

GUJARAT-AAAR

No.-GUJ/GAAAR/APPEAL/2021/2

Shivam Agro Industries-Appellant

J.P. Gupta And Seema Arora, Member

Date of order: 06/07/2021

Appearance:

Shri Rahul Bhatt for the Applicant.

Case referred/cited :-

1. [Shivam Agro Industries](#)
2. Shanker Raju Versus Union of India
3. Ratan Melting & Wire Industries

JUDGMENT

The appellant, M/s. Shivam Agro Industries filed an application for advance ruling before the Gujarat Authority for Advance Ruling (herein after referred to as the 'GAAR'), wherein it submitted that it is engaged in the manufacture and supply of Zinc Ethylenediamine Tetra Acetic Acid (Zn EDTA – Chelate Zinc as Zinc EDTA), Iron Ethylenediamine Tetra Acetic Acid (Fe EDTA – Chelate Iron as Fe. EDTA), and other products. It submitted that the product 'Zn EDTA' contains Zinc 12%+, Nitrogen – 6.9%, EDTA Acid, Salt and it has Ph level of 6 – 6.5; that the product 'Fe EDTA' contains Iron 12%+, Nitrogen – 6.5%, EDTA Acid, Salt and Ph level 6-6.5; that these products are sold in 25 kgs. Packing in HDPE Bags; that the products 'Zn EDTA' and 'Fe EDTA' are covered under serial number 1(g) of Schedule 1, Part (A) of the Fertilizer (Control) Order, 1985; that these products are used as fertilizer to overcome zinc deficiency and iron deficiency respectively, in plants as well as a source of zinc and iron respectively for those plants which require zinc and / or iron for their normal growth and higher yields. The appellant also submitted that it is registered under the Fertilizer (Control) Order, 1985 with the Deputy Director of Agriculture (Extension), District Mehsana, Gujarat.

2. The appellant raised the following questions for advance ruling before the GAAR –

(i) Whether the products 'Zn EDTA' (Zinc Ethylenediamine Tetra Acetic Acid) and 'Fe EDTA' (Iron Ethylenediamine Tetra Acetic Acid) being supplied by the

applicant are classifiable under Chapter Heading 2833, 2921, 3105 or 3808 or any other Chapter Heading of the Customs Tariff Act, 1962;

(ii) Whether the products 'Zn EDTA' (Zinc Ethylenediamine Tetra Acetic Acid) and 'Fe EDTA' (Iron Ethylenediamine Tetra Acetic Acid) being supplied by the applicant are covered under S. No. 182D of Schedule – I, S. No. 56 of Schedule – II, S. No. 40, 45 or 87 of Schedule-III, or any other S. No. of any of the Schedules of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 (as amended) and corresponding Notification No. 1/2017-State Tax (Rate) dated 30.06.2017 (as amended) and Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended); and

(iii) Whether the supply of products 'Zn EDTA' (Zinc Ethylenediamine Tetra Acetic Acid) and 'Fe EDTA' (Iron Ethylenediamine Tetra Acetic Acid) by the applicant to the recipient, who is not registered under the Fertilizer Control Order, 1985, will have any impact on the applicability of particular S. No. of Schedule of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 (as amended) and corresponding Notification No. 1/2017-State Tax (Rate) dated 30.06.2017 (as amended) and Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended), as determined under question No. (ii) above, on supply of such 'Zn EDTA' (Zinc Ethylenediamine Tetra Acetic Acid) and 'Fe EDTA' (Iron Ethylenediamine Tetra Acetic Acid). If yes, what would be the correct S. No. and Schedule of aforesaid Notification No. in case of supply of products 'Zn EDTA' (Zinc Ethylenediamine Tetra Acetic Acid) and 'Fe EDTA' (Iron Ethylenediamine Tetra Acetic Acid) by the applicant to the recipient, who is not registered under the Fertilizer Control Order, 1985.

