CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.71264 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-2032 & 2033-17-18 dated 28/03/2018 passed by Commissioner (Appeals), Central Tax, Noida)

M/s. S.D. Agro Chemicals Ltd. **.....Appellant**

(H-B/6, Industrial Area Sikandrabad,
District: Bulandshahar, U.P.)

VERSUS

Commissioner of Central Goods & Service Tax,
Gautam Budh Nagar **.....Respondent**

(Wegmans Busniess Park, K.P.-III,
Greater Noida, Gautam Budh Nagar, U.P.)

WITH

Excise Appeal No.71270 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-2032 & 2033-17-18 dated 28/03/2018 passed by Commissioner (Appeals), Central Tax, Noida)

M/s Nikhil Malhotra, Director **.....Appellant**

(H-B/6, Industrial Area Sikandrabad,
District: Bulandshahar, U.P.-203205)

VERSUS

Commissioner of Central Goods & Service Tax,
Gautam Budh Nagar **.....Respondent**

(Wegmans Busniess Park, K.P.-III,
Greater Noida, Gautam Budh Nagar, U.P.)

AND

Excise Appeal No.70028 of 2019

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-2034 & 2035-17-18 dated 28/03/2018 passed by Commissioner (Appeals), Central Tax, Noida)

M/s. S.D. Agro Chemicals Ltd. **.....Appellant**

(H-B/6, Industrial Area Sikandrabad,
District: Bulandshahar, U.P.-203205)

VERSUS

Commissioner of Central Goods & Service Tax,

Gautam Budh Nagar .....Respondent

(Wegmans Busniess Park, K.P.-III,

Greater Noida, Gautam Budh Nagar, U.P.)

<u>APPEARANCE:</u>

Shri Sharad Tewari, Advocate for Appellant
Shri Rajeev Ranjan, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 02 July, 2019
DATE OF DECISION : 02 July, 2019

FINAL ORDER NO. **71407-71409 / 2019**

ARCHANA WADHWA

All the three appeals are being disposed of by a common order as the issue involved in all of them is arising from the same set of facts and circumstances. It is seen that the appellant is engaged in the manufacture of micronutrients and the classification of the same is under dispute. The appellant had classified the same under Heading No.31.05 which attracts nil rate of duty and subsequently concessional rate of duty.

2. Revenue visited appellant's factory on 23 July, 2015 and after investigation, entertained a view that the appellants product is properly classifiable under Heading 3824 as miscellaneous chemicals not elsewhere specified. The material found in the assessee's factory was also seized by the Officers resulting in passing of a separate order in Excise Appeal No.70028 of 2019 vide which the Lower Authorities have confiscated material with an option to the

appellant to redeem the same on payment of redemption fine of Rs.2,66,000/-

3. Subsequently, proceedings were also initiated against the appellant by way of issuance of a show cause notice dated 09 June, 2016 for the period 2013-15 proposing confirmation of demand of duty to the extent of around Rs.38.50 lakhs. The said show cause notice culminated into an order passed upon by the Original Adjudicating Authority confirming the proposal in the notice and imposing penalties on the manufacturing unit as also on the Director.

4. On appeal against the said order, Commissioner (Appeals) changed classification and held that the goods are properly classifiable as 'Miscellaneous Chemicals' and not 'Plant Growth Regulator' as held by the Original Adjudicating Authority. As such, the said two different orders passed by Commissioner (Appeals), emanating from the same set of facts and circumstances are before us.

5. The contention of the learned advocate is that the issue of classification of the identical goods either as fertilizer or micronutrients or plant growth regulator have been under confusion for a long period and during the past decade, various matters have been dealt with by the Higher Authorities including the Hon'ble Supreme Court. There is also a Board's Circular No.1022/10/2016-CX dated 06 April, 2016 wherein its stand accepted by the Board that the issue of classification of micronutrients, multi micronutrients, plant growth regulator and fertilizer has remained a disputed area in Central Excise. For bringing clarity on the issue of classification, it was decided to take opinion of Indian Agricultural Research Institute. As such, he submits that since during the relevant period there was no clarity in

the field, the appellants cannot be attributed any *mala fide* for classifying the products as micronutrient fertilizers. Similarly, he submits that there was no justification for confiscation of the goods or imposition of penalty.

6. Learned advocate is not disputing the final classification adopted by the Revenue but submits that the extended period would not be available. We note that the issue in question was under confusion during the period in question as a lot of litigation on the classification of the same was going on. In such a scenario, as rightly contended by the learned advocate no *mala fide* can be attributed to them so as to invoke longer period of limitation. Accordingly, we hold the major part of the demand as barred by limitation and direct the Lower Authorities to re-quantify the demand falling under limitation after giving an opportunity to the appellant. For the same reason, imposition of penalty upon the appellant and the confiscation of the goods are set aside.

7. All the three appeals are disposed of in above manner.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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