**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

**Customs Appeal No. 164 of 2011**

(Arising out of Order-in-Appeal No. KOL/CUS/CKP/22-24/2011 dated 04.02.2011 passed by Commissioner of Customs (Appeals), Kolkata)

**M/s. Jaya Perfumery Works Pvt. Ltd.**
(9C, Ganguly Lane, Kolkata-700007)

**Appellant**

*VERSUS*

**Commr. of Customs (Port), Kolkata**
(15/1, Strand Road, Kolkata-700001)

**Respondent**

**With**

**(i) Customs Appeal No. 201 of 2011 (M/s Jaya Perfumery Works Vs. Commr. of Customs, Kolkata (ii) Customs Appeal No. 202 of 2011 (M/s Jaya Perfumery Works Vs. Commr. of Customs, Kolkata (iii) Customs Appeal No. 75950 of 2015 (M/s Jaya Perfumery Works Vs Commr. of Customs, Kolkata)**

(i) (Arising out of Order-in-Appeal No. KOL/CUS/CKP/22-24/2011 dated 04.02.2011 passed by Commissioner of Customs (Appeals), Kolkata)

(ii) (Arising out of Order-in-Appeal No. KOL/CUS/CKP/22-24/2011 dated 04.02.2011 passed by Commissioner of Customs (Appeals), Kolkata)

(iii) (Arising out of Order-in-Appeal No. Kol/Cus(Port)/AM/041/2015 dated 10/7/2015 passed by Commissioner of Customs (Appeal), Kolkata)

**APPEARANCE :**
Mr. Arijit Chakraborty, Advocate for the Appellant
Mr. S. Debnath, Authorized Representative for the Respondent

**CORAM:**
**HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)**
**HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO.77401-77404/2023**

Date of Hearing : 11 October 2023
Date of Decision: 11 October 2023

**PER R. MURALIDHAR:**

The Appellant has imported Joss Powder for usage in their finished goods known as Jigged Powder. They were importing these consignments right from May 2003 onwards and 11 consignments were imported between 2/05/2003 to 25/03/2004, through Haldi Port, wherein the goods were classified under chapter sub-heading 44013000 attracting basic Customs Duty @5%. Similar imports were also done by them through Kolkata (Port). Subsequently, the Customs Department took a view that the goods are liable to be classified under Chapter 12 of CTA, 1975. After due process, the Show Cause Notice was issued and adjudication Order was passed classifying the product under Chapter sub-heading 1211 9029 as against the Appellant's claim that the product was classifiable under 4401 30 00. The Duty Demand was confirmed along with interest and penalties. On Appeal, their Appeals were rejected by the Commissioner (Appeals). Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Counsel appearing on behalf of the Appellant submits that they have imported several consignments during the period 2003-2004 through Haldia (Port) as well as through Kolkata (Port), classifying the goods under 4401 30 00. Even the provisionally assessed imports were finalized on different occasions under 4401 30 00.

3. The Learned Counsel submits that the product in question falls clearly under 4401 30 00 and is not classifiable under 1211 90 29. The Appellant had filed one RTI Application seeking Department's comment for the Bills of Entry assessed on 23/02/2005. They were confirmed vide letter No. RTI/Cus/Kol(Port)22/11 dated 06/04/2011 that the issue was settled by classifying the product under CET 44013000 as per the Test Report received by the Customs Department. Hence, he submits that the Department has clearly held that even they have accepted that the goods are classifiable under 44013000 only. He also draws our attention to the Test Reports conducted by CRL. He submits that the goods can be classified under

1211 9029 only when there are medicinal properties are found in the imported goods. In the Test Reports given by CRL annexed at Page No. 46 to 49 of the Appeal Book, it can be seen that in all such cases, the Lab Report given by CRL clearly specifies that there is no medicinal property in the tested goods.

4. Further he submits that the classification has been unilaterally changed from CET 4401 to CET 1211. He submits that in terms of Circular dated 11/06/1988, whenever any classification of the product is changed, it has to be done only with the prior approval of the Commissioner of Customs which has not been done in this case. He further submits that all these pleadings were taken before the Commissioner (Appeals) who has recorded the submissions of the Appellant but has not passed any speaking order on the same. He submits that since the provisionally assessed Bills of entry were also finally assessed, the Department should have filed Appeals, if they were aggrieved by the finalized order which was not done in this case.

5. In view of the foregoing, the Learned Counsel submits that the present Appeals are required to be allowed.

6. The Learned AR reiterates the findings of the lower authorities.

7. Heard both sides and perused the Appeal Papers and other documentary evidence placed before us.

8. It is seen from the RTI response letter dated 06/4/2011 issued by the Assistant Commissioner of Customs that he has categorically stated that the classification of goods under CET 44013000 is settled and the Bill of Entry has been assessed finally in terms of Test Report dated 11/10/2004. This shows that the goods were being classified by the Department itself under CET 44013000.

9. Circular No. 41/98 dated 11/6/1998, specifies that if the classification for any commodity was required to be changed, the proper approval is required to be taken from the Commissioner of Customs. In this case, there is nothing on record to show that this

process was undertaken before the Customs Department adopted the new classification of CET 12119029.

10. On going through the Chapter Notes of Chapter 12, it is seen that Heading 12.11 applies to the plants or parts thereof: basil, borage, ginseng, hyssop, liquorice, all species of mint, rosemary, rue, sage and wormwood. The Test Report obtained from the CRL by the Department does not specify that the goods in question fall under any of these categories. Thus, we do not see any reason for the Department to suddenly change the classification from CET 44013000 to CET 12119029 when several consignments have been imported through Kolkata (Port) as well as Haldia (Port) during the period 2003 to 2004 were allowed to be classified under CET 44013000. Even the provisionally, assessed Bills of Entry has been finalized by classifying the goods under CET 44013000.

11. In view of foregoing, we do not see any proper evidence being brought in by the Customs Department to adopt new classification under CET 12119029, particularly when even the Test Reports obtained from CRL do not support the view of the Department.

12. Accordingly, we set aside the impugned Order and allow the Appeals filed by the Appeals with consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open court.)

Sd/-
**(R. Muralidhar)**
**Member (Judicial)**

**Sd/-**
**(K. Anpazhakan)**
**Member (Technical)**

Pooja