarded the certificate from M/s. Sowbhagya, the contents of which is already reproduced supra to substantiate their argument that it is derived from vegetable source ie maize protein (Gluten).

24. In the aforesaid backdrop, **Rapigro** cannot be termed as an Enzyme. Hence, we agree with the contention put forth by the applicant that the product would not fall within the ambit of 3507. However, this is not withstanding the fact that in the past when proceedings were launched, the applicant vehemently contended before the authorities under the Central Excise Act, 1944, that **Rapigro**, fell within the ambit of 3507.

In the above backdrop, we do not agree with the averment that GAAR took various extraneous considerations into account, which have no bearing on the classification of **Rapigro**. As far as the averment that the appellant cannot force M/s. Sowbhagya, their supplier, to disclose proprietary information in respect of CPH liquid, is concerned, we find that in matters pertaining to advance ruling on



classification, the onus is on the appellant to approach the Authority with clean hands. The averment that the appellant is not party to any dispute of classification of Rapigro in the past, has no standing. In-fact, on going through the compilation submitted during the course of personal hearing, we find that at Annexure 2, the applicant, in the index has stated that they have enclosed "*Certificate of analysis dated 17.9.2011 & 26.9.2011 of Rapigro issued by Doctors Analytical Laboratories P Ltd*". While on one hand the claim put forth is that they are not a party to any dispute of the past, on the other, they submit certificates pertaining to sample of Rapigro GR drawn from their predecessor M/s. Isagro. At the cost of repetition, we need to keep in mind that M/s. Isagro merged with P I Industries Ltd & the B2C vertical of M/s. Isagro was transferred to M/s Jivagro Limited, a newly incorporated subsidiary of PI Industries, which was approved by the National Company Law Tribunal vide its order dated **6.12.2021**.

12. Further, as far as the test reports, annexed in the compilation submitted during the course of personal hearing, as Annexure 2, 3 and 4 are concerned, viz

Annexure	Description	Page No.
	Written Statement dated June 25, 2025.	1 - 16
1.	Original Label of Rapigro Liquid.	17
2.	Certificate of Analysis dated September 17, 2011 and September 26, 2011 of Rapigro issued by Doctors' Analytical Laboratories Private Limited.	18 - 25
3.	Test Report by SGS of Rapigro dated August 30, 2012.	26
4.	Test Report No. 40/BP/14-15 dated May 12, 2014 of the National Institute of Plant Management.	27 - 32
5.	Test Report No. NRI/2014/5/430 dated May 15, 2014 of the National Research Centre for Grapes of the Indian Council of Agricultural Research, Pune.	33 - 47
6.	Test Report No. PFT/Analysis/14- 15/21 dated August 28, 2014 of the Institute of Pesticide Formulation Technology (IPFT).	48
7.	Test Report No. 4/7 dated November 19, 2014 of the Plant Pathology of the Indian Agricultural Research Institute, New Delhi.	49 - 50

we find that the certificate of analysis, test reports etc., are almost a decade old. Further, these are reports pertaining to a period when the present applicant was not even in existence. Most of the pages are not even legible. The reports being nearly a decade old and not obtained in respect of the appellant's product, we are not inclined to take the said reports into cognizance.

13. The next averment raised by the appellant is that once the product is notified as fertilizer under FCO⁶ & bio-stimulant and protein hydrolysates, the same

⁶ Fertilizer (Inorganic, Organic or mixed) Control Order, 1985

cannot be treated as PGR under chapter 3808. They have also relied upon the judgement in the case of Vasu Pharmaceutical, *supra*, to substantiate their averment. The appellant, in his grounds [2.1.1.5.4], has specifically relied upon para 31 of the judgement of the Hon'ble High Court of Gujarat, wherein it was held that the product 'Trichup Oil' was certified to be an Ayurvedic patent and proprietary medicine by the Joint Commissioner, Food and Drugs Control Administration, Gandhinagar & that the said product was manufactured by using active ingredients which are exclusively Ayurvedic Drugs described in Authoritative Books on Ayurvedic (including Siddha & Unani) system of medicines; that even the certificate issued by the Food and Drug Control Administration certifies the product in question to be an Ayurvedic Medicament; that if the department was of the view that the product was not an Ayurvedic Medicament it could have referred the matter to the Adviser, Ayurveda/Sub-Commissioner in terms of CBEC's circular.

14. The analogy being drawn by relying on the case law is that once the FCO has notified the product to be a fertilizer, it cannot be classified under 3808. We, however, find that CBEC's Circular No. 1022/1/2016-CX, dated 06.04.2016 on the issue of classification of micronutrients, multi-micronutrients, plant growth regulators and fertilizers, at para 4.2, states as under:

*"4.2 Any product where the essential elements are not nitrogen or phosphorus or potassium or their mixture would not merit classification under CETH 3105. Further, the specific exclusion of separate chemically defined compounds as laid down in chapter note 1(b) and in the HSN Explanatory Notes to the heading 3105.90, reinforce the above conclusion. **It may also be noted that notifications issued under Fertilizer Control Order are not relevant for deciding classification under the Central Excise Tariff.**"*

[emphasis supplied]

In view of the foregoing, neither the averment nor the reliance on the aforementioned judgement is tenable. We also find that the above view of the Board is approved by the Tribunal in the following cases:-

(a) Rupali Chemicals Vs CCE, Jaipur - [2017 (6) G.S.T.L. 161 (Tri. - Del.)]

