Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10042 of 2018

(Arising out of OIA-VAD-EXCUS-001-APP-200-2017-18 dated 11/07/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

A & A Enterprises **........Appellant**
Survey No.351, Village Rania, Taluka-Savli,
VADODARA, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-I **.......Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

WITH

Excise Appeal No.12571 of 2018

(Arising out of OIA-VAD-EXCUS-002-APP-197-2018-19 dated 30/07/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

A & A Enterprises **........Appellant**
Survey No.351, Village Rania, Taluka-Savli,
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-I **.......Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

APPEARANCE:
Shri Ajay Banerjee, Advocate for the Appellant
Shri L Patra, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10538-10539 /2020

DATE OF HEARING: 29.10.2019
DATE OF DECISION: 24.02 .2020

RAMESH NAIR

The issue involved is classification of NPK Fertilizer and Soil Conditioner and consequential demand of duty, penalties and interest.

2. Shri Ajay Banerjee, Learned Counsel appearing on behalf of the appellant at the outset submits that the issue is already decided by this tribunal in the case of M/s. NARMADA BIO CHEM PVT. LTD. VS C.C.E. & S.T.-VADODARA-I vide Final Order No. A/11074-11075/2019 dated 09.07.2019, therefore, the issue is no more under dispute. He also submits that there is no intent to evade payment of duty, there is no mala fide on the part of the appellant. In this regard he placed reliance on this tribunal's order in the case of M/s. ALISHA ENTERPRISE VS CCE & ST, VAPI, Order No. A/10860-10861/2019 dated 14.05.2019. He reiterates the grounds of appeal.

3. Shri L. Patra, Learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have heard both the sides and perused the records. We find that the appellant's entire reliance is on the judgment of M/s. NARMADA BIO CHEM PVT. LTD.(supra). However, in the said case this tribunal after examining various evidences on factual aspects and considering the technical literature, set aside the impugned order and allowed the appeal. Since, the case of classification cannot be decided solely on the basis of the judgment, as the factual matrix such as ingredients of the product, test report, etc to be considered. The judgment of M/s. NARMADA BIO CHEM PVT. LTD. cannot be applied *Mutatis mutandis* in the present case, without examining facts of this case.

5. We are, therefore, of the opinion that this matter needs to be reconsidered on the basis of the fact of this case and considering the judgment in the case of M/s. NARMADA BIO CHEM PVT. LTD.

6. Therefore, the impugned order is set aside and appeal is allowed by way of remand to the Adjudicating Authority for passing a fresh order. All the issues are kept open.

(Pronounced in the open court 24.2.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul