



सीमाशुल्क (निवारक) के आयुक्तकार्यालय, सीमाशुल्क भवन,
 जामनगर- राजकोट हाईवे, विक्टोरिया ब्रिज के पास,
 जामनगर (गुजरात) - 361 001

Office of the Commissioner of Customs (Preventive),
 'SEEMA SHULK BHAVAN', Jamnagar - Rajkot Highway,
 Near Victoria Bridge, Jamnagar (Gujarat) - 361 001

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दस्तावेज़ पहचान संख्या/

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2. मूल आदेश क्रमांक/ Order-In-Original Number	JAM-CUSTM-PRV-COM-008-24-25
3. आदेश पारित करने वाला प्राधिकारी/ Authority Passing the Order	धिरेन्द्र लाल / Dhirendra Lal आयुक्त/ Commissioner, सीमा शुल्क निवारक (/ Customs (Preventive), जामनगर/ Jamnagar.
4. आदेश की तिथि/ Date of Order	27.12.2024
5. आदेश जारी करने की तिथि/ Date of issue of Order	07.01.2025
6. कारण बताओ नोटिस संख्या और तारीख/ Show Cause Notice number and date	संख्या/ No.: COMMR-02/2024-25 दिनांक / dated: 30.08.2024 संख्या/ No.: COMMR-02/2024-25 दिनांक / dated: 30.08.2024
7. नोटिस पाने वाले का नाम/ Name of the Noticee	मेसर्स गंगोत्री इंडस्ट्रीज 383-मेहता टाइल्स कंपाउंड, गुजरात हाउसिंग बोर्ड, सिंगरवा-कठवाड़ा रोड अहमदाबाद-380024 M/s. Gangotri Industries, 383-Mehta Tiles Compound, Gujarat Housing Board, Singarwa-Kathwada Road, Ahmedabad-380024

1. इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है।

The original copy of this order is provided free of cost to the person concerned.

2. इस मूल आदेश से व्यक्ति कोई भी व्यक्ति, सीमा शुल्क अधिनियम, की धारा 129 1962A(1)a(, सीमा शुल्क अपील) नियम, 1982 के नियम 6(1) के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से तीन महीने के भीतर फॉर्म सीए 3-में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए 3-में अपील का प्रपत्र, चार प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। प्रति हो)। जिनमें से कम से कम एक प्रमाणित।

सीमा शुल्क, उत्पाद शुल्क और सेवा कर
अपीलीय न्यायाधिकरण, पश्चिम जोनल बैंच,
दूसरी मंजिल, बहुमाली भवन असरवा, गिरधर नगर
ब्रिज के पास, गिरधर नगर, अहमदाबाद, (गुजरात) -
380 004

Customs, Excise and Service Tax
Appellate Tribunal (West Zonal Bench)
2nd Floor, Bahumali Bhavan Asarwa, Near
Girdhar Nagar Bridge, Girdhar Nagar,
Ahmedabad (Gujarat) - 380 004

Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-3, within three months from the date of receipt of this order, under the provisions of Section 129A(1)(a) of the Customs Act, 1962, read with Rule 6(1) of the Customs (Appeals) Rules,

1982. The form of appeal in Form No. CA.-3 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

3. अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये) 0.50पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।
The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paisa only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

4. अपील के साथ सीमा शुल्क अधिनियम, 1962, की धारा) 129A) की उप) धारा-6) के अंतर्गत किसी भी राष्ट्रीयकृत बैंक द्वारा न्यायाधिकरण की उक्त पीठ के सहायक रेजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट रु। -/रु। 5000,-/1000या रु। -/10,000जैसा भी लागू होऐसे स्थान पर स्थित शाखा के लिए जारी किया जाना, पीठ स्थित है। चाहिए, जहां पर उक्त The appeal should be accompanied with a cross demand draft in favour of the Assistant Registrar of the Bench of the Tribunal, on a branch of any Nationalized Bank located at a place where the bench is located for Rs. 1,000/- (in cases where the duty, interest, fine, or penalty demanded is Rs. 5 lakh or less), Rs. 5,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 5 lakhs but less than Rs. 50 lakhs) and Rs. 10,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 50 lakhs) as applicable under Sub-Section (6) of the Section 129(A) of the Customs Act, 1962.