3. The GAAR has referred to the meanings assigned to the terms 'Fertilizers', 'Plant Growth Regulators' and 'Micronutrients'. The GAAR has observed that for any product to merit classification under Chapter Heading 3105 as 'other fertilizers', the product must have nitrogen or phosphorus or potassium or their combination as an essential character to the product; that any product where the essential elements are not nitrogen or phosphorus or potassium or their mixture, would not merit classification under CTH 3105. It has further observed that the mixtures of micronutrients / multi-micronutrients with fertilisers shall be classified according to their essential characters and general rules for interpretation of the schedule to the tariff; that where the essential constituent giving character to the mixture is one or more of the three elements namely Nitrogen, Phosphorous or Potassium, the mixture shall be classified under any of the heading of Chapter 31, depending upon its composition; on the other hand, where the essential character of the product is that of mixture of micronutrients / multi-micronutrients having predominately trace elements, it shall be classified under CTH 3824 99 90 as chemical products not elsewhere specified or included. The GAAR has considered the composition of the products and has observed that the appellant had submitted that the Nitrogen is contained in EDTA; that once the impugned products are delivered at the plant system, EDTA breaks out, resulting in release of nitrogen. In view thereof, the GAAR has concluded that the products in question are 'micronutrients' and merit classification under Chapter sub-heading 3824 99 90. As regards the various decisions cited by the appellant, it has been observed by the GAAR that in those decisions, Hon'ble CESTAT dealt with the dispute of the classification of micronutrients in Central Excise regime and hence, ratio of the same cannot be applied in GST regime. Accordingly, the **GAAR, vide Advance Ruling No. [GUJ/GAAR/R/79/2020 dated 17.09.2020](#)**, has ruled as follows –

Answer 1 : *The products, viz. "Zn EDTA" and "Fe EDTA" manufactured and supplied by the applicant are classifiable under HSN 3824 99 90 of the First Schedule to the Customs Tariff Act, 1975.*

Answer 2 : The products, 'Zn EDTA' and 'Fe EDTA', being supplied by the applicant are covered under Sl. No. 56 of Schedule-II of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 (as amended) and corresponding Notification No.1/2017-State Tax (Rate) dated 30.06.2017(as amended) and Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended), attracting GST @ 12% (6% SGST +6% CGST).

Answer 3 : Answered in Negative, as discussed above.

4.1 Aggrieved by the aforesaid ruling, the appellant has filed the present appeal wherein it has been submitted that the GAAR has not appropriately answered the Questions No. 1 and 2, though they fully agree with the advance ruling given in respect of Question No. 3. The appellant has requested to condone the delay in filing of appeal as initially it was under an impression that there was no provision for statutory appeal against Advance Ruling, and subsequently on being learnt that an appeal can be filed before this authority, the same could not be filed due to 'Covid 19' pandemic and Dipavali festival. The appellant has also referred to the **order dated 23.03.2020 of the Hon'ble Apex Court in Suo Motu Writ Petition (Civil) No. 3/2020.**

4.2 The appellant has referred to the Chapter Heading 3105 and Note 6 of Chapter 31 of the First Schedule to the Customs Tariff Act, 1975 (herein after referred to as the 'CTA, 1975') and has submitted that the products in question contains 6.5 % / 6.9% Nitrogen as an essential constituent apart from Zinc / Iron and other material and these products are known as 'Micronutrient Fertilizers' and are used to overcome zinc / iron deficiency, therefore these products satisfy all the requirements of being classified as 'other fertilizers' under Chapter Heading 3105 in terms of said Note 6 of Chapter 31 of the CTA, 1975.

4.3 The appellant has submitted that the Hon'ble CESTAT, in respect of the products similar to the products of the appellant, has held the same to be classifiable under Chapter Heading 3105 in the case of **Aries Agrovet Industries Ltd. [2017 (7) GSTL 317 (Tri.-Hyd.)]** which view has been upheld in the subsequent decision in the case of **Shivashakthi Bio Planteec Ltd. [2019 (20) GSTL 243 (Tri.-Hyd.)]**. It has been submitted that the aforesaid decisions have been accepted by the department on merit, as such the issue of classification of Micronutrient Fertilizers under Chapter Heading 3105 has attained finality.

