CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Customs Appeal No. 40226 of 2016

(Arising out of Order-in-Appeal C. Cus II/878/2015 dated 03.09.2015 passed by the Commissioner of Customs (Appeals – II), Chennai)

M/s. Jocil Ltd., **.... Appellant**
Dokiparru, Medikondur Mandal,
Guntur District – 522 436.
Andhra Pradesh.

VERSUS

Commissioner of Customs **...Respondent**
Custom House
No.60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :
Shri Chidananda URS B.G., Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No. 41425/2025

DATE OF HEARING: 11.08.2025
DATE OF DECISION: 04.12.2025

Per Ajayan T.V.

M/s. Jocil Limited, the appellant is aggrieved by the Order in Appeal No. C.Cus-II-No.878/2015 dated 3-9-2015 issued by the Commissioner of Customs (Appeals-II), by which, the appellate authority, rejected the appeal preferred and upheld the Order in original No. 39266/2015 dated 26-6-2015.

2. Brief facts are that the appellant had filed 23 bills of entry for import of 'lauric acid', during the period March 2012 to August 2012, classifying the goods under tariff item 2915 7090 as 'other palmitic acid, stearic acid, their salts and esters', by claiming the benefit of Notification No. 46/2011-Cus. Revenue was of the view that lauric acid is classifiable under tariff item 2915 9090 and is assessable to duty as applicable for the goods at Sl. No.553 of Notification No. 21/2002. A show cause notice

dated 8-8-2013 was issued by the Additional Commissioner of Customs (Gr-2) under section 28 (1) of the Customs Act 1962, alleging that the incorrect classification has resulted in short levy of duty of Rs.22,04,830/- and proposing reclassification under the tariff item 29159090, as well as demand of differential duty along with applicable interest. In response, the appellant filed a reply dated 21-8-2013 stating, among other things, that with respect to the dispute on the classification of the imported goods raised by the department, the appellant agrees to pay duty with interest in respect of 7 bills of entry which were within one year prior to the date of receipt of SCN. Accordingly, the appellant paid differential duty of Rs.6,03,267/- and interest of Rs.1,07,199/- on such differential duty, for the bills of entry within the normal period of limitation and furnished the details of such payments. With regard to the remaining 16 bills of entry, it was submitted that demand in respect of these were all raised beyond the one year time limit from the date of receipt of SCN, i.e., 17-8-2013. It was pointed out that as per the provisions of section 28(1) (a), of the Customs Act 1962, the demand for the short-levied amount can only be raised within a period of 1 year from the date of bills of entry. It was further requested that the proceedings pertaining to recovery of differential duty and interest on the 16 bills of entry falling beyond the one year time limit may be dropped. A personal hearing was also requested. The said notice is stated to be pending adjudication.

3. Thereafter, the same officer who had issued the first show cause notice, issued a second show cause notice dated 18-8-2014 in respect of the 16 bills of entry which were a part of the first show cause notice, placing reliance on the decision of the tribunal in the case of *Saraswathi Air Products Limited, 1998 (98) ELT 391 (Tribunal)*. It was alleged that on verification of the self-assessment made by the appellant, it revealed that the appellant has deliberately and willfully misclassified the correct CTH 2915 9090 to claim ineligible FTA benefit under Notification No. 46 of 2011, vide Serial No.299. The notice demanded duty of Rs.16,01,562/- with interest and proposed to impose mandatory penalty under section 114 (A) and/or 112(a) of the Act. The notice also proposed to confiscate the imported goods under section 111(m) of the Act. After due process of law, the Ld. Adjudicating Authority passed an

Order in Original No.39266/2015, dated 22/26.06.2015 adjudicating the second show cause notice, ordering reclassification of the impugned goods under tariff item 2915 9090, consequently denying the exemption availed under Notification No. 46/2011-Cus and confirmed the demand of Rs.16,01,562/- on the said 16 bills of entry under section 28 (8) of Customs Act 1962 along with applicable interest under section 28AA of Customs Act 1962. An equivalent penalty was imposed under section 114A of the Customs Act, ibid. Aggrieved, the appellant preferred an appeal before the aforementioned appellate authority, which came to be rejected as aforementioned. Hence this appeal.