4. The learned Counsel pleaded that they are covered by Fertilizer Control Order and also in their clearance invoices they are naming the product as fertilizer. We find these facts are not relevant to decide the classification under Central Excise Tariff, which should be in terms of the wordings of Tariff entries read with relevant chapter notes. As already explained above,



Magnesium Sulphate being a defined inorganic chemical not having any fertilizing element, is correctly classifiable under Chapter 28.

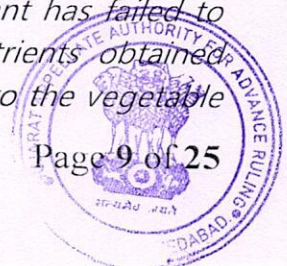
(b) **Sree Ramcides Chemicals P. Ltd. Vs CCE, Tiruchirapalli - [2016 (337) E.L.T. 412 (Tri. - Chennai)]**

17. *As far as the second criteria is concerned, goods are used as fertilizer spray on the foliage, which is not in dispute. As per the definition of the fertilizers, we find that the fertilizers which are either mixed in the soil or also used externally in the form of spray. The Revenue relying on the citation of Hon'ble Karnataka and Himgiri Metals Pvt. Ltd. (supra) are distinguishable and not relevant to the facts of the present case. In that case, the Hon'ble High Court remanded the matter to the authority to confirm whether the products contain elements of nitrogen etc. Whereas, in the present case, there is no dispute on the composition as confirmed from the test reports and confirms that both nitrogen and phosphorous or nitrogen and potassium or either one of the above are present in these mixtures and the usage as folio spray is not under dispute. Therefore, the adjudicating authority relying Fertilizer Control Order (FCO) for deciding the classification under Heading 3105 is not justified and not substantiated. Accordingly, we hold that these products (Sl. No. 3 to 9) qualified to be considered as other chemical fertilizers and contain either nitrogen, phosphorous or potassium, which is the essential constituents to be classified under other fertilizers. Accordingly, we hold that these products are rightly classifiable under Item 3105 90 and not under Item 3824 90*

15. The next averment raised is that that CPH liquid is obtained from vegetable protein which is maize protein technically called Gluten by hydrolysis process and is of vegetable origin and contains nitrogen & other growth elements & hence is classifiable under heading 3101; that classification cannot be changed at the recipient's end.

16. We find that this averment also stands answered by the impugned ruling, viz

31. *On going through the TI 3101 we find that the description mentioned is of animal or vegetable fertilizer, whether mixed together or chemically treated, Guano, & Other which includes animal dung, animal excreta & others. The applicant has not specifically pointed out to us as to how the product **Rapigro** would fall under the description 'Others' ie CTH 31010099. Moreover, at the cost of repetition, the applicant has failed to divulge as to what is the addition of other 'organic nutrients obtained through fermentation' which is added by M/s. Sowbhagya to the vegetable*

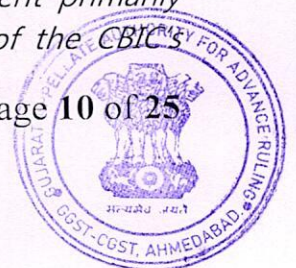


protein to manufacture CPH Liquid. In the present era other than the classical PGRs various other new plant growth promoter/regulator/stimulator are discovered and are currently used by the farmer for increasing their yield/quality of their produce. This fact is forthcoming from Sr. No. (iv) of the comments of ICAR –Indian Agricultural Research Institute, appended with circular No. 1022/10/2016-Cx dated 6.4.2016, which is reproduced below for ease of reference viz:

iv)	Kindly give examples of Plant Micro Nutrients and Plant Growth Regulators naturally found. Kindly also give examples of Plant Growth Regulators and Plant Growth Hormones which are produced industrially and sold in the market,	<p>Micro Nutrients: Iron (Fe), manganese (Mn), zinc (Zn), copper (Cu), boron (B), molybdenum (Mo), nickel (Ni) and chlorine (Cl) are classified as plant micronutrients.</p> <p>Plant Growth Regulators Naturally Found:</p> <ul style="list-style-type: none"> ➤ The plant hormones are identified as promoters (auxins, gibberellin and cytokinin), inhibitors (abscissic acid and ethylene) and other hypothetical growth substance (florigen, flowering hormone, etc.,) ➤ More recently discovered natural growth substances that have phytohormonal-like regulatory roles (polyamines, oligosaccharins, salicylates, jasmonates, sterols, brassinosteroids, dehydrodiconiferyl alcohol glucosides, turgorins, systemin, unrelated natural stimulators and inhibitors) as well as myoinositol. <p>Plant Growth Regulators which are produced industrially are listed in Table 1.</p>
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As the applicant has not disclosed the constituents added in step 5 as mentioned in process flow chart, it is difficult to exclude this product from classification as a plant growth regulator falling in chapter 3805.

40. The applicant has also relied upon the Order-in-Original No. 16/2006 (ADC) dated 30.10.2006 to further aver that since CPH liquid is classified under TI 3101, Rapigro which is manufactured using the said liquid should also fall under the same TI. The argument lacks merit primarily because the OIO has been decided way back before issue of the CBIC's



clarificatory circular dated 6.4.2016, which specifically deals with classification of products falling under fertilizer, plant growth promoter, etc. and going by the same we find that the product viz RAPIGRO is a plant growth regulator.