4.4 The appellant has referred to the dictionary meaning of the term 'fertilizers' relied upon by the GAAR and has submitted that its products contain zinc and nitrogen / iron and nitrogen; that zinc, iron and nitrogen are used in these products primarily for their plant nutrient content, therefore, the products 'Zn EDTA' and 'Fe EDTA' of the appellant satisfies all the requirements of the definition of 'Fertilizers' relied upon by the GAAR.

4.5 As regards the not following of the decisions of the Hon'ble CESTAT by the GAAR, the appellant has submitted that though the decisions cited by it were in Central Excise regime, the tariff entries, relevant Chapter Notes and Section Notes and the principles to be adopted for classification of the products were same under the Central Excise regime as they are under the Goods and Services Tax regime, therefore the decisions of the Hon'ble CESTAT should not have been disregarded merely on the ground that the same were pertaining to Central Excise regime. It has also been submitted that the Appellate Authority for Advance Ruling in Gujarat as well as in other States and the Authorities for Advance Ruling in different States, including Gujarat, have relied upon the decisions pertaining to Central Excise regime for determination of questions of classification of different products.

5.1 The appellant, vide letter dated 04.05.2021, has made further written submission, wherein apart from reiterating the earlier submissions, it has been submitted that the products similar to the products in question have consistently been held to be classifiable under Chapter Heading 31.05 by the different adjudicating authorities and different benches of the Hon'ble Tribunal.

5.2 The appellant has referred to Chapter Note 6 of Chapter 31 of the CTA, 1975 and has submitted that in order to be covered under heading 3105 as "other fertilisers", twin conditions need to be fulfilled viz. (i) the product should be of a kind used as fertilisers; and (ii) the product should contain, as an essential constituent, at least one of the fertilizing elements nitrogen, phosphorus or potassium.

5.3 The appellant has submitted that the products in question are of a kind used as fertilizer. The appellant has referred to the definition of 'fertilisers' given in sub-clause (h) of clause (2) of the Fertiliser (Control) Order, 1985 and has submitted that the products 'Zn EDTA' and 'Fe EDTA' squarely falls within the said definition of the term 'fertiliser'. It has further been submitted that both the products have been specified at entry 7 and 8, Serial No. 1(g) of the [Schedule I](#), Part A of the Fertiliser (Control) Order, 1985, as amended. The appellant has also submitted that their products satisfy all the requirements of the definition of 'Fertilizers' relied upon by the GAAR. It has been submitted that the appellant is registered under the Fertilizer (Control) Order, 1985 and a Registration Certificate under the Fertilizer (Control) Order, 1985 has been issued to the appellant by the Deputy Director of Agriculture (Extension), District Mehsana, Gujarat. The appellant has also referred to Para 20 of the **Order No. A/86615/2018 dated 31.05.2018** of the Hon'ble CESTAT and has submitted that the products in question are of a kind used as fertilisers.

5.4 The appellant has submitted that the products 'Zn EDTA' and 'Fe EDTA' contain Nitrogen as an essential constituent. It has been submitted that EDTA is used in the manufacture of chelated fertilisers 'Zn EDTA' and 'Fe EDTA', as EDTA is the only permitted chelating agent in India under the Fertilizer (Control) Order 1985, as amended, promulgated by the Ministry of Agriculture, Government of India; that the Nitrogen is a constituent in EDTA and 'Zn EDTA' / 'Fe EDTA' cannot be manufactured without EDTA, hence Nitrogen is an essential constituent of the products 'Zn EDTA' and 'Fe EDTA'.

5.5 The appellant has submitted that the Chapter Note 6 of Chapter 31 requires that the product, to be covered under 'other fertiliser', should contain Nitrogen as an essential constituent, and not as a predominant constituent, giving essential character to the product. It has further been submitted that in the said Chapter Note, no minimum percentage of Nitrogen to be contained in the product to be classified as 'other fertiliser' has been prescribed; that the only requirement is that the Nitrogen contained in the product should be an essential constituent. The appellant has relied upon the Order-in-Original No. 25/2005 of the **Commissioner of Central Excise, Hyderabad-IV, the Orders of the Hon'ble CESTAT reported at 2017 (7) GSTL 317 (Tri.-Hyd.) and Order No. A/86615/2018**. The appellant has submitted that its products, thus contain Nitrogen as an essential constituent. It has been submitted that as the twin conditions of Note 6 of Chapter 31 are fulfilled in case of the products in question, both these products are classifiable under Chapter Heading 3105 as "other fertilisers".

