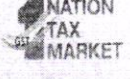


GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2023/24
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/03)

Date: - 30 .06.2023

Name and address of the applicant	:	Jivagro Limited Plot No. 3133 to 3139, C/o P I Industries Limited, GIDC Panoli, Bharuch, Gujarat – 394 115.
GSTIN of the applicant	:	24AAECJ7119A1Z1
Date of application	:	24.01.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) (e)
Date of Personal Hearing	:	23.03.2023
Present for the applicant	:	Ms. Sonia Gupta, Advocate, Shri Ashok Dhingra, Advocate

Brief facts:

1. Jivagro Limited, Plot No. 3133 to 3139, C/o PI Industries Limited, GIDC Panoli, Bharuch, Gujarat – 394 115 [for short –‘applicant’] is registered under GST and their GSTIN is 24AAECJ7119A1Z1.
2. Briefly, M/s. Isagro (Asia) Agrochemicals P Ltd [for short – M/s. Isagro] merged with P I Industries Ltd & the B2C vertical of 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.
3. Prior to this merger, M/s. Isagro was engaged in the manufacture of the product **Rapigro** & was classifying it under TI 3507 of CETA '85. However, Central Excise authorities disputed the same and ordered its classification under TI 38089340, as a ‘plant growth regulator’. Various show cause notices were issued, which are presently pending before various authorities.
4. The applicant further states that they are manufacturing and supplying the product **Rapigro** by classifying it under 3507. It is further stated that according to them, the product merits classification under CTH 31010099.



5. The applicant has given detailed reasoning to substantiate their belief that **Rapigro** merits classification under 31010099, viz

- that they have applied & have been granted registration for the product as a bio stimulant under clause 20C(5)(b) of the Fertilizer (Inorganic, Organic or mixed) Control Order 1985 [for short –FCO]; that since in terms of the FCO, Rapigro is a bio-stimulant, it falls within the definition of fertilizer;
- fertilizers are covered under chapter 31;
- Rapigro provides essential nutrients to plants; that it is brought by the farmers for use as a fertilizer for beneficial growth of plants;
- that both the terms ‘bio stimulant’ and ‘fertilizers’ are defined under FCO;
- in terms of circular No. 1022/10/2016-Cx dated 6.4.2016, for any product to merit classification under CETH 3105 as other fertilizers it 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 & potassium are also referred as macronutrients or primary fertilizer elements & are required in higher quantity by the plants;
- that where the essential constituent giving character to the mixture is one or more of the three element namely nitrogen, phosphorus or potassium the mixture shall be classified under any of the heading of chapter 31, depending upon its composition;
- perusal of the chemical composition of Rapigro shows that it contains amino acids peptides a significant component of which is nitrogen;
- CPH liquid utilized in manufacture of Rapigro contains amino acids and amino nitrogen which provide nutrition to plants;
- that Rapigro is made from CPH liquid, procured from M/s. Sowbhagya without it undergoing any change in its chemical properties;
- that M/s. Sowbhagya classifies CPH Liquid under TI 31000099;
- that CPH liquid is being manufactured from vegetable sources;
- **that according to them Rapigro is classifiable under 3101 and Rapigro granules sold in packages of gross weight not exceeding 10 kgs merit classification under heading 3105 of CTH;**
- they have also relied upon the following circular & citations
 - Circular no. 1022/10/2016-Cx dtd 6.4.2016;
 - BPL Pharmaceuticals Ltd [1995(77) ELT 485 (SC)];
 - Soulfed Plant Product & Services P Ltd [2018 (364) ELT 999 (Tri)]
 - Karnataka Agro Chemicals [2007(215) ELT 470 (Tri)] & [2008(227) ELT 12 (SC)]
 - Atul Glass Industries Ltd [1986 (25) ELT 473 (SC)]
 - Leeds Kem [2001 (134) ELT 294 Tri].