The findings not having been effectively rebutted by the appellant, we concur with the same.

17. The appellant, in paragraph 2.5.4 of his grounds of appeal, has relied upon the case of M/s. SAIL [2022 (382) ELT 10 (SC)] to substantiate their averment that the classification done at the consignor's end cannot be changed/questioned at the consignee's end. The relevant portion of the said judgement of the Hon'ble SC is reproduced below for ease of reference, viz

3. The facts leading to the present appeal for the purpose of issue involved in the present appeal in a nutshell are as under :

A show cause notice dated 9-5-2000 was issued to the appellant seeking to deny Modvat credit amounting to Rs. 3,09,78,465/- availed by the appellant on capital goods, i.e., 'Guide Car' during the month of March, 2000. As per the show cause notice, the Modvat credit on 'Guide Car' was not available since it was classifiable under Chapter sub-heading 8603.00 of the Central Excise Tariff Act, 1985 (hereinafter referred to as the 'Tariff').

6. We have heard learned counsel for the respective parties at length. At the outset, it is required to be noted that in the case of supplier, 'Guide Car' was classified under Chapter sub-heading 8603.00. As per the settled position of law, classification of a product done at the consignor's end shall be final and that cannot be changed/questioned at the consignee's end. Therefore, 'Guide Car' shall be treated and/or considered as classifiable under Chapter sub-heading 8603.00 of the tariff.

9. Considering the process and the manner in which and/or for the purpose for which the 'Guide Car' is used, by no stretch of imagination, it can be said to be a 'component' of Coke Oven Battery. It cannot be said that without the 'Guide Car' the Coke Oven Battery shall not be functional. The 'Guide Car' is being used for the purpose of transporting the hot coke after it is processed in the Coke Oven Battery. Therefore, 'Guide Car' can be said to be a different equipment distinct from the Coke Oven Battery and cannot be considered to be a part of the Coke Oven Battery. In that view of the matter, the appellant shall not be entitled to the Modvat credit on 'Guide Car' as 'component' and/or part of Coke Oven Battery as claimed by the appellant. The Adjudicating Authority as well as the learned Tribunal have rightly confirmed the demand of Modvat credit availed by the appellant on 'Guide Cars'. We



are in complete agreement with the view taken by the Adjudicating Authority as well as the learned Tribunal.

11. Now so far as the submission on behalf of the appellant that the classification of the 'Guide Car' under Chapter sub-heading 8603.00 shall be applicable prospectively and shall not be applicable retrospectively with respect to supply in the month of November, 1999 and the reliance placed upon the decision of this Court in the case of Cotspun Limited (supra) is concerned, the aforesaid has no substance. It is required to be noted that it was a case of self-assessment by the supplier and the supplier classified the 'Guide Car' under Chapter sub-heading 8428.90, though it was classifiable under Chapter sub-heading 8603.00. That thereafter the appropriate authority classified the 'Guide Car' under Chapter sub-heading 8603.00. Therefore, it will relate back to the original claim and/or relate back to the date of supply/self-assessment.

Though the Hon'ble SC in paragraph 6 has observed that classification of a product done at the consignor's end shall be final and that cannot be changed/questioned at the consignee's end, this observation cannot be read in isolation. It has to be read holistically with the facts of the case. The issue in the aforementioned case is relating to availment of MODVAT credit, which is different from the present dispute. We are aware of the claim of the appellant that their supplier, M/s. Sowbhagya, is classifying the product under HSN 31010099 of the Customs Tariff & that the appellant sends the CPH liquid to job-worker where the same is diluted with DM water & converted into granule form via heating process. It is worthwhile to examine the precedential value in the facts of the present case in the light of the decision of the Hon'ble SC in case of *Collector of C. EX, Calcutta vs Alnoori Tobacco Products* [2004 (170) E.L.T. 135 (S.C.)]. The Hon'ble SC laid down the ground rules for following the decisions as precedence, with the following observation-

"11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at p. 761), Lord Mac Dermot observed:



"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

12. In *Home Office v. Dorset Yacht Co.* [1970 (2) All ER 294] Lord Reid said, "Lord Atkin's speech..... is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* [1972 (2) WLR 537] Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

13. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

14. *The following words of Lord Denning in the matter of applying precedents have become locus classicus:*

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

Viewed in the light of the above decision of the Hon'ble Supreme Court, we find that the issue in this the case, cited by the appellant, is not similar to the present dispute. The material facts not being similar, we find that the reliance by the appellant on the aforementioned case law, is not legally tenable.

18. The next averment of the applicant is that for a product to be covered under PGR, it needs to have at least promoters or other hypothetical growth substances & inhibitors. The applicant further contends that in terms of note 1(a)(2) of chapter 38, the product should be separately defined chemical element or compound & should be put up in forms or packaging for retail sale or as preparations or articles; that in case of *Rapigro* it is not a separately defined chemical element or compound & hence the same cannot be covered under chapter 38 & is, therefore, correctly classifiable under 3101 0099.