5.6 The appellant has submitted that the doctrine of Stare Decisis is also applicable in this case and has relied upon the judgement of the Hon'ble Supreme Court in the case of **Shanker Raju Versus Union of India [2011 (271) E.L.T. 492 (S.C.)]**. It has been submitted that the Additional Collector of Central

Excise, Hyderabad held the products 'Chelamin' and 'Agromin' as 'fertiliser' classifiable under Central Excise Tariff sub-heading 3105.00; that on appeal by the department, New Delhi Bench of **Hon'ble Tribunal, vide Final Order No. 549/98C dated 12.08.1998 [1998 (104) E.L.T. 524 (Tribunal)]** upheld the order of the Additional Collector by relying on the judgement of the **Hon'ble Supreme Court in the case of Ranadey Micronutrients [1996 (87) E.L.T. 19 (SC)]**. It has been submitted that the products similar to the products of the appellant have been held to be classifiable under Chapter Heading 3105 by the **Commissioner of Central Excise, Hyderabad-IV, vide Orders No. 25/2005 dated 30.11.2005 and 3/2006 dated 29.05.2006**, which have been upheld by the Hyderabad Bench of the **Hon'ble Tribunal vide Final Order No. A/30767-30768/2017 dated 19.06.2017**, followed by subsequent **Final Order Nos. A/30480-30483/2018 dated 31.01.2018 and A/31234-31236/2017 dated 20.06.2017**. It has been submitted that the **Final Order No. A/30767-30768/2017 dated 19.06.2017 and the Final Order No. A/30480-30483/2018 dated 31.01.2018** of the Hon'ble Tribunal, to the extent of classification of products, have been accepted on Merits by the Central Tax and Central Excise Department. The appellant has also referred to the Order-in-Original no. 26/2006 dated 27.11.2006 passed by the Commissioner of Central Excise, Mumbai-II wherein the similar products were held classifiable under Chapter Heading 3105 / 3105 90 90, which has been upheld by the Mumbai Bench of the **Hon'ble Tribunal, vide Order No. A/86615/2018 dated 31.05.2018**. It has been submitted that as the Hon'ble Supreme Court, different benches of the Hon'ble Tribunal and different adjudicating authorities, have consistently held that the products similar to the products 'Zn EDTA' and 'Fe EDTA' of the appellant are classifiable under Chapter Heading 31.05 as 'other fertilisers', and the decisions of the Hon'ble Tribunal have been accepted by the department on merit, the view which has held the field for more than 25 years, should not be unsettled.

5.7 The appellant has submitted that though the Customs Tariff has been followed in the GST, the decision in respect of relevant chapter notes and section notes and classification under Chapter Heading / Sub -heading / Tariff item rendered for Central Excise Tariff are equally applicable as the Customs Tariff and the Central Excise Tariff are similar. The appellant has relied upon the decision of the Hon'ble Tribunal in the case of **Jersyindia Ltd. [2001 (131) E.L.T. 434 (Tri. – Del.)]** in this regard.

5.8 The appellant has also relied upon the judgements of the **Hon'ble Gujarat High Court in the cases of Raymon Glues & Chemicals [2000 (117) E.L.T. 29 (Guj.)] and General Foods Ltd. [2010 (258) E.L.T. 449 (Guj)]** and Hon'ble Supreme Court judgement in the case of **Ratan Melting & Wire Industries [2008 (231) E.L.T. 22 (S.C.)]**.

5.9 The appellant has requested to hold the products 'Zn EDTA' and 'Fe EDTA' classifiable under Chapter Heading 31.05 (Tariff Item 3105 90 90) as 'Other fertilisers' attracting Goods and Services Tax @ 5% (CGST 2.5% + SGST 2.5% or IGST 5%) under Sr. No. 182D of [Schedule I](#) of [Notification No. 1/2017-Central Tax \(Rate\)](#) dated 28.06.2017, as amended, and corresponding Notification issued under the Gujarat Goods and Services Tax Act, 2017.