6. The applicant has also submitted detailed reasoning as to why **Rapigro** would not fall within the ambit of TI 3507 viz

- TI 3507 relates to Enzymes; prepared enzymes not elsewhere specified or included; that it is a residuary entry for enzymes not covered elsewhere;
- **Rapigro** is not an enzyme because
 - Enzymes are organic substances produced by living cells;
 - Enzymes have property of causing & regulating specific chemical reactions inside or outside living cells without undergoing any change in their chemical structure
 - Enzyme solely has protein or protein combined with a non protein compound of low molecular weight acting as a cofactor
 - Enzymes do not include fertilizing elements eg Nitrogen, Phosphorus.
 - Rapigro contains organic fractions derived through fermentation process containing growth promoter, organic acid, protein & protein hydrolyzates, amino nitrogen, peptides, vitamins & micronutrients
 - Rapigro is a complex product containing nitrogen & is a bio-stimulant & therefore a fertilizer and not an enzyme.
- **Rapigro** is a bio-stimulant & is registered with both Central and State Government; that it cannot be relegated to residual entry of heading 3507;



- that they wish to rely on rule 1 of the General Rules of Interpretation which states that if a product can be classified in terms of heading of customs tariff, under a specific heading it should not be classified under another entry or residual entry;
- that they wish to rely on the case of JOCIL Ltd [2011 (263) ELT 9 (SC), UNI Products [2020(372) ELT 465 (SC)], Mauri Yeast India P Ltd [2008 (225) ELT 321 (SC)], HPL Chemicals Ltd [2006 (197) ELT 324 (SC)], Gujarat Perstrop Electronics Ltd [2005 (186) ELT 532 (SC)].

7. In view of the foregoing, the applicant has filed this application seeking advance ruling on the below mentioned questions viz

1. Classification of *Rapigro* under the Customs Tariff Act, 1975;
2. Classification of *Rapigro* under the Central Goods & Services Tax Act, 2017;
3. Rate of tax payable on *Rapigro*.

8. Personal hearing was held on 23.3.2023, wherein Ms. Sonia Gupta, and Shri Ashok Dhingra, both Advocates, represented the applicant. The authorized representative informed that they are presently supplying under 3507. On being asked it was informed that M/s. Sowbhagya is clearing under 31010099. They further stated that it is a bio-stimulant and by virtue of it being a bio stimulant it is a fertilizer. They further stated that they would provide [a] what active ingredient is being added by M/s. Sowbhagya and [b] copy of the original order in respect of M/s. Sowbhagya.

9. Vide email dated 27.3.2023, the applicant provided certificate from M/s. Sowbhagya in respect of the query seeking details of product added in step 5 of the process flow chart reproduced in para 2.3 of the application; copy of OIO dated 10.10.2006 passed by ADC, Hyderabad-III Commissionerate wherein the classification of CPH liquid was upheld under chapter heading 3101; ROC certificate of change of name in the case of M/s. Sowbhagya Biotech P Ltd.

Discussion and findings

10. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

11. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts



& the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

12. Before dealing with to the submissions made by the applicant, we would like to reproduce the competing tariff entries, for ease of reference:

Chapter 31

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
3101	ANIMAL OR VEGETABLE FERTILISERS, WHETHER OR NOT MIXED TOGETHER OR CHEMICALLY TREATED; FERTILISERS PRODUCED BY THE MIXING OR CHEMICAL TREATMENT OF ANIMAL OR VEGETABLE PRODUCTS			
3101 00	- <i>Animal or vegetable fertilisers, whether or not mixed together or chemically treated; fertilisers produced by the mixing or chemical treatment of animal or vegetable products :</i>			
3101 00 10	--- Guano	kg.	*7.5%	-
	--- <i>Other :</i>			
3101 00 91	---- Animal dung	kg.	*7.5%	-
3101 00 92	---- Animal excreta	kg.	*7.5%	-
3101 00 99	---- Other	kg.	*7.5%	-

