CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 2352 of 2012

(Arising out of **Order-in-Appeal** No.21/2012 (H-II) Cus dated 31.03.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

M/s Jasmine Biotechnologies .. **APPELLANT**
1-39/A,
Beside Dholari Dhani,
Kompally,
Ranga Reddy District
Telangana – 500 010.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Hyderabad - Customs
Kendriya Shulk Bhavan,
Opp L.B. Stadium,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 2353 of 2012

(Arising out of **Order-in-Appeal** No.22/2012 (H-II) Cus dated 31.03.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

Shri K. Ravinder .. **APPELLANT**
1-39/A,
Beside Dholari Dhani,
Kompally,
Ranga Reddy District
Telangana – 500 010.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Hyderabad - Customs
Kendriya Shulk Bhavan,
Opp L.B. Stadium,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 30093 of 2018

(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-093-095-17-18 dated 24.10.2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

M/s Jasmine Biotechnologies .. **APPELLANT**
1-39/A,
Beside Dholari Dhani,
Kompally,
Ranga Reddy District
Telangana – 500 010.

VERSUS

Commissioner of Customs .. RESPONDENT
Hyderabad - Customs
Kendriya Shulk Bhavan,
Opp L.B. Stadium,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

AND

Customs Appeal No. 30094 of 2018

(Arising out of **Order-in-Appeal** No. HYD-CUS-000-APP-093-095-17-18 dated 24.10.2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

Shri K. Ravinder .. APPELLANT
1-39/A,
Beside Dholari Dhani,
Kompally,
Ranga Reddy District
Telangana – 500 010.

VERSUS

Commissioner of Customs .. RESPONDENT
Hyderabad - Customs
Kendriya Shulk Bhavan,
Opp L.B. Stadium,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri G. Natarajan, Advocate for the Appellant.
Shri M. Anukathir Surya, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30288-30291/2026

Date of Hearing: 13.04.2026
Date of Decision: 15.05.2026

[ORDER PER: ANGAD PRASAD]

The appellant M/s Jasmine Technologies and Proprietor Shri K. Ravinder have filed these appeals. Appeal Nos. C/2352-2353/2012 are filed against the Order-in-Appeal No. 21 & 22/2012 (H-II) dated 31.03.2012 and appeal nos. C/30093-30094/2018 filed against the Order-in-Appeal No. HYD-EXCUS-000-

APP-093-095/17-18 dated 24.10.2017, whereby, the imported goods declared as "Kingbo K Bio-Fertilizers/exodus" plant protector, where, they classified as insecticides under Customs Tariff Heading 3808 9199, confiscated under Section 111(d) and 111(m) of the Customs Act, 1962 and penalties were imposed upon the appellants under Section 112(a) and 114AA of the Customs Act 1962.

2. Since, all the appeals arouse out of common investigation, common facts and identical issues, the same are being disposed of by this common order.

3. The fact, in brief, is that the appellant M/s Jasmine Bio-technologies imported products from M/s Beijing Kingbo Biotech Co., Ltd., China declaring the same as "Bio-Fertiliser" under Chapter Heading 3101 0099. The Department entertained a view that the imported goods were in fact insecticides containing "Oxymatrin" and therefore classifiable under Chapter 38 as insecticides requiring registration under the Insecticides Act, 1968. Samples were drawn and sent to RCOF, Bangalore and IICT, Hyderabad for testing. The reports indicated presence of compounds namely Matrin, Oxymatrin, Dehydromatrin and Dehydrooxymatrin. On the basis of the said reports, proceedings were initiated alleging mis-declartion, suppression and violation of the Insecticides Act 1968.

4. The Adjudicating Authority confiscated the goods, confirmed customs duty demand and imposed penalties upon the importer firm as well as connected persons. The Commissioner (Appeals) substantially upheld the orders. Hence, appellants filed these appeals before this Tribunal.

5. Learned Counsel for the appellants submits that the entire proceedings are based upon assumptions and inconclusive laboratory reports which

nowhere categorically certify that the imported goods are "insecticides" as understood under the Customs Tariff and Insecticides Act, 1968.

6. Learned Counsel for the appellants submits that the reports merely record presence of naturally occurring plant alckaloids and do not establish that the imported product was formulated, marketed or intended as insecticide in commercial parlance. It is further submitted that the goods are plant-based agricultural supplements/plant growth protectors and not synthetic pesticides.