4. Shri Chidananda URS B.G., Learned Advocate appearing for the appellant contented that there is a clear admission by the department that the importer has not misdeclared the imported goods. The imported goods, namely, 'lauric acid', was described correctly in the bills of entry filed and the classification was claimed as per the importer. Ld. Counsel submits that the findings of the adjudicating authority, and that of the appellate authority relying on Hawley's condensed chemical dictionary to compare the imported goods with other goods and recording the view that there are many differences, description wise, property wise and usage wise; would itself show that it is an issue of interpretation, based on the chemical composition. It is submitted that the issue being debatable and involving interpretation, invocation of the extended period of limitation is impermissible in law. Reliance was placed on the decision in the case of ***Larson and Turbo limited Versus Commissioner of Central Excise, 2007 (211) ELT 513 (SC)***.

5. It is submitted by the Ld. Counsel that by merely claiming classification under a particular tariff entry, the assessee cannot be held guilty of suppression or misstatement of facts. Reliance was placed on the decisions in ***CCE versus Ishaan Research Lab (P) Limited, 2008 (230) ELT 7 (SC)*** and ***Commissioner versus Ameya Foods, 2024 (388) ELT 411 (SC)***.

6. The Ld. Counsel submits that when the first show cause notice with respect to the import of lauric acid vide 23 shipping bills was issued, the appellant had already filed their response contesting the demand in respect of the 16 bills of entry as barred by limitation. It is only

thereafter that the second show cause notice was issued with respect to the same 16 bills of entry, which were already part of the first show cause notice. The second show cause notice is wholly barred by limitation. Reliance was placed on the decisions in ***Nizam Sugar Factory versus Collector of Central Excise, 2006 (197) ELT 465 (SC), Caprihans India limited versus Commissioner, 2015 (324) ELT 8 (SC) and Northern plastics limited versus Collector, 1998 (101) ELT 549 (SC)***.

7. Ld. Counsel also submits that the decision of the tribunal in the case of Saraswati Air Products relied on in the SCN is distinguishable on facts as it was rendered on the peculiar facts that there was non-disclosure on the part of the assessee wherein.

8. The Ld. Counsel emphasizes that once the appellant has declared what is being imported in the invoice and the bill of entry correctly, they cannot be faulted for claiming a classification which according to them was correct. It is submitted that this does not amount of misdeclaration and the issue was only of interpretation of the entry provided under the notification. The reliance was placed on the decisions in Power Grid Corporation of India limited versus ***CC, 2024 (389) ELT 502 (T) and CC central excise versus Sandor Medicaid Private Limited, 2019 (367) ELT 486 (T)***. The Ld. Counsel emphasizes that the appellants were continuously importing the goods by proposing the classification adverted in the bills of entry and all the 23 bills of entry were cleared by the department. He submitted that invocation of extended period of limitation in such cases is impermissible in law.

9. The Ld. Counsel further submits, drawing attention to paragraph 5 of the second show cause notice, that that the notice does not provide the basis for such conclusion. Further, the adjudicating authority at para 15 of the impugned order has stated that *he draws his conclusion from an authoritative source of HSN Explanatory notes,* without revealing the source*.* That apart, the appellate authority has referred to a chemical dictionary that is i.e. Howley's condensed chemical dictionary, to conclude that there are many differences description wise, property wise, and usage wise among lauric acid / stearic acid/ palmitic acid and that

therefore, lauric acid cannot be brought under the entry meant for palmitic acid, stearic acid, their salts and esters.

10. It is submitted that the revenue has not adduced any expert evidence and mere reference to dictionary meaning cannot be construed as expert evidence. And as such, the impugned order of the first appellate authority is beyond the show cause notice and therefore unsustainable in law. Reliance is placed on the decisions in:-

    a. ***CCE v. Gas Authority of India Ltd. 2008 (232) ELT 7 (SC);***
    b. ***CCE v. Brindavan Beverages (P) Ltd, 2007 (213) ELT 467 (SC);***
    c. ***Saci Allied Products Ltd v CCE, 2005 (183) ELT 225 (SC),***
    d. ***Reckitt & Colman of India Ltd v. CCE, 1996 (88) ELT 641 (SC) and***
    e. ***CCE v. Sun Pharmaceuticals Inds. Ltd, 2015 (326) ELT 3 (SC).***

    The Ld. Counsel prays that the appeal may be allowed in the above circumstances.