Chapter 35

3507	ENZYMES; PREPARED ENZYMES NOT ELSEWHERE SPECIFIED OR INCLUDED			
3507 10	- <i>Rennet and concentrates thereof:</i>			
	--- <i>Microbial rennet:</i>			
3507 10 11	---- Animal rennet	kg.	10%	-
3507 10 19	---- Other	kg.	10%	-
	--- <i>Other :</i>			
3507 10 91	---- Animal rennet	kg.	10%	-
3507 10 99	---- Other	kg.	10%	-
3507 90	- <i>Other :</i>			
3507 90 10	--- Industrial enzymes (textile assistant)	kg.	10%	-
3507 90 20	--- Pancreatin pure (excluding medicament)	kg.	10%	-
3507 90 30	--- Pepsin (excluding medicament)	kg.	10%	-
3507 90 40	--- Pectin esterases pure	kg.	10%	-
3507 90 50	--- Pectolytic enzyme (pectinase)	kg.	10%	-
	--- <i>Other enzymes of microbial origin:</i>			
3507 90 61	---- Streptokinase	kg.	10%	-
3507 90 62	---- Amylases enzymes	kg.	10%	-
3507 90 69	---- Other	kg.	10%	-
	--- <i>Enzymes for pharmaceutical use, other than streptokinase :</i>			
3507 90 71	---- Papain, pure, of pharmaceutical grade	kg.	10%	-
3507 90 79	---- Other	kg.	10%	-
	--- <i>Other:</i>			
3507 90 91	---- Enzymatic preparations containing food stuffs	kg.	10%	-
3507 90 99	---- Other	kg.	10%	-

Chapter 38

3808	INSECTICIDES, RODENTICIDES, FUNGICIDES, HERBICIDES, ANTI-SPROUTING PRODUCTS AND PLANT-GROWTH REGULATORS, DISINFECTANTS AND SIMILAR PRODUCTS, PUT UP IN FORMS OR PACKINGS FOR RETAIL SALE OR AS PREPARATIONS OR ARTICLES (FOR EXAMPLE, SULPHUR-TREATED BANDS, WICKS AND CANDLES, AND FLY-PAPERS)			
	- <i>Goods specified in Sub-heading Note 1 to this Chapter:</i>			
3808 52 00	-- DDT (ISO) (clofenotane (INN)), in packings of a net weight content not exceeding 300 g	kg.	10%	-
3808 59 00	-- Other	kg.	10%	-
	- <i>Goods specified in Sub-heading Note 2</i>			



<i>to this Chapter:</i>			
3808 61 00	-- In packings of a net weight content not exceeding 300 g	kg.	10%
3808 62 00	-- In packings of a net weight content exceeding 300 g but not exceeding 7.5 kg	kg.	10%
3808 69 00	-- Other	kg.	10%
3808 91	<i>Insecticides:</i>		
3808 91 11	----	Aluminium phosphate (for example phostoxin)kg.	
	10%		
3808 91 12	---- Calcium cyanide	kg.	10%
3808 91 13	---- D.D.V.P. (Dimethyle-dichloro-vinyl- phosphate)	kg.	10%
3808 91 21	---- Diagonal	kg.	10%
3808 91 22	---- Methyl bromide	kg.	10%
3808 91 23	---- Dimethoate, technical grade	kg.	10%
3808 91 24	---- Melathion	kg.	10%
3808 91 31	---- Endosulphan, technical grade	kg.	10%
3808 91 32	---- Quinal phos	kg.	10%
3808 91 33	---- Isoprotraron	kg.	10%
3808 91 34	---- Fenitlion	kg.	10%
3808 91 35	---- Cipermethrin, technical grade	kg.	10%
3808 91 36	---- Allethrin	kg.	10%
3808 91 37	---- Synthetic pyrethrum	kg.	10%
	-- Other		
3808 91 91	---- Repellants for insects such as flies, mosquito	kg.	10%
3808 91 92	---- Paper impregnated or coated with insecticides such as D.D.T. coated paper	kg.	10%
	-- Other		
3808 91 99	---- Other	kg.	10%
3808 92	<i>Fungicides:</i>		
3808 92 10	-- Maneb	kg.	10%
3808 92 20	-- Sodium penta chlorophenate (santrobrite)	kg.	10%
3808 92 30	-- Thiram (tetra methyl thuram disulphide)	kg.	10%
3808 92 40	-- Zineb	kg.	10%
3808 92 50	-- Copper oxychloride	kg.	10%
3808 92 90	-- Other	kg.	10%
3808 93	<i>Herbicides, anti-sprouting products and plant-growth regulators</i>		
3808 93 10	-- Chloromethyl phenozy acetic acid (M.C.P.A)	kg.	10%
3808 93 20	-- 2:4 Dichloro phenozy acetic acid its and esters	kg.	10%
	-- Gibberellic acid		
3808 93 30	-- Gibberellic acid	kg.	10%
3808 93 40	-- Plant growth regulators	kg.	10%
3808 93 50	-- Weedicides and weed killing agents	kg.	10%
3808 93 90	-- Other	kg.	10%
3808 94 00	-- Disinfectants	kg.	10%
3808 99	<i>Other:</i>		
3808 99 10	-- Pesticides, not else where specified or included	kg.	10%
3808 99 90	-- Other	kg.	10%

13. In the explanatory notes of HSN, 35.07 it is stated as follows:

35.07 - Enzymes; prepared enzymes not elsewhere specified or included.