5. अपीलीय ज्ञापन के साथ शुल्क भुगतानजुर्माना/ अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क / अधिनियम, 1962 की धारा 129(E) के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।
Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 129 (E) of the Customs Act, 1962.

6. अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील) नियम, और सिस्टेट प्रक्रिया 1982 सीजर) नियमप्रो, के सभी नियमों का पूरा पालन हुआ है। 1982
While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.

7. इस आदेश के खिलाफ अपील, सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।
An appeal, against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal, on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.

Brief Facts of the Case:

M/s. Gangotri Industries hold IEC No: ABOPP5754B and GSTIN 24ABOPP5754B1ZL (herein after referred as 'Noticee'), having their office at 383-Mehta Tiles Compound, Gujarat Housing Board, Singarwa-Kathwada Road, Ahmedabad-380024, are engaged in import of Saw Dust Powder / Wood Wast Powder (for making incense stick / agarbatti), at the Port of Pipavav.

2. The said Noticee had filed Bills of Entry, as per details, given below:-

Sr. No.	BE No. & Date	Description of the Goods	CTSH declared	COO	AV	COO Benefit
01	2355553 / 08.09.2022	Saw Dust Powder for making Agarbatti	44013900	VN	1403531	As per Noti. No. 46/2011 (S.No.542-I)
02	3477440 / 16.11.2022	Saw Dust Powder for making incense stick	44013900	VN	609918.4	--do--
03	3685791 / 10.12.2022	--do--	44013900	VN	605488	--do--
04	3770815 / 16.12.2022	Saw Dust Powder for making Agarbatti	44013900	VN	1328779	--do--
05	4374842 / 27.01.2023	--do--	44013900	VN	1332272	--do--
06	4552298 / 08.02.2023	Saw dust powder (Saw dust powder for making incense stick)	44013900	VN	623273/-	Not availed benefit
07	4632860 / 14.02.2023	--do--	44013900	VN	622776.5	Not availed benefit
08	4904959 / 04.03.2023	Saw Dust Powder for making Agarbatti	44013900	VN	1280556	As per Noti. No. 46/2011 (S.No.542-I)
09	4927182 / 06.03.2023	Saw Dust Powder for making incense stick	44013900	VN	1270175	--do--
10	5202225 / 24.03.2023	Saw Dust Powder for making Agarbatti	44013900	VN	1259852	--do--
11	5772257 / 02.05.2023	--do--	44013900	VN	1133501	--do--
12	6150706 / 27.05.2023	Saw Dust Powder for making incense stick	44013900	VN	1076653	--do--
13	6350322 / 10.06.2023	--do--	44013900	VN	544768.8	--do--
14	6350323 / 10.06.2023	Saw Dust Powder for making Agarbatti	44013900	VN	1136909	--do--
15	6389898 / 13.06.2023	Saw Dust Powder for making incense stick	44013900	VN	1096877	--do--
16	7139221 / 01.08.2023	Saw Dust Powder for making Agarbatti	44013900	VN	1201448	--do--
17	7197986 / 04.08.2023	Saw Dust Powder for making incense stick	44013900	VN	1615152	--do--

18	7583071 / 29.08.2023	--do--	44014100	VN	1103788	--do--	
19	6565627 / 24.06.2023	Saw Powder making Aggarbatti	Dust for	44014100	VN	1132138	--do--
20	7468395 / 22.08.2023	Saw Powder making Aggarbatti	Dust for	44014100	VN	1215208	--do--
21	7774209 / 11.09.2023	--do--	44014100	VN	1215932	--do--	
22	8506725 / 28.10.2023	--do--	44014100	VN	1219553	--do--	
23	9025839 / 01.12.2023	--do--	44014100	VN	1218104	--do--	
24	9150988 / 09.12.2023	Saw Powder making incense stick	Dust for	44014100	VN	550647.6	--do--
25	9251375 / 15.12.2023	Saw Powder making Aggarbatti	Dust for	44014100	VN	1221001	--do--
26	9852670 / 27.01.2024	--do--	44014100	VN	1146451	--do--	
27	2500692 / 09.03.2024	--do--	44014100	VN	1141680	--do--	
28	3012102 / 13.04.2024	--do--	44014100	VN	1149859	--do--	
29	8800634 / 17.11.2023	Wood Dust	Waste	44013900	CN	748384.9	Not availed benefit
30	9806997 / 24.01.2024	--do--	44013900	CN	736505.8	Not availed benefit	
31	3064293 / 17.04.2024	--do--	44013900	CN	762524	Not availed benefit	
32	3231645 / 27.04.2024	--do--	44013900	CN	739133	Not availed benefit	