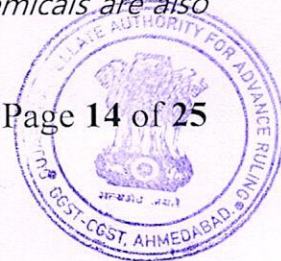
19. For ease of reference, we would like to reproduce the relevant portion of circular No. 1022/10/2016-CX, dated 06.04.2016, which is governing the field, viz

*2.1 **Micronutrients** are essential nutrients that are required in small quantities for the normal growth and development of plants. As on today, iron (Fe), manganese (Mn), zinc (Zn), copper (Cu), boron (B), molybdenum (Mo), nickel (Ni) and chlorine (Cl) are included in this category. These elements are also called minor or trace elements, but this does not mean that they are less important than macronutrients. Reply received from IARI on the subject, enclosed with the circular, may please be referred for further details. Inputs received from the trade indicates that these micronutrients are sold in the market as 'micronutrient fertilizer' supplying one or more of the eight essential nutrients listed above, namely iron to chlorine. However, in the trade parlance sale of micronutrients as 'micronutrient fertilizers' would not lead to classification thereof under chapter 31 as fertilizers for the purposes of Central Excise Tariff. For classification under chapter 31, at least one of the elements, namely - nitrogen, phosphorus or potassium should be an essential constituent of the fertilizer as per chapter note 6 of chapter 31.*

2.2 There is no specific heading in the tariff for classification of micronutrients. However, where the micronutrient is a separate chemically defined compound, it will be classifiable under the heading for that chemically defined compound under chapter 28 or chapter 29. For example, some of the sulphates of micronutrients are specifically covered under CETH 2833.

2.3 Vide Notification no. 12/2016-C.E., dated 1-3-2016, Notification no. 12/2012-C.E., dated 17-3-2012 has been amended and a new serial no. 109A has been inserted to exempt duty of excise in excess of 6%, payable on micronutrients classifiable under chapter 28, 29 or 38 and covered under serial number 1(f) of Schedule 1, Part (A) of the Fertilizer Control Order, 1985 and manufactured by the manufacturers registered under the Fertilizer Control Order, 1985.

*3.1 **Plant Growth Regulators** are defined as organic compounds other than nutrients that affect the physiological processes of growth and development in plants when applied in low concentration. Plant growth regulators are active at low concentrations in promoting, inhibiting or modifying growth and development. They are either natural or synthetic compounds that are applied directly to a target plant to alter its life processes and its structure to improve quality, increase yields, or facilitate harvesting etc. These are in the nature of plant hormones and classical of them are auxins, cytokinins, gibberellins (all three promoters) and abscisic acid, ethylene (both inhibitors). PGRs in the list are not exhaustive and more growth substances are being discovered in this category. PGRs are naturally produced by plants and they act by controlling or modifying, plant growth processes such as formation of leaves and flowers, elongation of stems, development and ripening of fruits etc. Synthetic organic chemicals are also*



used as PGRs and are industrially produced and marketed. A list of some of the PGRs industrially produced in India is enclosed with the reply of IARI.

3.2 It would thus be noted that PGRs are different from nutrients, be it macronutrient or micronutrient. The difference between PGR and micronutrient has been clearly brought out in the reply from ICAR. PGR as a substance is specifically covered under CETH 3808. More specifically, Gibberellic acid and Plant Growth regulators are respectively covered under tariff item 3808 9330 and 3808 9340.

*4. **Fertilizers** are classified under chapter 31 of the Central Excise Tariff and for this purpose they may inter alia be minerals or chemical fertilizers - nitrogenous (CETH 3102), phosphatic (CETH 3103), potassic (CETH 3104) or fertilizers consisting of two or three of the fertilizing elements namely nitrogen, phosphorous and potassium; other fertilizers (CETH 3105). For the purpose of classification of any product as "other fertilizers", chapter note 6 of Chapter 31 is relevant which provides that the term "other fertilizers" applies only to products of a kind used as fertilizers and contain, as an essential constituent, at least one of the elements nitrogen, phosphorus or potassium. It is quite clear that for any product to merit classification under CETH 3105 as other fertilizers, the product must have nitrogen or phosphorus or potassium or their combination as an essential constituent providing the essential character to the product. The chemical elements - nitrogen, phosphorus and potassium are also referred as macronutrients or primary fertilizer elements and are required in higher quantity by the plants.*

4.2 Any product where the essential elements are not nitrogen or phosphorus or potassium or their mixture would not merit classification under CETH 3105. Further, the specific exclusion of separate chemically defined compounds as laid down in chapter note 1(b) and in the HSN Explanatory Notes to the heading 3105.90, reinforce the above conclusion. It may also be noted that notifications issued under Fertilizer Control Order are not relevant for deciding classification under the Central Excise Tariff.

Further, chapter note (1)(a)(2) of Chapter 38 is also reproduced below for ease of reference, viz

Notes

1. This Chapter does not cover :

(a) Separate chemically defined elements or compounds with the exception of the following :

*(1) * * **

(2) insecticides, rodenticides, fungicides, herbicides, anti-sprouting products & plant growth regulators, disinfectants & similar products, put up as described in heading 3808;

** * **



20. Now moving on to the averment, we find that these stand answered by the impugned ruling in paragraph nos. 31 to 38. Paragraph 31 is already reproduced above. In paragraphs 32 to 38, the GAAR held as under:

32. Further, the applicant has relied on the definition of fertilizers as defined under FCO, which states as follows:

Fertiliser means any essential substance, either in straight or mixed form and derived from either inorganic, organic or mixed sources, that is used or intended to be used to provide essential plant nutrients or beneficial elements or both for the soil or for the crop or makes essential plant nutrients available to the plants either directly or by biological process or by both in the soil or plant as notified from time to time by Central Government and specified in the schedules appended to this order or as may be notified by the State Government and includes a bio stimulant and nano fertilizers.