3507.10 - Rennet and concentrates thereof

3507.90 - Other

Enzymes are organic substances produced by living cells; they have the property of causing and regulating specific chemical reactions inside or outside living cells, without themselves undergoing any change in their chemical structure.

Enzymes may be referred to as follows :

(I) According to their chemical constitution, e.g. :

(a) Enzymes in which the molecule consists solely of a protein (e.g., pepsin, trypsin, urease).

(b) Enzymes in which the molecule consists of a protein combined with a non-protein compound of low molecular weight, acting as a cofactor. The cofactor may be either a metal ion (e.g., copper in ascorbate oxidase, zinc in human placental alkaline phosphatase) or a complex organic molecule called a coenzyme (e.g., thiamine diphosphate in pyruvate decarboxylase, pyridoxal phosphate in glutamine-oxo-acid aminotransferase). Sometimes both are required.

(II) According to :

(a) **their chemical activity** as oxidoreductases, transferases, hydrolases, lyases, isomerases, ligases; or

(b) **their biological activity** as amylases, lipases, proteases, etc.



This heading includes :

(A) "Pure" (isolated) enzymes.

These are generally in crystalline form, and are mainly intended for use in medicine or in scientific research. They are not as important in international trade as enzymatic concentrates and prepared enzymes.

(B) Enzymatic concentrates.

These concentrates are generally obtained from either aqueous or solvent extracts of animal organs, of plants, of micro-organisms or of culture-broths (the latter derived from bacteria, moulds, etc.). These products, which may contain several enzymes in various proportions, can be standardised or stabilised.

It should be noted that certain standardising or stabilising agents may already exist in the concentrates in variable quantities, deriving either from the fermentation liquor or from the clarifying or precipitating processes.

The concentrates can be obtained, for example, in powder form by precipitation or freeze-drying or in granular form by using granulating agents or inert supports or carriers.

(C) Prepared enzymes not elsewhere specified or included.

Prepared enzymes are obtained by further dilution of the concentrates mentioned in Part (B) above or by intermixing isolated enzymes or enzymatic concentrates. Preparations with substances added, which render them suitable for specific purposes, are also included in this heading, provided they are not covered by a more specific heading in the Nomenclature.

This group includes, *inter alia* :

- (i) Enzymatic preparations for tenderising meat, such as those consisting of a proteolytic enzyme (e.g., papain) with added dextrose or other foodstuffs.
- (ii) Enzymatic preparations for clarifying beer, wine or fruit juice (e.g., pectic enzymes containing added gelatin, bentonite, etc.).
- (iii) Enzymatic preparations for desizing textiles such as those with a basis of bacterial α -amylases or proteases.

This heading **excludes**, *inter alia*, the following preparations :

- (a) Medicaments (heading 30.03 or 30.04).
- (b) Enzymatic preparations for pre-tanning (heading 32.02).
- (c) Enzymatic soaking or washing preparations and other products of Chapter 34.

14. CBIC vide its circular No. 1022/10/2016-Cx dated 6.4.2016, has clarified on Classification of Micronutrients, Multi-micronutrients, Plant Growth Regulators & Fertilizers. The relevant extract of the clarification is reproduced below for ease of reference viz

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.



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.*

15. Explanatory notes of HSN 3808 states as under:

38.08 - Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers) (+).

- 3808.50 - Goods specified in Subheading Note 1 to this Chapter
- Other :
- 3808.91 -- Insecticides
- 3808.92 -- Fungicides
- 3808.93 -- Herbicides, anti-sprouting products and plant-growth regulators
- 3808.94 -- Disinfectants
- 3808.99 -- Other

This heading covers a range of products (other than those having the character of medicaments, including veterinary medicaments - heading 30.03 or 30.04) intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches, etc.), mosses and moulds, weeds, rodents, wild birds, etc. Products intended to repel pests or used for disinfecting seeds are also classified here.