3. As per various documents viz. (1) Invoice, (2) Bill of Lading, (3) Fumigation Certificate, (4) Country of Origin Certificate, Phytosanitary Certificate presented along with the said Bills of Entry, the goods under import have been described as Saw Dust Powder / Wood Powder (for Making Incense Stick / Aggarbatti), therefore, it transpires that the goods imported are to be used for making incense stick commonly known as 'agarbatti';

4. The Noticee have classified & self-assessed the said goods under Custom Tariff Sub-Heading No. 44013900/44014100 of the 1st Schedule to the Customs Tariff in the above mentioned Bills of Entry with Basic Customs Duty (BCD) @ 5%, SWS @ 10% of BCD and IGST @ 5% (as per Notification No. 001/2017-IGST (Rate) (Sr. No 198 of Schedule-I). The Noticee also availed benefit of exemption from payment of Basic Customs Duty (BCD) as per Notification No. 046/2011-Customs (Sr. No. 542-I) in respect of goods originated in Vietnam, on the strength of Country of Origin (COO) Certificate issued by the AIAFTA authorities, Vietnam. The above mentioned Bills of Entry were either selected for assessments/ cleared through RMS. The Noticee had paid the appropriate duty self-assessed thereon followed by the Out of Customs charge of the goods by the proper officer. These Bills of Entry were later on marked for Post Clearance Audit (PCA).

5. The Post Clearance Audit of the Bills of Entry filed by the Noticee was carried out by the Office of the Commissioner of Customs (Prev.), Jamnagar. Chapter Note (1) to Chapter 44 falling under Section-IX of the Customs Tariff stipulates as under:-

SECTION IX

WOOD AND ARTICLES OF WOOD; WOOD CHARCOAL; CORK AND ARTICLES OF

CORK; MANUFACTURERS OF STRAW, OF ESPARTO OR OF OTHER PLATING MATERIALS; BASKETWARE AND WICKERWORK

CHAPTER 44

Wood and articles of wood; wood charcoal

NOTES : 1. This Chapter does not cover:

- (a) wood, in chips, in shavings, crushed, ground or powdered, of a kind used primarily in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes (heading 1211);
- (b) bamboos or other materials of a woody nature of a kind used primarily for plaiting, in the rough, whether or not split, sawn lengthwise or cut to length (heading 1401);
- (c) wood, in chips, in shavings, ground or powdered, of a kind used primarily in dyeing or in tanning (heading 1404);

5.1 Upon careful reading of clause (a) to Note 1 mentioned above, it appeared that if the Saw Dust Powder imported vide above Bills of Entry, though classifiable in CTH 44, for a definite purpose is excluded from the said CTH, wherein the definite purpose should be such imported goods should be used for of a kind used primarily in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes and such goods are classifiable under CTH 1211.

5.2 It further appeared from the above that Saw Dust/ Wood Powder is regularly classifiable under **CTH 4401** for the purpose of levy of Customs duty as per the provisions of Customs Act, 1962 & Customs Tariff Act, 1975. However, by virtue of clause (a) to Note1 of Chapter44 of the Customs Tariff, Saw Dust/ Wood Powder is classifiable differently depending upon its usage. As such, Saw Dust / Wood Powder / Joss Powder etc., when used primarily in perfumery, its classification is excluded from Chapter 44 and become classifiable under Heading 1211. In the present case, it appeared that the specific purpose of import of such goods has been explicitly mentioned in their import documents i.e. for the purpose of making of incense stick, commonly known as Aggarbatti. Further, the Incense Stick or Aggarbatti is used to spread fragrance while burning, therefore, it transpires that the Incense Stick / Aggarbatti falls in the category of 'perfumery'.