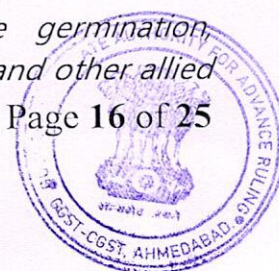
*As per the explanation, **essential plant nutrients** includes any primary nutrients viz nitrogen, phosphorus and potassium, secondary nutrients like calcium, magnesium and sulphur and micro nutrients like zinc, manganese, copper, iron, boron and molybdenum. On going through the analytical composition provided by the applicant [refer para 2.4] we do not find any mention or inclusion of these secondary or micro nutrients.*

33. The circular dated 6.4.2016 clarifies that "It may also be noted that notifications issued under FCO are not relevant for deciding classification under Central Excise Tariff". The averment therefore, that since they have applied and have been granted registration as a bio stimulant under FCO would not be the sole determining factor under the present proceedings.

34. Further the circular dated 6.4.2016 goes on to state that "Where the essential constituent giving character to the mixture is one or more of the three elements namely Nitrogen, Phosphorus or Potassium, the mixture shall be classified under any of the heading of chapter 31, depending upon its composition." Again, ongoing through the analytical composition, we find that neither Nitrogen, Phosphorus or Potassium is the essential constituent giving character to the product **Rapigro**.

35. We find that the applicant has also attached the **Rapigro** Liquid Technical Literature. The introduction states the following viz

- that it is a stable, balanced, systemic & biologically active liquid concentrate consisting of proteins, protein hydrolysates, amino acids, organic acids and short chain peptides;
- it is derived biologically through the process of fermentation and selection of certain products obtained through the fermentation process
- certain cellular products are present in the concentrate;
- it produces certain complex proteins to initiate germination, physiological differentiation in to reproductive phase and other allied



growth activities; they help enhance different physiological process in plants;

- *When it is applied, the plants absorb vitamins, organic acids, etc.;*
- *It increases these compounds level in plants*
- *The benefits/effects are already listed in para 25 above.*

36. Further, we find that the technical literature also lists the important characteristics of "**Rapigro**".

Important characteristics of "RAPIGRO"

- *Activates absorption of available soil nutrients and provides required minerals in readily available form.*
- *Does not affect the genetic make-up of plant but increases yield and crop quality by improving the expression of the genetic potential of the crop.*
- *Vitalizes the plant and induces tolerance to pests and diseases.*
- *Reduces the vegetative growth period without any deleterious effect on the overall duration of productive phase of plant.*
- *Induces the strength to withstand adverse environmental conditions. (High or low temperature, drought, all of which reduce crop yield).*
- *Increases the average yield of plant by stimulating the photosynthetic activity and result in high profitability.*
- *Induces early and uniform maturity of fruit (size, shape, colour development).*
- *The organo-leptic quality of produce is also enhanced through increase in TSS and sugar content (wherever applicable e.g. Mango, grapes, etc.).*
- *It helps plant through crucial physiological changes such as flowers formation and fruit set.*
- *The keeping quality (shelf life) is markedly increased.*
- *Increase colour intensity of leaves, flowers and enhances shelf life of ornamental plants.*
- *Absence of live microorganisms and toxins.*
- *Does not leave any toxic residue on plant body.*
- *Increase chlorophyll content of plant and stimulates photosynthesis.*
- *Brings fast normalcy to metabolic imbalances.*
- *Provides supplementary organic micronutrients, amino acids, short chain peptides, vitamins in a balanced form leading to overall plant development and growth.*
- *A stepping-stone towards satisfying the needs of the emerging biotechnology oriented market segment.*
- *It is compatible with most of agrochemicals, user friendly and environmentally non-toxic*

37. A further reading of the technical bulletin of Rapigro states the following viz



"Rate of application

- 2 ml/ltr water or 200 ml/acre."

38. We understand that both fertilizer and plant growth regulator are different. While a 'fertilizer' promotes growth of the plant, a 'plant growth regulator' on the other hand also stimulates plant growth. The plant growth regulator in-fact promotes/inhibits the growth by affecting the structure at the physiological level. Whereas fertilizers provide nutrients, - the plant growth regulator is an organic component which when applied in low concentration promotes, inhibits or qualitatively modifies plant growth. Plant growth regulator further helps plants in making efficient use of the nutrients for their growth. Plant growth regulators are classified under CETH 38.08 alongside other insecticides, fungicides, herbicides and disinfectants. In-fact plant growth regulator are even considered as pesticides in some parts of the world.