These insecticides, disinfectants, herbicides, fungicides, etc., are applied by spraying, dusting, sprinkling, coating, impregnating, etc., or may necessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc.

The heading further covers anti-sprouting products and plant-growth regulators intended to inhibit or promote physiological processes in plants. Their modes of application vary and their effects range from destruction of the plant to enhanced growth-vigour and improved crop-yield.

16. We find that the product in respect of which advance ruling is sought was manufactured and cleared by the erstwhile M/s. Isagro. The dispute in respect of the product's classification it is informed, is still pending.

17. During the course of personal hearing, we were provided and shown the copy of the label of **Rapigro** which is reproduced below:

The image displays a product label for **JIVAGRO RAPIGRO LIQUID**, a horticulture specialist product. The label includes the following information:

- Customer Care No.:** 02646 272018
- E-mail:** customercare@jivagro.com
- Address:** Krystal Blue Apartments, Flat No. 11, 11th Road, Santacruz (E), Mumbai - 400055, Maharashtra. Plot No. 3133 to 3139 and others, G.I.D.C. Estate, Panoli-394116, Dist-Bharuch, Gujarat.
- Approval No. / Batch No.:** NPPO/14/2061320
- MRP:** ₹ (Incl. of all Taxes)
- Net Content:** 1L/9 Ltr.

Overlaid on the bottom right of the label is a circular blue stamp from the **GUJARAT AUTHORITY FOR ADVANCE RULING, CGST-CGST, AHMEDABAD**. The stamp features the state emblem of India in the center and the text "સાચો ભારત" (Sachio Bharat) at the bottom.

18. Consequent to the personal hearing, the applicant has provided a copy of the certificate issued by M/s. Sowbhagya Biotech (P) Ltd., which broadly states as follows:

- that they supply CPH [Cereal Protein Hydrolysate] in bulk to the applicant under Plant Growth Promoters (Organic Fertilizers); that it is protein based fertilizer commonly also known as Plant Growth Promoter;
- it is derived from vegetable source ie Maize Protein (Gluten);
- that it is a natural fertilizer & is not figuring in the schedule to FCO;
- that they purchase maize protein treated with Nzyme & then treat with mild acids later with ammonia liquid for converting into CPH;
- its use is on crops as foliar spray for improving the crop quality yield; CPH liquid is to be used in large quantities.

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.

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.

25. The benefits of the product **Rapigro**, as mentioned in the label [para 2.7] and the technical bulletin [para 2.8], is as under *viz*

- it maximizes utilization of available soil nutrients; leads to better root growth;
- it improves crop quality & increases yield significantly; leads to taller/vigorous plant/larger leaves; better flowering, better fruit in larger size;
- it increases plant resistance/tolerance to pest and diseases;
- it rejuvenates plants exposed to climate stresses and other injuries; it reduces flower drop and fruit fixation;
- it is non toxic and safe for use.



26. The two competing entries post our finding *supra* that **Rapigro** would not fall within TI 3507 are TI 3101 and TI 3808. Now chapter note to chapter 38 of the Customs Tariff Act, states as follow

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 and plant-growth regulators, disinfectants and similar products, put up as described in heading 3808;

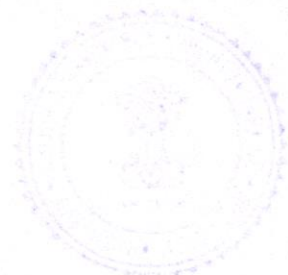
27. The applicant's reasoning as to why **Rapigro** merits classification under 3101 as a fertilizer, is mentioned in detail in para 5 above. For the sake of brevity, we are not repeating it. To summarize, we find that the applicant has stated that they had applied & was granted registration for the product as a 'bio-stimulant' under clause 20C(5)(b) of the FCO & being a bio-stimulant, it fell within the definition of fertilizer; that in terms of its end-use and clarification vide circular dated 6.4.2016, **Rapigro** shall be classified under chapter 31; that the chemical composition of **Rapigro** shows that it contains amino acids peptides, a significant component of which is nitrogen and lastly that the supplier M/s. Sowbhagya has classified it under TI 31000099 of CTH;

28. CBIC vide its circular No. 1022/10/2016-CX dated 6.4.2016, has clarified on Classification of Plant Growth Regulators as under viz

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.