5.3 The relevant extract of CTH-1211 is reproduced herein below :-

CTH-1211

PLANTS AND PARTS OF PLANTS (INCLUDING SEEDS AND FRUITS), OF A KIND USED PRIMARILY IN PERFUMERY, IN PHARMACY OR FOR INSECTICIDAL, FUNGICIDAL OR SIMILAR PURPOSE, FRESH, CHILLED, FROZEN OR DRIED, WHETHER OR NOT CUT, CRUSHED OR POWDERED

--- Leaves, powder, flowers and pods:

1211 90 21	--- Belladonna leaves	- 30% / 15%
1211 90 22	--- Senna leaves and pods	- 30% / 15%
1211 90 23	--- Neem leaves, powder	3 - 30% / 15%
1211 90 24	--- Gymnema powder	- 30% / 15%
1211 90 25	--- Cubeb powder	- 30% / 15%
1211 90 26	--- Pyrethrum	- 30% / 15%
1211 90 29	--- Other	- 30% / 15%

From the above, it appeared that the Saw Dust/ Wood Powder/ Joss Powder etc. imported for use in making Incense Stick/ Aggarbatti would merit classification under CTH 12119029 and not under CTH 44013900/44014100. Further, by classifyingthe goods

under CTH 44013900/ 44014100, the importer paid NIL BCD by availing benefit of Exemption Notification No.046/2011-Customs (Sr. No. 542-I) when imported from Vietnam under AIAFTA, though it attracted Basic Customs Duty (BCD) @ 15% along with SWS @ 10% of BCD & IGST @ 5% (as per Notification No. 001/2017-IGST (Rate) (Sr. No 73 of Schedule-I). It further appeared that the said goods when classified under CTH i.e. 12119029 attracted Basic Customs Duty (BCD) @ 15%, SWS @ 10% of BCD & IGST @ 5% (as per Notification No. 001/2017-IGST (Rate) (Sr. No 73 of Schedule-I), and the benefit of NIL payment of BCD in terms of Notification No. 046/2011-Cus dated 01.06.2011 is not extended for the said classification. Thus, it appeared that there is a mis-classification of imported goods under CTH 44013900/44014100, resulting into short-levy/ short-payment of Customs Duty.

6. The aforesaid observation was communicated to the Noticee by the Assistant Commissioner of Customs, C.H. GPPL, Pipavav separately vide letters issued from F. No. PCA/JMN/GPPL/CL-1/2024 dated 15.02.2024 and 15.02.2024 to the Noticee and requested to pay differential Customs duty with applicable interest.

7. It appeared that the Noticee did not agree with the observations communicated vide above letters and filed submission with the Deputy / Assistant Commissioner, Customs House, Pipavav vide letter Ref.: Nil, both dated 18-03-2024, in which, the Noticee, inter alia, contended that:

- 7.1 they have filed BoEs for clearance of the imported goods namely Saw Dust Powder (Saw Dust Powder for making Incense Stick/ Aggarbatti) and have classified the goods under Chapter 44 (CTH 44013900 / 44014100) being Tariff Item specific for the saw dust. However, the department have not agreed with this classification and have proposed classification/ classified the same under 12 (CTH 1211 9029) by linking use of the subject goods in making 'Aggarbatti' to the expression "of kind used primarily in perfumery" appearing under CTH 1211. The classification proposed by the department is completely erroneous for the following amongst other reason which are for kind consideration;
- 7.2 the distinction between the item that give fragrance and those which don't critical for arriving at correct and lawful classification, when Chapter heading 1211 is being considered; it is an admitted position that the item, saw dust powder, is earmarked a specific place in the tariff i.e. CTH 4401 4100, however, guided by declaration made on the bill of entry that is saw dust powder has been imported for making incense stick, it is proposed to classify the item under CTH heading 1211 by treating the incense stick as perfumery;
- 7.3 the decision of Hon'ble in the case of Shri Mahalaxmi Flour Mills v/s Commr. Of Cus. Chennai, 2004 (167) ELT 429 (Tri-Bang) would act as the guiding light for the purpose of applying chapter heading 1211. Para 2 of the decision re reproduced below for the ease of ready reference :-

"We have carefully considered the submissions made by both sides. From the records we find that the appellants have imported "Desapped Sandal Wood Roots". The appellants have stated that the imported goods would be covered into powder and used in the manufacture of "Aggarbatti". Plants/parts of a kind used primarily in perfumery, etc. are covered by Chapter 12 of the Customs Tariff Act. Since the goods are to be used in the manufacture of "Aggarbatti" for giving fragrance, therefore, they are primarily used for the purpose of perfumery."