7. Learned Counsel for the appellants further submits that the test reports themselves recorded absence of pesticides peaks and therefore, the very foundation of the Department's allegation stands demolished. It was emphasized that the report dated 15.07.2010 specifically records that "analysis result did not show any peaks related to pesticides". It is also submitted that no expert from the Testing Laboratories was offered for cross-examination despite repeated requests. The Adjudicating Authority relied heavily upon scientific opinions while simultaneously denying opportunity to test their correctness through cross-examinations, thereby causing gross violation of principles of natural justice.

8. Learned Counsel for the appellant further submits that no evidence has been produced to establish that the imported goods were prohibited goods under law. Merely because a product possess some pest-control properties cannot automatically bring out within the ambit of prohibited insecticides. It is further submitted that the Department failed to establish deliberate mis-declaration or mens rea. The imports were met openly under bills of entry after declaring complete description and supporting documents. Hence, extended period, confiscation and penalties are wholly unsustainable.

9. Learned Authorised Representative reiterates the findings recorded in the impugned orders and submits that the product contain Oxymatrine which is recognized under the Insecticides Act. It is argued that the appellant marketed the goods as "plant protector" and therefore the goods were correctly classifiable as insecticides under Chapter 38.

10. We have carefully considered the rival submissions and perused the records with their written submissions.

11. The main issue requiring determination is whether the Department has successfully established, through legally admissible and conclusive evidence, that the imported goods are "insecticides" liable for classification under Chapter Heading 3808 and consequentially liable for confiscation for want of registration under the Insecticides Act, 1968. At the outset, we find that entire case of the Revenue is founded upon laboratory reports. However, a careful reading of the reports reveal significant ambiguity and unsustainable. Both the reports are as thus: -

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ANNEXURE 6

15th July 2010

Analysis Report

Sample submitted by : Mr. C. Hari Nath, Direcotrate of Revenue Intelligence, Hyderabad.

Date of Submission : 06-07-2010, Ref : F.NO. V/1/2010 HRU (PF)

Nature of the Sample : Chemical sample (250 mL)

Analysed for : Presence of Pesticides

The chemical sample (250 mL) submitted by Mr C. Hari Nath, I.O, DRI, HRU, vide the letter with Ref. No. V/1/2010 HRU (PF), for identification of any suspected pesticides has been analysed by two different mass spectrometric techniques, GC-MS and ESI-MS.

GC-MS analysis :

Gas chromatography – mass spectromeric (GC-MS) analysis can reveal the volatile and semi-volatile organophosphorus, organochlorine and pyrethroid pesticides and insecticides if present by comparison with Wiley and NIST library databases. The sample (10 mL) was extracted with methylene chloride and the methylene chloride fraction was analysed by GC-MS method on ZB-5 MS column as per the analytical conditions given by EPA method 8081A.

Result : The analysis result did not show any pesticides in the extract.

ESI-MS analysis :

Electrospray ionization – mass spectrometry (ESI-MS) analysis can provide the information of molecular masses of non-volatile and highly polar pesticides like carbamates. The sample was analysed by direct infusion of 10 µL of sample dissolved in 1 mL of 50% acetonitrile containing 0.1% formic acid.

Result : The analysis result did not show any peaks realated to the pesticides. The result showed a prominent polyethylene glycol pattern

Enclosures : 1. GC-MS analysis report
2. ESI-MS mass spectrum

Signature of the Analyst 15/07/2010

Signature of the Scientist-in-Charge 15/7/10

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ANNEXURE.. 7

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19th July 2010

Analysis Report

Sample submitted by : Mr. C. Hari Nath, Direcotrate of Revenue Intelligence, Hyderabad.

Date of Submission : 06-07-2010, Ref : F.NO. V/1/2010 HRU (PF)

Nature of the Sample : Chemical sample (250 mL)

Analysed for : Presence of Pesticides

The chemical sample (250 mL) submitted by Mr C. Hari Nath, I.O, DRI, HRU, vide the letter with Ref. No. V/1/2010 HRU (PF), for identification of any suspected pesticides has been analysed by two different mass spectrometric techniques, GC-MS and ESI-MS.

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Result : The analysis result did not show any peaks realated to the pesticides. The result showed Matrin, Oxymatrin, dehydromatrin, dehydrooxymatrin and prominent polyethylene glycol pattern

Enclosures : 1. GC-MS analysis report
2. ESI-MS mass spectrum

Signature of the Analyst 19/07/10

Signature of the Scientist-in-Charge 19/7/10

Y. Rasinder 30/07/10

30/7/10

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12. The analysis report dated 15.07.2010 specifically records that the "analysis result did not show any peak related to pesticides". This finding goes to the root of the matter. Once the laboratory itself records absence of pesticides peaks, the Department cannot selectively rely upon some presence of naturally occurring alckaloids to conclude that the product is necessarily an insecticide. It is also a matter of considerable surprise that when a report on the very same subject had already been submitted on 15.07.2010, on what basis a separate report dated 19.07.2010 came to be submitted again on the same issue. It is further significant to note that even in the said report, the quantities have not been specified. It is also important that basis of analysis of sample is same but results are different.