[emphasis added]



Sr. No.	Points	Comments
iii)	What are Plant Growth regulators (PGRs)? What are their functions in the plant?	<p>➤ PGRs: Plant growth regulators defined as organic compounds other than nutrients that affect the physiological processes of growth and development in plants when applied in low concentrations. Plant growth regulators are active at low concentrations (1-10 ng/nl) in promoting, inhibiting or modifying growth and development.</p> <p>➤ They are either natural or synthetic compounds that are applied directly to a target plant to alter its life processes or its structure to improve quality, increase yields, or facilitate harvesting. In modern agriculture, people have established the benefits of extending the use of plant hormones to regulate growth of other plants. When natural or synthetic substances used in this manner, they are called Plant Growth Regulators.</p> <p>Role:</p> <p>➤ Plant hormones are produced naturally by plants and are essential for regulating their own growth. They act by controlling or modifying plant growth processes, such as formation of leaves and flowers, elongation of stems, development and ripening of fruit etc.</p> <p>➤ Plant hormones rarely act alone, and for most processes--at least those that are observed at the organ level--many of these regulators have interacted in order to produce the final effect.</p> <p>Examples:</p> <p>➤ (a) Classical plant hormones (auxins, cytokinins, gibberellins, abscisic acid, ethylene) and growth regulatory substances with similar biological effects.</p> <p>➤ (b) 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. Many of these growth active substances have not yet been examined in relation to growth and organized development in vitro.</p>

Further, as per the HSN, plant growth regulators are mentioned as

Plant-growth regulators are applied to alter the life processes of a plant so as to accelerate or retard growth, enhance yield, improve quality or facilitate harvesting, etc.. Plant hormones (phytohormones) are one type of plant-growth regulator (e.g., gibberellic acid). Synthetic organic chemicals are also used as plant growth regulators.

29. We find that the applicant has vehemently stated that according to them **Rapigro** would be covered under TI 3101. Before dwelling on the same, we find it appropriate to re-produce the explanatory notes of HSN in respect of 3101, viz



31.01 - Animal or vegetable fertilisers, whether or not mixed together or chemically treated; fertilisers produced by the mixing or chemical treatment of animal or vegetable products.

This heading covers :

- (a) Animal or vegetable fertilisers, whether or not mixed together or chemically treated;
- (b) Animal or vegetable products converted into fertilisers by mixing together or chemical treatment (**other than** bone superphosphates of heading 31.03).

However, these products fall in heading 31.05 when put up in the forms or packages described in that heading.

The heading includes, *inter alia* :

- (1) Guano, which is an accumulation of the excreta and remains of sea birds, found in large quantities on certain islands and coasts. It is both nitrogenous and phosphatic, and is usually a yellowish powder with a strong ammoniacal odour.
- (2) Excreta, dung, soiled fleece waste and manure, unsuitable for use other than as fertilisers.
- (3) Rotted vegetable products, unsuitable for use other than as fertilisers.
- (4) Disintegrated guano.
- (5) Products resulting from the treatment of leather with sulphuric acid.
- (6) Compost consisting of rotted waste vegetable and other matter where decay has been accelerated or controlled by treatment with lime, etc.
- (7) Wool scouring residues.
- (8) Mixtures of dried blood and bone meal.
- (9) Stabilised sewage sludge from urban effluent treatment plants. Stabilised sewage sludge is obtained by screening the sewage effluent to remove large objects and settling out grit and heavy non-biological constituents; the remaining sludge is then allowed to air dry or is filtered. The stabilised sludge so obtained contains a high proportion of organic matter and also contains some fertilising elements (e.g., phosphorus and nitrogen). However, such sludge containing other materials (e.g., heavy metals) at a high concentration, which make the stabilised sludge unfit for use as fertilisers, is **excluded** (heading 38.25).