In the present case, the entry in Heading 12.11 of the Customs Tariff Act, is as under :-

"Plants and parts of plants (Including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose. Fresh or chilled whether or not cut, crushed or powdered",

"Since the Sandal Wood Roots, after being powdered, are to be used in manufacture of "Aggarbatti" and it can only be used as perfumery for giving fragrance, the interpretation of the perfumery as given by the Apex Court in the case of Pardeep Aggarbatti (supra) is not applicable in the present case. We do not find any merit in the appeal filed by the party."

And thus, as per the criteria, duly appreciated by Hon'ble Tribunal, only such item which give fragrance shall be classified under CTH 1211.

8. Whereas, it appeared that the contentions of the Noticee is not proper in as much as:-

- 8.1 as per Rule 1 of General Rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, "the titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the heading of any relative Section or Chapter Note...". Clause (a) to Note 1 in Chapter 44 of the Customs Tariff Act (CTA), 1975 is explicitly clear and excludes goods viz. wood, in chips, shaving, crushed, grounded, powdered form, a kind used, inter alia, in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes, from the purview of chapter 44 of the CTA, 1975. In the instant case, it is a fact that the Saw Dust Powder was meant for making Incense Stick, commonly known as "Aggarbatti". Further, the incense stick or Aggarbatti is used to spread fragrance, thus, it is considered as a perfumery product. Owing to specified purpose or usage for making incense, the imported goods i.e. "Saw dust powder for making Incense Stick" is correctly classifiable under CTH 1211;
- 8.2 conjoint reading of clause (a) of Note 1 to Chapter 44 along with Customs Tariff Head 1211, it transpires that the primary usage of the goods is relevant for the classification of the goods. Thus, if at all whether the goods (raw material) for the purpose of making of incense stick sought to be classified under CTH 1211 contains fragrance or otherwise, has no significance. Moreover, there are many other factors, apart from fragrance, such as moisture content, hardness or softness, etc. which makes the goods fit to be used for perfumery. On the contrary it can be construed that, had the goods in question were used for the purposes such as for making plywood or charcoal or industrial purpose, then the goods shall have been classified at appropriate place under Chapter 44, which is not the case herein.
- 8.3 clause (a) to Note 1 of chapter 44 further provides that the wood, in chips, shaving, crushed, grounded, powdered form, and to be used in perfumery or pharmacy or insecticide or fungicidal or similar purposes, is excluded from the purview of chapter 44 of the CTA, 1975 and classifiable under CTH 1211. Thus, it is amply clear that the exclusion of the product from Chapter 44 is specifically based on the imported goods usage, i.e. if it is used in perfumery or pharmacy or insecticide or fungicidal or similar purposes and there is no mention about goods to possess fragrance in the exclusion clause, as construed by the noticee. In this backdrop, it is not relevant that the goods "saw dust powder" generated as waste during sawing the wood, contains any fragrance or otherwise? Once, it is used for the intended purpose described in clause (a) to Note 1 of Chapter 44, such goods

inevitably gets excluded from the purview of that Chapter and by no stretch of imagination, it can be classified in that Chapter, i.e. in Chapter 44.

8.4 the quoting of the case-law of Sri Mahalakshmi Flour Mills Vs. Commr. Of Cus., Chennai [2004 (167) ELT 429 (Tri.-Bang.)] is to emphasize that since Sandal Wood itself contains fragrance, therefore, classifiable under CTH 1211. The reliance has been wrongly placed on the said case law in as much as the referred case-law stipulates that “..... Since the goods are to be used in the manufacture of “Agarbatti” for giving fragrance, therefore, they are primarily used for the purpose of perfumery.” and it nowhere stipulates that the goods used in perfumery should itself be with fragrance. It is mere coincidence that in referred citation, the goods imported was Sandal Wood Roots which itself contains fragrance, otherwise, the case-law cited by the Noticee is not in conformity of the view taken by the noticee. On the contrary, the said case law is rebutting the view of the Noticee only. As a result, the argument that Saw Dust Powder is not fragrance bearing substance in Agarbatti and is only binding material only is not relevant. Hence, the **maxim ejusdem generis** is also not applicable as claimed by the Noticee.