13. It is a well settled law that classification cannot be determined on assumptions or isolated chemical presence without considering composition, primary use, marketed identity and commercial understanding of the product etc. We further find that none of the reports categorically certify that the imported goods are "insecticides" within the meaning of Chapter 38 or Insecticides Act. The reports merely identify presence of certain constituents. Presence of certain constituents by itself cannot conclusively determine tariff classification unless supported by technical opinion regarding product functionality and market identity. Significantly, the Department has not produced any evidence showing that the imported product was registered, sold or recognized internationally as insecticides under any statutory regime. No trade evidence, expert evidence or market enquiry has been brought on record. We also find considerable force in the submissions of the appellants regarding violation of principles of natural justice. The Adjudicating Authority relied on extensively upon technical reports obtained from RCOF and ICT, however, despite specific request, the authors of the report were not offered

for cross-examination. The appellants were thereby, denied opportunity to test the methodology, basis and conclusions of the reports. The Hon'ble Supreme Court in the case of Andaman Timber Industries Vs Commissioner of Central Excise [2015 (324) ELT 64 (SC)] categorically held that denial of cross-examination, whose statements are relied upon, amounts to serious violation of principles of natural justice and renders the order unsustainable. Hon'ble Supreme Court observed that where adjudication is substantially based upon statements or reports, denial of effective cross-examination strikes at the very root of fair adjudication. In the present case, technical reports constitute the sole basis for reclassification and confiscation. Once, cross-examination was denied, reliance upon such reports becomes legally unsustainable. The reliance placed by the Revenue on KANUNGO & Co Vs CC, Calcatta & Others [1972 (2) TMI 35 (SC)] and Tele Star Travels Pvt Ltd., & Others Vs Special Director of Enforcement [2013 (2) TMI 396 (SC)] is misplaced. These decisions were rendered in entirely different factual contexts. In the present matter, the technical reports are not merely corroborative but constitute the primary (substantive) evidence. Therefore, denial of cross-examination has caused manifest prejudice to the appellants.

14. We also find that the Department has failed to establish deliberate suppression or wilful mis-statement. The imports were made through proper bills of entry with declared product description and supporting literature. The goods were not clandestinely imported. The Department itself drew samples and conducted extensive investigation only after clearance process had commenced. This, itself demonstrates that the issue involved interpretational dispute regarding classification and nature of products. The Hon'ble Supreme Court has consistently held that where classification dispute arises on

interpretational issues, allegation of suppression or wilful mis-statement cannot automatically be sustained.

15. We further note that the product literature relied upon by the Department describes the product as plant protector and agricultural product derived from herbal extracts. Agricultural products frequently possess dual characteristics such as plant nutrition and pest resistance. Such products cannot automatically be treated as prohibited insecticides without clear statutory determination.

16. The Department has also failed to establish that the imported goods caused any hazard or violated any specific prohibition order. No material has been produced to show that the goods were banned or specifically prohibited for import at the relevant time.

17. The confiscation under Section 111(d) of the Customs Act, therefore cannot survive in absence of any clear proof that the goods were prohibited imports. Likewise, confiscation under Section 111(m) of the Customs Act for mis-declaration is also unsustainable because the Department has failed to conclusively prove that the declarations made by the appellants were not knowingly false. Once the very basis of classification fails, the consequential demands of Customs duty, confiscation, redemption fine and penalties also cannot survive. We also find that the penalties imposed under Section 112(a) and 114AA of the Customs Act are wholly unsustainable, since, no evidence has been produced to establish conscious involvement and fraud, deliberate falsification or intentional evasion. We accordingly hold that the Department has failed to establish its case through cogent, reliable and legally admissible evidence.

18. In view of the above discussion, we find that reclassification of the imported goods under CTH 3808 9199 is not sustainable. Therefore, confiscation of goods under Section 111(d) and 111(m) of the Customs Act is liable to be quashed. Demand of customs duty, interest, redemption fine are also not sustainable. Since demand is not sustainable, imposition of penalties also not sustainable. Therefore, impugned orders are liable to be set aside and appeals are liable to be allowed.

19. Appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in open court on 15.05.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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