FINDINGS :-

6. We have considered the submissions made by the appellant in the appeal filed by them, in the further written submission as well as at the time of personal hearing, Ruling given by the GAAR and other evidences available on record.

7. The present appeal has been filed on 04.12.2020. The appellant has submitted that [Advance Ruling No. GUJ/GAAR/R/79/2020 dated 17.09.2020](#) , was

received by them on 07.10.2020. The appellant has submitted that initially they were under an impression that there is no provision for statutory appeal against the Advance Ruling and thereafter they could not file appeal due to 'Covid 19' pandemic and Dipavali festival. The appellant has also submitted that the *Hon'ble Apex Court, in Suo Motu Writ Petition (Civil) No. 3/2020, vide Oeder dated 23.03.2020*, has ordered that a period of limitation in all proceedings, irrespective of the limitation prescribed under the general law or Special Law, whether condonable or not, shall stand extended w.e.f. 15.03.2020 till further order/s to be passed by the Apex Court in the said proceedings. We take into consideration the fact that the Goods and Services Tax is a new tax regime and there may be bona-fide mistake on the part of registered person. We also take into consideration that there was 'Covid 19' pandemic in the country and Hon'ble Apex Court has also issued directions for extending the period of limitations. Therefore, the delay in filing of appeal in this case is condoned in exercise of the powers contained in proviso to the sub-section (2) of [Section 100](#) of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017').

8. The issue involved in this case is regarding proper classification of the products 'Zn EDTA' and 'Fe EDTA' and the related issue is the applicable rate of Goods and Services Tax on these products.

CLASSIFICATION OF THE PRODUCTS

9. The appellant has submitted that the product 'Zn EDTA' contains Zinc 12%+, Nitrogen – 6.9%, EDTA Acid, Salt and it has Ph level of 6 – 6.5 and the product 'Fe EDTA' contains Iron 12%+, Nitrogen – 6.5%, EDTA Acid, Salt and it has Ph level 6-6.5. The appellant has submitted that these products are classifiable under Chapter Heading 31.05 (Tariff Item 3105 90 90) as 'other fertilisers', whereas the GAAR has held these products are classifiable under Tariff Item 3824 99 90 of the CTA, 1975.

10.1 Chapter heading 3105 of the CTA, 1975 covers "Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg."

10.2 The appellant has claimed that the products under consideration fall under chapter heading 3105 of the CTA, 1975 as '**other fertilisers**'. The appellant has also referred to the dictionary meaning of the term 'fertiliser' as well as the term 'fertiliser' defined in sub-clause (h) of clause (2) of the Fertiliser (control) Order, 1985, as amended.

10.3 It is a settled principle that the dictionary meaning or the definition given in other enactment cannot be adopted when the meaning of the term has been specified in the Chapter Note or Section Note of the CTA, 1975. We observe that in respect of 'other fertilisers' of chapter heading 3105, Chapter Note 6 of Chapter 31 of the CTA, 1975 provides as follows –

"6. For the purposes of heading 3105, the term "other fertilisers" applies only to products of a kind used as fertilisers and containing, as an essential constituent, at least one of the fertilising elements nitrogen, phosphorus or potassium."

10.4 Thus, as per Chapter Note 6 of Chapter 31 of the CTA, 1975, the product, to be termed as "other fertilisers", should contain at least one of the fertilizing elements nitrogen, phosphorus or potassium, as an essential constituent. In this regard, the specifications for the products 'Zn-EDTA' and 'Fe-EDTA' given at

serial no. 1(g) of Part-A Schedule-I of the Fertilizer Control Order, 1985 may be referred, which are as follows –

7. Chelated Zinc as Zn-EDTA		
(i)	Appearance – Free flowing crystalline or powder or Tablet	
(ii)	Zinc content (Expressed as Zn), per cent by weight minimum in the form of Zn-EDTA	12.0
(iii)	pH(5% solution)	6.0-6.5
(iv)	Lead (as Pb) per cent by weight, maximum	0.003
(v)	Cadmium (as Cd) per cent by weight, maximum	0.0025
(vi)	Arsenic (as As) per cent by weight, maximum	0.01

