CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 472 of 2012

(Arising out of Order-in-Appeal No. BC/253/M-III/2011 dated 18.01.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.)

M/s S. Narendrakumar & Co. ....Appellant
4/B Everest House,
LBS Marg, Vikhroli (West),
Mumbai – 400 083

VERSUS

Commissioner of Central Excise, ...Respondent
Mumbai-III
3rd & 4th Floor Vardaan Centre,
MIDC Wagle Industrial Estate,
Thane (West), Mumbai – 400 604

APPERANCE:

Shri Sanjeev Nair, Advocate for the Appellant
Shri N.N. Prabhudesai, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85893/2020

Date of Hearing: 06.03.2020
Date of Decision: 06.03.2020

PER: DR. SUVENDU KUMAR PATI

Duty liability on the appellant for Heena Powder manufactured during the period from April, 2010 to February, 2011 is assailed in this appeal.

2. We have heard submissions from both the sides. It is observed that CESTAT Principal Bench in the case of M/s. Baboolal Brijbhushan *vide* order dated *13.10.2017* (cited by the appellant), with reference to the Tribunal's earlier decision passed in a bunch of appeals vide final order No. *53554-53574/2017 dated 17.05.2017* had set aside the confirmation of demand made on Heena Powder by invoking Notification No. 11/2017-CE (NT) dated 24.04.2017 issued under Section 11C of the Central Excise Act, 1944 exempting Heena Powder and Paste falling under Chapter 33 for the period 01.01.2007 to 01.03.2013. The present dispute is admittedly covered within the same period. Contrary to such findings, as submitted by learned DR for the respondent-department, CESTAT Mumbai in appeal No. E/1497/2010 had confirmed the duty liability but set aside the penalty *vide* its decision dated 13.11.2018 concerning this appellant's own case for the period June, 2006 to March, 2007 and basing on same decision, while disposing of appeal Nos. E/851 & 852/2011, penalty for the subsequent period were waived off but duty for those period were confirmed as classification under Chapter sub-heading 3304 9190 was held to be valid against appellant's classification made under Chapter 1404. However, Notification No. 11/2017-CE (NT) dated 24.04.2017 and the judgment of the Principal Bench have not been taken into consideration in those orders cited by the learned DR. Further, Notification No. 11/2017-CE (NT) has made it quite clear that levy of duty of excise on Heena Powder and Paste falling under Chapter 33 from 01.01.2007 to

01.03.2013 has been exempted and the disputed period was covered in that. We have got no hesitation, therefore, to set aside the order passed by the Commissioner (Appeals) in confirming the duty demand, interest and penalty on the appellant. The appeal is accordingly, allowed.

(Operative portion of the order pronounced in open Court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad