

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH - COURT No. III

**(1) Customs Appeal No. 40051 of 2016**

(Arising out of Order-in-Appeal C.Cus. No.771/2015 dated 30.08.2015 passed by Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai 600 001.)

**M/s.Good Luck Syndicate**

**... Appellant**

Good Luck Park,  
S.F.No.410/1,  
Tex Park Road,  
Civil Aerodrome Post,  
Coimbatore 641 014.

*VERSUS*

**The Commissioner of Customs**

**... Respondent**

Custom House,  
60, Rajaji Salai,  
Chennai 600 001.

**WITH**

**(2) Customs Appeal No.40052 of 2016**

(Arising out of Order-in-Appeal C.Cus. No.772/2015 dated 30.08.2015 passed by Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai 600 001.)

**M/s.Good Luck Syndicate**

**... Appellant**

Good Luck Park,  
S.F.No.410/1,  
Tex Park Road,  
Civil Aerodrome Post,  
Coimbatore 641 014.

*VERSUS*

**The Commissioner of Customs**

**... Respondent**

Custom House,  
60, Rajaji Salai,  
Chennai 600 001.

**APPEARANCE :**

Shri M. Saravanan, Chartered Accountant for the Appellant  
Shri Vineet Goyal, Authorized Representative for the Respondent

**CORAM :**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**  
**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER Nos.40209-40210/2026**

**DATE OF HEARING : 08.10.2025**  
**DATE OF DECISION : 12.02.2026**

**Per: Shri P. Dinesha**

These Appeals, filed by the Assessee-Importer, arise out of a common impugned Order-in-Appeal Nos.771 & 772/2015 dated 30.08.2015 passed by the Commissioner of Customs (Appeals-II), Chennai.

2. Heard Shri M. Saravanan, Ld. Chartered Accountant for the Appellants in both the Appeals and Shri Vineet Goyal, Ld. Authorized Representative for the Respondent.

3. In these two Appeals the issues that arise for our consideration are :

- (i) Whether the demand raised in the impugned order is sustainable or not ?
- (ii) Whether the demand raised in the SCN is barred by limitation ? and
- (ii) Whether the First Appellate Authority is correct in imposing a penalty under Section 114A of the Customs Act, 1962 and whether the said Authority is correct in remanding the matter to the limited extent of causing verification as to the eligibility of Appellant to beneficial Notification No.46/2011-Cus.?

4. Brief facts leading to these Appeals are that the Appellants imported Joss Powder classifying it under CTH 44050000, assessed to BCD at 5% in terms of Notification No.46/2011 [Sl.No.543(1)] and CVD 'Nil'. It is the case of the Appellant that the Adjudicating Authority without serving any Show Cause Notice and without providing any personal hearing, passed the Order-in-Original No.35383/2015 dt. 25.02.2015 whereby the goods in question were reclassified under CTH 12119039, resulting in demanding differential duty. Aggrieved by the above demand, it appears that that the Assessee filed an Appeal before Commissioner (Appeals) and it also appears that the Revenue being unhappy with the non-imposition of penalty, also preferred an Appeal before the

Commissioner (Appeals). It transpires from the common impugned Order-in-Appeal that the First Appellate Authority went overboard, even beyond the SCN apparently without proper application of mind while ordering (i) imposition of penalty under Section 114A and (ii) remanding the matter to a limited extent, to the file of Original Authority to cause verification insofar as the benefit of Notification No.46/2011 *ibid* as to the concessional rate of BCD is concerned. We say so because both the above directions are never part of the Review Order of the Commissioner dated 27.05.2015 and certainly not even an allegation about the non-compliance or non-entitlement to the benefit of Notification No.46/2011 *ibid*. Hence, at the threshold, we are of the view that these above two directions which have been challenged along with other issues deserve to be set aside which we hereby do.

5. Admittedly, the dispute relates to the classification of "Joss Powder" and from the perusal of the Order-in-Original (*supra*), the Adjudicating Authority has, without laboring much, resorted to Note 1 (a) to Chapter 44 of Customs Tariff Act, 1975 against which, the Importer-Appellant's case is that the 'Joss Powder' which is a bark of lit-sea tree in powdered form is nothing but a saw dust which do not have perfumery effect of its

own and hence, the same could never be used directly or indirectly in perfumery. It has adhesive or binder function and hence, used in many industries including Plywood Industries.

6. We find that Note 1 (a) to Chapter 44 (*supra*), only wood in chips, shavings, crushed, ground or powdered form, of a kind used primarily in perfumery, is excluded from the purview of Chapter 44 of Customs Tariff Act, 1975. CTH 1211 covers 'Plants and Parts of Plants' including seeds and fruits of a kind used primarily in perfumery in pharmaceutical or for insecticidal, fungicidal or similar purposes. In effect, the products to be classifiable under CTH 1211 should have an essential perfumery ingredient or medical effect while it is nobody's case that the goods in question does have any such characteristics.

7. Further, we also find that the Appellant has raised an issue as to the invocation of extended period of limitation since in terms of Section 28 of the Customs Act, 1962 normal period is only one year for which any duty could be demanded that too in cases where duty has not been levied or short-levied or erroneously refunded by reason of collusion, willful misstatement or suppression of facts, in which event the period for issuance SCN could be extended upto 5 years. Here the period

involved is May, June & September 2012 for which the SCN dt.18.09.2013 was issued though service of notice is disputed by the Appellant. It was submitted in this case by the Appellant that the Revenue had issued a notice on 01.10.2013 and without passing an order, another SCN dt. 18.10.2013 was issued which notice was disputed by the Appellant having been not served on them. Even if we consider the same, for argument sake, the same clearly stands hit by limitation since the same is clearly issued after a period of one year under Section 28 *ibid*. We find that the ratio of Hon'ble Supreme Court in the cases of **Nizam Sugar Factory Vs Collector of Central Excise, AP** - 2006 (197) ELT 465 (SC), **ECE Industries Ltd. CCE New Delhi** - 2004 (164) ELT 236 (SC) and **Hyderabad Polymers (P) Ltd. Vs CCE Hyderabad** - 2004 (166) ELT 151 (SC) clearly applies to this case.

8. In view of the above, we do not find any reasons to uphold the impugned order and hence, we set aside the same and allow the Appeals with consequential benefits if any, as per law.

(Order pronounced in open court on 12.02.2026)

sd/-

**(VASA SESHAGIRI RAO)**  
Member (Technical)

sd/-

**(P. DINESHA)**  
Member (Judicial)