8. Chelated Iron as Fe-EDTA		
(i)	Appearance – Free flowing crystalline / powder	
(ii)	Iron content (Expressed as Fe), per cent by weight minimum in the form of Fe-EDTA	12.0
(iii)	pH(5% solution)	5.5-6.5
(iv)	Lead (as Pb) per cent by weight, maximum	0.003
(v)	Cadmium (as Cd) per cent by weight, maximum	0.0025
(vi)	Arsenic (as As) per cent by weight, maximum	0.01

It is evident from the aforesaid specifications for the products ‘Zn-EDTA’ and ‘Fe-EDTA’ given in the Fertilizer Control Order, 1985 that minimum percentage of Zinc is essential in the product ‘Zn-EDTA’ and minimum percentage of Iron is essential in the product ‘Fe-EDTA’, besides some other requirements. However, in the specifications of these products given in the Fertilizer Control Order, 1985, no requirement of any of the fertilizing elements nitrogen, phosphorus or potassium has been mentioned. Therefore, it cannot be said that the products ‘Zn-EDTA’ and ‘Fe-EDTA’ contain at least one of the fertilizing elements nitrogen, phosphorus or potassium as “an essential constituent”, which is one of the prime requirements as per Chapter Note 6 of Chapter 31 of the CTA, 1975 to term a product as “other fertilizer” classifiable under heading 3105 of the CTA, 1975.

10.5 It has also been observed that the Explanatory Notes of the Harmonized System of Nomenclature (HSN) for Chapter 31 contain following note under the heading “General” –

“This Chapter also excludes micronutrient preparations which are applied to seed, to foliage or to soil to assist in seed germination and plant growth. They may contain small amounts of the fertilizing elements nitrogen, phosphorus and potassium, but not as essential constituents (e.g. heading 38.24)”

The products ‘Zn EDTA’ and ‘Fe EDTA’ are covered under serial no. 1(g) of Part-A Schedule-I of the Fertilizer Control Order, 1985, which is for ‘Micronutrients’. As per the Explanatory Note of Chapter 31, even if the micronutrient preparations contain small amounts of fertilizing elements nitrogen, phosphorus and potassium, but not as essential constituents, the said products are excluded from Chapter 31. We have already held that the products ‘Zn EDTA’ and ‘Fe EDTA’ do not contain fertilizing elements nitrogen, phosphorus and potassium as an essential constituent. The appellant has submitted that these products contain around 6.9% and 6.5% Nitrogen. However, in view of the Explanatory Note of Chapter 31, the products ‘Zn

EDTA' and 'Fe EDTA', even if contain small amount of the fertilizing element Nitrogen, but not as essential constituent, would get excluded from Chapter 31.

10.6 Thus, in view of the Chapter Note 6 of Chapter 31 of the CTA, 1975 and the Explanatory note of Chapter 31 discussed herein above, we hold that the products 'Zn EDTA' and 'Fe EDTA' do not fall under Chapter heading 3105 of the CTA, 1975 as "other fertilizer".

11.1 In the erstwhile Central Excise regime, the Central Board of Indirect Taxes & Customs (CBIC – previously Central Board of Excise & Customs – CBEC) issued different Circulars clarifying the proper classification of the 'Micronutrients', as follows –

(i) It was clarified vide CBEC's Circular No. 26/90-CX.3, dated 26.6.1990, that 'micronutrients' would be appropriately classifiable under heading No. 38.08 as 'plant growth regulator'.

(ii) After consultation with the Ministry of Agriculture and the Chief Chemist, CRCL (Central Revenue Control Laboratory), the CBEC, vide Circular No. 79/79/1994-CX dated 21.11.1994 clarified that Micronutrients listed under Sr. No. 1(F) of Schedule 1 Part (A) of the Fertilizer (Control) Order, 1985 and their mixture (with or without N,P,K) as notified by the Central Government or a State Government would be appropriately classifiable under Heading No. 31.05 as "Other Fertilisers".