The heading also **excludes** :

- (a) Animal blood, whether liquid or dried (heading 05.11).
- (b) Powdered bone, horn or hoof, or fish waste (Chapter 5).
- (c) Flours, meals and pellets of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption (heading 23.01), and other products covered by Chapter 23 (oil cakes, brewing or distilling dregs, etc.).
- (d) Ash from bone, wood, peat or coal (heading 26.21).
- (e) Mixtures of the natural fertilisers of this heading with chemical fertilising substances (heading 31.05).
- (f) Mixtures of stabilised sewage sludge with potassium or ammonium nitrate (heading 31.05).
- (g) Parings and other waste of leather; leather dust, powder and flour (heading 41.15).

30. Now, let us examine the claim of applicant that his product **Rapigro** would fall under 3101. CBIC's circular dated 6.4.2016, has clarified on classification of Fertilizers. We have reproduced the relevant extract and hence for brevity the same is not being repeated. However, to summarize, the clarification states that fertilizers classified under chapter 31 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. 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.

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, dehydroniciferyl alcohol glucosides, turgorins, systemin, unrelated natural stimulators and 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.

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.

35.1 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

35.2 A further reading of the technical bulletin of Rapigro states the following viz

*“Rate of application
- 2 ml/lit water or 200 ml/acre.”*

36. 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/lit 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**.

37. The applicant has relied upon various judgements viz

- **BPL Pharmaceuticals Ltd [1995(77) ELT 485 (SC)];**

The dispute in this case was whether the product manufactured was a drug or a cosmetic product. The relevant portion of the judgement is as under:

29. We cannot ignore the above broad classification while considering the character of the product in question. Certainly, the product in question is not intended for cleansing, beautifying, promoting attractiveness or altering appearance. On the other hand it is intended to cure certain diseases as mentioned supra.

Based on the above the applicant states that since their product *Rapigro* is registered as a Bio stimulant under the FCO, it is a fertilizer. The averment made is not tenable since even the CBIC while clarifying has clearly stated that notifications issued under FCO are not relevant for deciding classification under Central Excise Tariff. This holds good even for classification under the GST. Even otherwise, what is stated is that the broad classification cannot be ignored. We have already held that as far as the product in question is concerned in terms of the findings recorded *supra*, the end use and the technical bulletin, the product *Rapigro* is a plant growth regulator.

- **Soulfeed Plant Product & Services P Ltd [2018 (364) ELT 999 (Tri)]**

The Hon'ble Tribunal in this case states that as long as they answer to the description and are in bulk, these including mixtures of nitrates, phosphates and potassium would be classifiable as fertilizer. The facts of the present dispute are not similar to the one mentioned in the case and therefore the averment that the judgement is applicable to their dispute is not correct.

- **Karnataka Agro Chemicals [2007(215) ELT 470 (Tri)] & [2008(227) ELT 12 (SC)]**

The aforementioned judgement, relied upon by the applicant has been remanded back by the Hon'ble Supreme Court as reported at [2008 (227) E.L.T. 12 (S.C.)]. Therefore the reliance on the said judgment is not tenable. Further the judgement relies on circular dated 19.5.1998. However, vide circular dated 6.4.2016, the said circular dated 19.5.1998 has been rescinded.

- **Atul Glass Industries Ltd [1986 (25) ELT 473 (SC)]**

The relevant head notes states as follows:

Classification of goods on the basis of primary function - Glass mirror - Identity of an article is associated with its primary function - In the case of glass mirror, the consumer recalls primarily the reflective function of the article than anything else - Not treated as 'glass and glassware' for Trade parlance.



As we have already held that on the basis of the characteristics of the product, the end use, the product is a plant growth regulator, the reliance placed on this judgement is not relevant.

○ **Leeds Kem [2001 (134) ELT 294 Tri)].**

The Hon'ble Tribunal in the aforementioned case, gives the below mentioned finding viz [relevant extract]

Therefore, the assessee's claim of having derived the product from natural sources including microbes (bacteria) and ocean plants (seaweeds) cannot be rejected. In other words, the animal and vegetable origin of the product is well-established. The Revenue has not attempted to rebut this fact

As is evident, the facts being different the reliance on this judgement is not tenable.

38. 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.

39. In the light of the above, we rule as under:

RULING

1. 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'

2. 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.

(MILIND KAVATKAR)
MEMBER (SGST)



(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 30 /06/2023