8.5 Further, as regards the submission of the Noticee that Entry 121190209 is preceded by the entries i.e. 12119021 to 12119026 which deal with items namely Beladona leaves, Senna leaves and pods, Neem leaves, powder, Gymnema powder, Cubeb powder and Pyrethrum respectively and department proposed to classify Saw Dust Power meant for use in Agarbatti against entry 1211 90 29, it is observed that these entries are specific one particularly for leaves or pods or powders of Beladona or Senna or Neem or Gymnema or Cubeb. However, the description of the goods declared in Bill of Entry or supporting documents nowhere indicate that the goods in question is leaves or pods as well as powder of Beladona or Senna or Neem or Gymnema or Cubeb to be appropriately classifiable against Entry 12119021 to 12119026. There is no specific declaration of exact origin of Saw Dust or Wood Powder. As such, in absence of any other supporting documents regarding the type of Saw Dust Powder, the imported goods is more specifically classifiable against Entry 12119029 only.

9. Accordingly, the goods i.e. Saw dust powder (Saw dust powder for making Incense Stick) appeared to be classifiable under CTH 12119029 instead of under CTH 44013900 / 44014100, thereby the Noticee appeared to be liable to pay Basic Customs Duty (BCD) @ 15%, SWS @ 10% of BCD & IGST @ 5% (as per Notification No. 001/2017-IGST (Rate) (Sr. No 73 of Schedule-I). It also appeared that the noticee is not eligible for the benefit of exemption from basic customs duty under Sr.No. 542(I) of Notification No. 046/2011-Cus dated 01.06.2011, in as much as the Country of Origin (COO) Certificate(s) issued by the AIAFTA authorities are for the goods falling under ITC(HS) 44013900 / 44014100. Thus, short paid Customs duty is required to be recovered under Section 28(1) of the Customs Act, 1962 along with interest, as applicable, for delayed payment of differential Customs duty, under Section 28AA of the Customs Act, 1962. Therefore, a Show Cause Notice bearing No.02/2024-25 dated 30-08-2024 was issued to the Noticee asking them to show cause as to why:

(i) the declared classification of the imported goods under CTH 44013900/44014100 of the First Schedule to the Customs Tariff Act, 1975 in the Bills of Entry as detailed in Annexure-A to this Notice should not be rejected and the said goods should not be re-classified under CTH 12119029 of the First Schedule to the Customs Tariff Act, 1975 and why the subject Bills of Entry should not be reassessed accordingly;

- (ii) differential Customs duty amounting to Rs.55,55,305/- (Rupees Fifty Five Lakhs, Fifty Five Thousand, Three Hundred and Five only), as detailed in Annexure-A to this Notice, should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962;
- (iii) interest on the Customs duty as mentioned in (ii) above should not be charged and recovered from them under the provisions of Section 28AA of the Customs Act, 1962;

Defence Submission:

10. The Noticee had vide their letter dated 18-11-2024 submitted their defence reply wherein they had submitted that the proposal is based on Chapter Note 1 of Chapter 44, which is based on the averment that goods were imported for use in making incense stock/ agarbatti and hence, the same must be classified under CTH 1211 and not CTH 4401; that the notice at para 8.2 unequivocally concedes that "had the goods in question were used for the purposes such as for making plywood or charcoal or industrial purpose, then the goods shall have been classified at appropriate place under Chapter 44 and thus, the notice propounds use-based classification of one and the same item i.e. saw dust powder/ wood waste powder. The notice further contended that the settled legal position that no word can be rendered otiose or superfluous while reading and interpreting a legal statute; that using words "of a kind" and "primarily" attach some kind of exclusivity for the goods to fall under the exception contained in the chapter note; that when the goods are used in perfumery (agarbatti) as well as non-perfumery (plywood, charcoal and other industries), there is no element of exclusivity that is the sine qua non of the chapter note; that mere use of goods in making agarbatti is not sufficient to bring within the purview of expression "of a kind used primarily in" used in Chapter Note 1 (a) above, particularly, in the face of department's own admission in para 8.2 of the notice that the same goods were used for making plywood or charcoal or industrial purpose; that therefore, unless department brings out any particular characteristic or characteristics of the goods which makes them of such a kind that is capable of being used primarily or principally in the making of agarbatti and not for any other use, including making plywood or charcoal, etc., given the fact that the item has common use for making all this, the preposition to exclude the said item from the scope of Chapter 44 for the sole reason that it was imported for use in making agarbatti lacks objective justification.