It is in this background, that on a conjoint reading of the technical bulletin, characteristics, rate of application, supra we observe as under-

- *In terms of the circular dated 6.4.2016, PGRs are defined as organic compounds other than nutrients that affect the physiological processes of growth and development in plants when applied in low concentration. The technical bulletin of the product clearly states that the rate of application of the product in question, RAPIGRO, is only 2 ml/ltr water or 200 ml/acre, meaning thereby that such low quantity of formulation is only required, of which the active ingredient will be considerably very negligible, the reason being that the formulation will also include active ingredient along with the filler. This leads to the conclusion that the product is effective in very low concentration.*
- *The characteristics of the product RAPIGRO inter-alia clearly state that the product reduces the vegetative growth period without any deleterious effect on the overall duration of the productive phase of plant. CBIC circular dated 6.4.2016, supra regarding classification of PGR, clearly states viz*
"They are either natural or synthetic compounds that are applied directly to a target plant to alter its life processes and its structure to improve quality, increase yields or facilitate harvesting etc. "

*Thus, we find no difficulty in holding that the product Rapigro merits classification under TI 38089340 as a **Plant Growth Regulator**.*

21. The appellant, in paragraph 2.3.1.7.7 of his grounds of appeal, states that the finding in paragraph 34 of the GAAR after having gone through the analytical composition is contrary to paragraph 5 of the impugned ruling. The averment made is ignoring the fact that under paragraph 5, the contentions as stated by the appellant in his application was recorded. However, the GAAR, having gone through the analytical composition in paragraph 2.4 of appellant's submission



before the GAAR, held that neither Nitrogen, Phosphorus or Potassium is the essential constituent giving character to the product Rapigro. The appellant, except for the above ground, has not refuted the findings except for relying on the judgement of the Hon'ble Tribunal in the case of Cress Industries [2019-TIOL-17-CESTAT-MAD]. We have gone through the judgement. The relevant portion of the judgement is as under

The facts of the case are that the appellants are manufacturers of "Micronutrients" and availing SSI exemption. Pursuant to audit, it emerged that the appellants were also engaged in manufacture of Chelated Zinc as 12%, Chelated Iron as 12% Fe, mixture of Chelated substance. It emerged that appellants are manufacturing the said products under nil rate of duty vide Notification No. 4/2006-CE dated 1.3.2006 classifying the same under Central Excise Tariff Heading 3105 as "other fertilizers". Department took a view that the products would appropriately fall as 'Plant Growth Regulators' under CETA 3808 9340. Proceedings initiated by issue of a show cause notice culminated in an order dated 20.11.2013 by adjudicating authority inter alia holding that the goods are classifiable only as 'Plant Growth Regulators' under CETA 38089340, confirming the differential duty of Rs.14,95,381/-, along with interest thereon and imposition of equal penalty under section 11AC of Central Excise Act, 1944. In appeal, Commissioner (Appeals) vide impugned order dated 26.12.2014 upheld the orders of the original authority. Hence the appellants before this Tribunal

8.5 From the data on plant growth regulators submitted by the appellant, we find that at least in some parts of the world, they are regulated as pesticides. Discernibly, micronutrients which are admittedly for promoting only growth and health of plant cannot logically find a place in this heading.

8.6 It is interesting to note that C.B.E. & C. found it necessary to issue yet one more Circular No. 1022/10/2016-CX, dated 6-4-2016, on the very issue of classification of micronutrients, plant growth regulators, etc. In the first para itself, the circular acknowledges that the issue of classification of these items remain a disputed area in Central Excise. On the basis of opinion obtained from Indian Agricultural Research Institute (IARI), Central Excise Tariff explanatory notes, nature, usage, etc., the C.B.E. & C. has clarified, inter alia, that micronutrients are essential nutrients and required in small quantities for the normal growth and development of plants containing elements like iron, Manganese, Zinc, Copper, Boron, Molybdenum, Nickel, etc. Board has also acknowledged that these micronutrients are sold in the market as micronutrient fertiliser. It has, however, clarified that for classification under Chapter 31, at least one of the elements viz; Nitrogen, phosphorous or potassium should be an essential constituent of the fertiliser. Board has also clearly differentiated plant growth regulators as "organic compound other than nutrients which affect the physiological process of growth and development in plants." Board has further clarified, in para 6 therein, that its past circulars on the subject, viz; dated 21-11-1994 and 19-5-1998 are rescinded and that classification of micronutrients, etc. shall be governed by the present circulars.



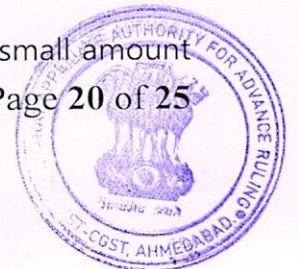
8.7 As per the aforesaid C.B.E. & C. Circular dated 6-4- 2016, plant growth regulators are defined as organic compounds other than nutrients that affect the physiological processes in plants, by hormonal action in promoting inhibiting or modifying growth and development. On the other hand, micronutrients, as explained in the very same circular, are essential nutrients, like iron, Manganese, Zinc, Copper, Boron etc., that are required in small quantities for the normal growth and development of plants. Micronutrients thus cannot modify inhibit retard the growth of plants like plant growth regulators, they only promote normal growth.

8.8 Applying the above findings, it clearly emerges that the impugned products definitely do contain more than one of the essential nutrients listed in the circular, they have also contain recognisable percentage of nitrogen. This being so, the disputed items are certainly micronutrients. In view of presence of nitrogen, and also considering that they are mixtures and not separate chemically defined compounds, the said goods would therefore come under the ambit of micronutrient fertilisers and will then required to be classified as in "other fertilisers" in CETH 31.05.

