IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.I

APPEAL NO.E/851 & 852/11

(Arising out of Order-in-Appeal No.PKS/538-542/Bel/2010 dated 28/02/2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s.S Narendrakumar & Co. : **Appellant**

VS

Commissioner of Central Excise Mumbai-III : **Respondent**

Appearance

Shri Sanjeev Nair, Advocate for Appellant
Shri Anil Chaudhary, Asst. Comm. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 12/02/2019
Date of decision : 12/02/2019

ORDER NO. A/85646-85647/2019

Per : Dr. D.M. Misra

1. These appeals are filed against Order-in-Appeal No.PKS/538-542/Bel/2010 dated 28/02/2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of "Henna Powder", which they had

classified under Chapter sub-heading 1404 of CETA, 1985 and clearing the same at nil rate of duty. Alleging that their product is appropriately classifiable under Chapter sub-heading 3304 9190, a demand notice was issued to them for recovery of the differential duty with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn rejected their appeal. Hence, the present appeal.

3. Learned Advocate for the appellant fairly submits that this Tribunal for the period April 2008 to September 2008 vide order No.A/88305/2018 dated 13/11/2018, in their own case, classified their products under Chapter sub-heading 3304 9190 of CETA, 1985, however, set aside the penalty imposed on the appellants.

4. Leaded AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. We find that this Tribunal in the appellant's own case vide order No.A/88305/2018 dated 13/11/2018 observed that the product "Henna Powder" merit classification under Chapter heading 3304 9091 of CETA, 1985 and confirmed the demand for the relevant period. The present appeal relates to the period subsequent to the said period. Therefore, following the order of this Tribunal dated 13/11/2018, we also confirm the demand with interest involved in the present appeal and set aside the penalty imposed on the appellants.

5. Appeals are partly allowed to the extent of setting aside penalty imposed on the appellants.

(Dictated and pronounced in court)

(P Anjani Kumar) ***Member (Technical)***

(D.M. Misra*)* ***Member (Judicial)***

PJ