(iii) Thereafter, vide Circular No. 392/25/98-CX. dated 19-5-1998, CBEC inter-alia clarified that for the purpose of classification of micronutrients as 'Other Fertilizers' in Heading 31.05 CET, the scope of the term 'Other Fertilizers' has to be determined in the light of Note 6 of Chapter 31

(iv) CBEC, vide Circular No. 1022/10/2016-CX, dated 6-4-2016, inter-alia clarified that 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.; that 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. It has been clarified at Para 5 of the said Circular as follows –

"5. Mixtures of micronutrients/multi-micronutrients with fertilisers are also manufactured and sold. They shall be classified according to their essential characters and general rules for interpretation of the schedule to the tariff. Where the essential constituent giving character to the mixture is one or more of the three elements namely Nitrogen, Phosphorous or Potassium, the mixture shall be classified under any of the heading of Chapter 31, depending upon its composition. On the other hand, where the essential character of the product is that of mixture of micronutrients/multi-micronutrients having predominately trace elements, it shall be classified under CETH 3824 as chemical products not elsewhere specified or included.

[underlining supplied]

11.2 There is no specific heading in the tariff (CTA, 1975) for classification of the 'Micronutrients'. However, as discussed, as per specifications for the products 'Zn-EDTA' and 'Fe-EDTA' given in the Fertilizer Control Order, 1985, minimum 12 percent of Zinc is essential in the product 'Zn-EDTA' and minimum 12 percent of Iron is essential in the product 'Fe-EDTA. Thus, the essential character of the product 'Zn EDTA' is given by Zinc and essential character of the product 'Fe EDTA' is given by Iron.

11.3 Therefore, as indicated in the Explanatory Notes of the HSN for Chapter 31 under the heading “General” (reproduced above) and as clarified by the CBEC vide Circular No. 1022/10/2016-CX, dated 6-4-2016, the products “Zn EDTA” and “Fe EDTA” are classifiable under heading 3824 / Tariff Item 3824 99 90 of the CTA, 1975 as chemical products not elsewhere specified or included.

11.4 We, therefore hold that the product “Zn EDTA” and “Fe EDTA” being supplied by the appellant are classifiable under heading 3824 / Tariff Item 3824 99 90 of the CTA, 1975.

12.1 We have gone through various judgements / decisions cited by the appellant. The Hon’ble Supreme Court in the case of **Ranadey Micronutrients Vs. Collector of Central Excise [1996 (87) E.L.T. 19 (SC)]** has decided the issue in favour of the appellant therein mainly on the ground that it is not open to the Revenue to raise a contention that is contrary to a binding Circular issued by the Board (CBEC). The decision of the New Delhi Bench of the **Hon’ble CESTAT in Final Order No. 549/98 dated 12.08.1998 [1998 (104) E.L.T. 524 (Tribunal)]** was rendered by following the ratio of the said judgement of the Hon’ble Supreme Court. In the present case, there is no binding Circular at present clarifying that Micronutrients and specifically “Zn EDTA” and “Fe EDTA” should be classified under heading 31.05 of the CTA, 1975, therefore those judgements are not applicable in the present case.

12.2 In the case of **Commissioner of Central Excise, Hyderabad-IV Vs. Aries Agrovet Industries Ltd. [2017 (7) G.S.T.L. 317 (Tri.-Hyd.)]** as well as **Commissioner of Central Excise, Mumbai – II Vs. Aries Agrovet Industries Ltd. [Order No. A/86615/2018]**, department proposed the classification of the Micronutrients under heading 38.08 of the Central Excise Tariff Act, 1985 (CETA, 1985), which was not found to be the correct classification of the said products by the Hon’ble CESTAT. Therefore, the classification of the said products under heading 31.05 of the CETA, 1985, adopted by the assessee, was upheld by the Hon’ble CESTAT. In the case of **Shivashakthi Bio Planteec Ltd. Vs. CCE, Cus. & ST, Hyderabad-I [2019 (20) GSTL 243 (Tri.-Hyd.)]** and in the case of **Hindustan Agro Insecticides Vs. CCE & ST, Guntur [Final Order No. A/31234-31236/2017]** the Hon’ble CESTAT has followed its earlier decision in the case of Aries Agrovet Industries Ltd. However, the issue in the present case is not limited to the classification of Micronutrients under heading 38.08 or 31.05 only. Therefore the decisions in those cases cannot be applied in the present case.