11. Ms. Anandalakshmi Ganeshram, Ld. Authorised Representative, appeared on behalf of the respondent, and reiterated the findings of the appellate authority. She places reliance on the decision in ***Hindustan Unilever Ltd versus the Commissioner of Customs, 2025 (2) TMI 111 (Cestat – Chennai).***

12. We have heard the rival submissions, perused the appeal records and the citations submitted.

13. We find that the tenability of the impugned order hinges on whether the second show cause notice could have invoked the extended period of limitation.

14. Admittedly, the appellant has been clearing these products declaring them as "Lauric Acid" and classifying them under the tariff item 29157090 and the fact that the first SCN lists all the 23 bills as well as the classification claimed by the appellant attests to this fact. While the earliest bill of entry that was sought to be covered in the first SCN is dated 31.03.2012, the said SCN has neither raised any allegation about wilful suppression or misstatement of facts on the part of the appellant

nor invoked the provisions of Section 28(4) of the Customs Act, 1962 to cover the demand beyond the normal period of limitation. Even after the first SCN dated 08.08.2013 has been replied to by the appellant vide their reply dated 21.08.2013 pointing out that the demand in respect of 16 bills of entry were barred by limitation, it took more than a year for the Revenue to realise its mistake in not invoking the extended period of limitation, which was sought to be overcome by issuing the second show cause notice dated 18-08-2014 citing the decision of the Tribunal in Saraswathi Air Products, to secure a legal backing.

15. We find that the second SCN is opposed to the law laid down by the Hon'ble Apex Court in ***Nizam Sugar Factory v. Collector of Central Excise, A.P, 2006 (197) ELT 465 (SC)***, wherein it has been held as under:

> "**9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities**. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant."

16. That apart, it is also settled that an importer, by classifying the imported goods under a customs tariff heading which he believes to be correct, cannot in itself lead to a conclusion of misstatement or wilful suppression of facts on the part of the importer, warranting invoking of the extended period of limitation. In the instant case the impugned order itself makes it evident that the classification issue involved is interpretational in nature In this regard, the reliance placed by the appellant on the decisions in ***CCE versus Ishaan Research Lab (P) Limited, 2008 (230) ELT 7 (SC)*** and ***Commissioner versus Ameya Foods, 2024 (388) ELT 411 (SC)*** is apposite.

17. Therefore, we are of the considered view that in the instant case the allegation of wilful suppression and misstatement of facts would not

sustain against the appellant and the second SCN itself being wholly barred by limitation, the impugned order upholding the demand as confirmed by the adjudicating authority, is wholly untenable and liable to be set aside. The decision relied upon by the Ld. Appellate Authority also misconceived in the light of the Apex Court decision in Nizam Sugars cited supra. In such circumstances, nothing turns on the decision relied upon by the Ld. A.R wherein the issue of limitation on which our present decision has been made, was not under consideration. Once we have found in favour of the appellant on limitation, it would be outside our jurisdiction to enter into the merits of the dispute as per the dicta of Higher judicial Fora, as can be seen from the decisions in ***Commissioner of Customs, Mumbai v B.V. Jewels, 2004 (172) ELT 3 (SC), Commr of Cus, C.Ex & S.Tax v. Monsanto Manufacturer Pvt Ltd, 2014 (35) STR 177 (All)***, ***Commr of Service Tax, Mumbai IV v. Rochem Separations (I) P Ltd, 2019 (366) ELT 103 (Bom)*** as well as that of the Jurisdictional High Court in ***E.T.A General Pvt Ltd v Additional Commissioner of C.Ex, Chennai, 2016 (44) STR 409 (Mad)***.

18. In light of our aforesaid discussions, respectfully following the aforecited decisions, having found in favour of the appellant on the issue of limitation, we refrain from entering any finding on the other contentions of the Appellant. Accordingly we set aside the impugned Order in Appeal.

The appeal is allowed, with consequential relief(s) in law, if any.

(Order pronounced in open court on 04.12.2025)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

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