The appellant, after extensively quoting from the judgement of the Hon'ble Tribunal, has not stated how this is applicable specifically to their case, more so since the judgement relies on the circular dated 6.4.2016, which was also relied upon by the GAAR in its impugned ruling. It appears that the appellant wants to rely on the analytical composition of CPH liquid provided by M/s Sowbhagya Biotech (P) Ltd. (their supplier), which is reproduced below:-

<u>Analytical Composition</u>		
S. No.	PARAMETERS	SPECIFICATIONS
01	Description	Brown Colour liquid
02	pH (As Such)	2.0±0.5
03	pH (0.4% aqueous Solution)	6.0±0.5
04	Specific Gravity (gm/ml)	1.15±0.05
05	Dissolved Solids (%)	40% min
06	Solubility in water	Soluble
07	Total Nitrogen (W/v)	3.0 min
08	Amino acid(W/v)	8.0%min
09	Other Organic Nutrients (W/v)	10%min

Firstly, the said analytical composition is not in respect of their product 'Rapigro'. The CPH liquid is one of their raw materials, which they procure from M/s Sowbhagya Biotech (P) Ltd., on which some process is undertaken by the appellant to manufacture their final product i.e Rapigro. Therefore, we do not find it worthwhile to take cognizance of the same. Secondly, presence of a small amount



of nitrogen in the product will not automatically bring it into the ambit of a fertilizer. It is the essential character of the product which determines the classification of the product. While a fertilizer promotes growth, a plant growth regulator promotes/inhibits the growth by affecting the structure at the physiological level. A plant growth regulator, when applied in low concentration, promotes, inhibits or qualitatively modifies plant growth. The GAAR in Para 38, reproduced *supra*, after going through the technical bulletin of the RAPIGRO, has dealt with in detail as to why the product falls under the category of plant growth regulator.

22. During the course of the personal hearing, the representative of the appellant was specifically asked as to whether they can provide any documents/report from any experts to the effect that their product "*Rapigro*" merely provides nutrients to the plant and does not alter physiological process. The authorized representative drew the attention to pages 18 to 26 of the submission made during the course of personal hearing, (index reproduced *supra*) to inform that the copies of the reports have been submitted. As is already mentioned at paragraph 12 *supra*, the certificate of analysis, test reports etc., are almost a decade old and most are not even legible. On this account, as stated *supra*, we are not inclined to take cognizance of the said reports.

23. Lastly, the appellant has relied upon various case laws, *viz.*

a) Northland Industries - [1988 (37) ELT 229 (Tri.) and Hamdard (Wakf) Laboratories - [1999 (113) ELT 20 (SC)].

In these two judgements, the principle laid down is that though definitions of other enactment cannot be basis of construing Tariff schedule, it is permissible to look at these definitions to have an idea as to how authorities concerned with a particular industry have viewed the subject.

However, consequent to the aforementioned judgements, CBIC vide its circular dated 6.4.2016, has in paragraph 4.2 stated that "it may also be noted that notifications issued under the Fertilizer Control Order are not relevant for deciding classification under Central Excise Tariff."

Now, the mention of the term Central Excise Tariff, would not make much difference as the Hon'ble SC in the case of M/s. Thermax Ltd [2022 (382) ELT 442 (SC)], held as under:



"6. The definition of a product given in the HSN should be given due weightage in the classification of a product for the purpose of levying excise duty. This is because in the Statement of Objects and Reasons of the Bill leading to enactment of Central Excise Tariff Act, 1985, it was clearly stated that the pattern of tariff classification is broadly based on the system of classification derived from the International Convention on the Harmonised Commodity Description and Coding System (Harmonised System) with such contraction or modification thereto as are necessary, to fall within the scope of the levy of Central Excise duty. The tariff so suggested for the levy under the Indian Tariff Act is based on an internationally accepted nomenclature, in the formulation of which, all considerations, technical and legal, have been taken into account. This was done to reduce avoidable disputes on tariff classification. Besides, the tariff would be on the lines of the harmonized system. It was also borne in mind that the tariff on the lines of the harmonized system would bring about considerable alignment, between the Customs and Central Excise Tariffs, which in turn, would facilitate charging of additional customs duty on imports, equivalent of excise duty. It was therefore expressly stated in the Statement of Objects and Reasons that the Central Excise Tariff are based on the HSN and the internationally accepted nomenclature was as such taken into account, to reduce tariff classification disputes."

In GST, in terms of explanation of Notification No. 1/2017-CT(R), dated 28.06.2017, Customs Tariff Act, 1975 has been adopted for classification, etc. Both the Tariffs have been adopted from the the International Convention on the Harmonised Commodity Description and Coding System (Harmonised System).

b) Vardhman Fertilizers & Seeds Private Limited- [2017 (345) ELT 560 (Tri.).

The appellant has emphasized the findings of the Hon'ble Tribunal at para 8 wherein it is held that inclusions of the imported items in the FCO, cannot but reinforce the opinion that these are indeed fertilizers as decided by the competent department of the Government of India.