APPLICABLE RATE OF GOODS AND SERVICES TAX

13.1 The appellant has submitted that the products ‘Zn EDTA’ and ‘Fe EDTA’ being supplied by it be held classifiable under Chapter Heading 31.05 attracting Goods and Services Tax @ 5% (CGST 2.5% + SGST 2.5%) under Sr. No. 182D of [Schedule I](#) of [Notification No. 1/2017-Central Tax \(Rate\)](#) dated 28.06.2017, as amended, and corresponding Notification issued under the GGST Act, 2017.

13.2 In [Schedule I](#) (2.5%) of Notification No. 1/20107-Central Tax (Rate), it is mentioned at Sr. No. 182 as follows :-

Schedule I – 2.5%

Sr.No.	Chapter/Heading/ Subheading/ Tariff item	Description of Goods
182D	3105	Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen,

		<i>phosphorus and potassium; other fertilisers; goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg; other than those which are clearly not to be used as fertilizers</i>
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13.3 As we have already held that the products of the appellant are not classifiable under heading 31.05 of the CTA, 1975 as “other fertilizers”, the said products are not found to be covered under Sr. No. 182D of [Schedule-I](#) of [Notification No. 1/2017-Central Tax \(Rate\)](#) dated 28.06.2017.

14.1 The GAAR has ruled that the products ‘Zn EDTA’ and ‘Fe EDTA’ being supplied by the appellant are covered under Sl. No. 56 of [Schedule-II](#) of [Notification No. 1/2017-Central Tax \(Rate\)](#) dated 28.06.2017, as amended (and corresponding Notification issued under the GGST Act, 2017) attracting Goods and Services Tax @ 12% (CGST 6% + SGST 6%).

14.2 In [Schedule II](#) (6%) of Notification No. 1/20107-Central Tax (Rate), it is mentioned at Sr. No. 56 as follows

[Schedule II](#) – 6%

Sr.No.	Chapter/Heading/ Sub-heading/ Tariff item	Description of Goods
56	28 or 38	<i>Micronutrients, which are covered under [serial number 1(g)] of Schedule I, Part (A) of the Fertilizer Control Order, 1985 and are manufactured by the manufacturers which are registered under the Fertilizer Control Order, 1985</i>

14.3 It is observed that Serial no. 1(g) of Part-A Schedule-I of the Fertilizer Control Order, 1985 covers different ‘Micronutrients’. As already discussed, the products ‘Zn EDTA’ and ‘Fe EDTA’ being supplied by the appellant are covered at entry 7 and 8 respectively of serial no. 1(g) of Part-A Schedule-I of the Fertilizer Control Order, 1985. Further, the appellant has submitted that it is a manufacturer of the said products for which it is registered by the Deputy Director of Agriculture (Extension), District Mehsana, Gujarat under the Fertilizer Control Order, 1985.

14.4 We, therefore hold that the products ‘Zn EDTA’ and Fe EDTA’ being supplied by the appellant are covered under Sl. No. 56 of [Schedule-II](#) of [Notification No. 1/2017-Central Tax \(Rate\)](#) dated 28.06.2017, as amended (and corresponding Notification issued under the GGST Act, 2017) attracting Goods and Services Tax @ 12% (CGST 6% + SGST 6%).

15. In view thereof, we confirm the [Advance Ruling No. GUJ/GAAR/R/79/2020 dated 17.09.2020](#) to the extent it has been appealed, by holding that the products ‘Zn EDTA’ and ‘Fe EDTA’ being supplied by M/s. Shivam Agro Industries are classifiable under heading 38.24 (Tariff Item 3824 99 90) of the First Schedule to the Customs Tariff Act, 1975 and are covered under Sl. No. 56 of [Schedule-II](#) of [Notification No. 1/2017-Central Tax \(Rate\)](#) dated 28.06.2017, as amended and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, attracting Goods and Services Tax @ 12% (CGST 6% + SGST 6%).