However, on going through the judgement it is observed that the clarification issued by CBIC vide its circular dated 6.4.2016, which has in paragraph 4.2 stated that "it may also be noted that notifications issued under the Fertilizer Control Order are not relevant for deciding classification under Central Excise Tariff" was not brought to the notice of the Hon'ble Tribunal. Also, as mentioned in para 14 supra, in the case of **Rupali Chemicals Vs CCE, Jaipur - [2017 (6) G.S.T.L. 161 (Tri. - Del.)]**, it has been held that inclusion of a product in FCO is not relevant to decide the classification under Central Excise Tariff,



which should be in terms of the wordings of Tariff entries read with relevant chapter notes.

c) GB Agro Industries-[2022 (57) GSTL 393 (AAAR-Guj) & Criyagen Agri & Biotech Private Limited-[2023 (74) GSTL 241 (AAAR -Kar).

In terms of Section 103 of the CGST Act, 2017, the advance ruling pronounced by the Appellate Authority is only binding on the applicant and the jurisdictional officer. The reliance therefore on these two appellate rulings are not legally tenable.

d) Northern Minerals Limited-[2001 (131) ELT 355 (Tri.)] & Northern Minerals-[2003 (156) ELT A161 (SC)]

The judgement of the Hon'ble Tribunal, upheld by the Hon'ble Supreme Court, lays down the principle that a PGP⁷ will only promote growth of plant and will not inhibit it; that on the other hand, a PGR can inhibit, promote or otherwise alter physiological process in plants.

We find that the impugned ruling of GAAR dated 30.6.2023, has followed the aforementioned principle, which incidentally also finds a mention in the circular dated 6.4.2016.

e) Safex Chemicals India Limited - [2017 (7) GSTL 234 (Tri.)]

In this case, the Tribunal decided the classification based on the chemical report.

In the present dispute, though test reports are annexed during the course of personal hearing, as is already mentioned *supra*, we find that the same is almost a decade old and not obtained in respect of the products manufactured by the Appellant herein as they pertain to the appellant's predecessor. The reliance, therefore, on these reports is not tenable.

f) Jai Shree Rasayan Udyog Limited - [2015 (316) ELT 338 (T)]

Though the case laws deal with classification of a product as a bio-fertilizer or a PGR, the facts being different, the reliance is not tenable.

g) PI Industries Limited vide Interim Order No.25-30/2024, dated 02.09.2024 & PI Industries Limited [Final Order No. 13047-13052/2024, dated 05.12.2024].

Vide the interim order dated 02.09.2024, the Larger Bench of the Hon'ble CESTAT answered the reference of the Division Bench. The relevant paragraphs are reproduced below for ease of reference:

⁷ plant growth promoter



"49. The following four aspects would demonstrate the distinction between fertilizers and plant growth regulators.

Purpose

(i) Fertilizers primarily provide essential nutrients to plants, aiding in their growth, development, and overall health. They ensure that plants have an adequate supply of nutrients for optimal performance

(ii) Plant growth regulators, on the other hand, influence and control specific physiological processes within plants, such as growth patterns, flowering, fruit development, and response to environmental stimuli.

Mode of Action

(i) Fertilizers work by supplying nutrients directly to the soil or plants, which are then absorbed by the roots and utilized for various metabolic processes within the plant.

(ii) Plant growth regulators function by interacting with plant hormones and signaling pathways, altering gene expression, and ultimately modifying plant growth patterns and responses.

Application

(i) Fertilizers are applied to ensure a consistent supply of nutrients throughout the growing season. They can be applied before planting, during growth stages, or as a foliar spray.

(ii) Plant growth regulators are applied in specific concentrations and at precise timings to elicit desired responses in plants. They are used to manipulate plant growth processes at critical stages of development.

Effects

(i) Fertilizers enhance overall plant growth, increase crop yield, improve nutrient uptake, and support healthy plant development.

(ii) Plant growth regulators can induce specific responses in plants, such as promoting flowering, delaying senescence, improving fruit quality, or enhancing stress tolerance.

52. The reference would, therefore, have to be answered in the following manner:

(i) A plant growth promoter cannot be equated with a plant growth regulator. A plant growth promoter only promotes the growth of the plant and does not inhibit it. On the other hand, a plant growth regulator inhibits, promotes or otherwise alters the physiological processes in a plant. The view to the contrary taken by the Division Bench in the referral order is not correct; and

(ii) Siapton 10L and Isabion merit classification as fertilizers under ETI 3101 00 99 and not as a plant growth regulator under ETI 3808 93 40."



Thereafter, the division Bench, following the directions of the LB, disposed of the main matter under which the reference was made to the LB in the first place. It is at this juncture that we feel it appropriate to refer to the technical literature and characteristics of the product "Rapigro", which we have already reproduced at paragraph 20. A conjoint reading of the purpose, mode of action, application, effects along with the technical literature and important characteristics of the product in question, *i.e.* Rapigro, leads us to a conclusion that it is a PGR.

24. In view of the foregoing, we find that the appellant has not produced anything to warrant any interference with the findings of the impugned ruling.

25. To sum up, we concur with the findings of the GAAR and, hence, uphold the impugned ruling dated 30.06.2023. In view thereof, we reject the appeal filed by appellant M/s. Jivagro Limited, against the Advance Ruling No. GUJ/GAAR/R/2023/24, dated 30.06.2023.



(Rajeev Topno)

Member [SGST]



(Sunil Kumar Mall)

Member [CGST]

Place: Ahmedabad

Date: 22/09/2025