10.1 The noticee has further contended that there is some kind of exclusivity involved when words "of a kind" and "primarily" are used in the chapter note; that when the goods have use in diverse industries like agarbatti, plywood, charcoal, etc. i.e. perfumery as well as non-perfumery products, there is no element of exclusivity and hence, the criteria laid down in the chapter note invoked in the notice is not satisfied and thus, use of goods in making agarbatti per se is not sufficient to exclude them from the purview of Chapter 44 and therefore, submitted that the proposition to exclude them from Chapter 44 and classify them under Chapter 12 is not justified, hence the same is liable to be rejected and dropped.

10.2 The noticee, placing reliance on in the case of Sri Mahalakshmi Flour Mills v/s. Commissioner of Customs, Chennai, reported in 2004 (167) ELT 429 (Tri. Bang), submitted that the said case law would act as the guiding light for the purpose of applying Chapter Heading 1211 and reproduced para 4 of the case law as under:

"4. We have carefully considered the submissions made by both sides. From the records, we find that the appellants have imported "Desapped Sandal Wood (Roots)". The appellants have stated that the imported goods would be converted into powder and used in the manufacture of

'Aggarbatti'. Plants/parts of plants of a kind used primarily in perfumery, etc. are covered by Chapter 12 of the Customs Tariff Act. Since the goods are to be used in the manufacture of 'Aggarbatti' for giving fragrance, therefore, they are primarily used for the purpose of perfumery....

In the present case, the entry in Heading 12.11 of the Customs Tariff Act, is as under -

"plants and parts of plants (including seeds and fruits) of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered".

Since the Sandal Wood Roots, after being powdered, are to be used in the manufacture of 'Aggarbatti' and it can only be used as perfumery for giving fragrance, the interpretation of the perfumery as given by the Apex Court in the case of Pardeep Aggarbatti (supra) is not applicable in the present case. We do not find any merit in the appeal filed by the party. Accordingly the appeal is rejected."

and contended that as per the criteria duly appreciated by Hon'ble Tribunal, only such item which give fragrance shall be classified under CTH 1211, considering that primary requirement of perfumery is fragrance; that in this case it is not the case of department that saw dust powder imported by them is the fragrance bearing substance in Aggarbatti and since it is not the fragrance bearing substance, it cannot be excluded from Chapter 44.

10.3 The notice further contended that Entry 121190209, where the department has proposed to classify saw dust powder meant for use in Aggarbatti is preceded by the entries i.e. 12119021 to 12119026 which deal with items namely Beladona leaves, Senna leaves and pods, Neem leaves, powder, Gymnema powder, Cubeb powder and Pyrethrum respectively, whereas nowhere it is shown in the SCN that saw dust is of the same kind and nature as the aforesaid items so as to fall within the same bracket as 121190. Further, he submitted that the assessment has already attained finality and hence no duty can be lawfully demanded without having filed any appeal against the assessment orders, placing reliance in the case of Shri Rumen Dey v/s. Commissioner of Customs (Prev.), Shillong. The Noticee finally submitted that goods have been correctly classified under Chapter 44.

Personal Hearing:

11. Personal hearing in the matter was scheduled on 12-11-2024, however the representative of the Noticee requested for a short adjournment. Therefore, considering the request of the Noticee, personal hearing was again scheduled on 18-11-2024. Shri Vikas Mehta appeared on behalf of the Noticee on 18-11-2024 and made submissions primarily that fragrance is one of the differentiating factor citing the judgment of Shri Mahalaxmi Flour Mills v/s. Commr. of Cus. Chennai, 2004 (167) ELT 429 (Tri. Bang). He further submitted that the notice does not take into account the term 'of a kind', that is used in Chapter Note of Chapter 44. He further submitted that CTH uses for the purpose of excluding the goods from Chapter 44, the expression of a kind and primarily. Therefore, these two factors ought to have been given due consideration before issuing the notice. Further, he submitted that 'of a kind' is the distinguishing factor here. The notice did not consider that whether the goods are 'of a kind' which in this context stands for fragrance which is the distinguishing factor between the use in aggarbatti and the use in charcoal etc. If there is no fragrance then my goods are in same bracket as goods used in charcoal or industrial purpose or plywood etc., as duly admitted in para 8.2 of the notice. Thus, without fragrance, there is no distinction at all between wood powder used in making aggarbatti, plywood, charcoal and other industrial purposes. In as much as goods do not bear fragrance and no other feature fulfilling the criteria "of a kind used primarily" in making aggarbatti (and no other goods mentioned in para 8.2 of the notice) is brought on record, wood powder per se will not be automatically exclude it from Chapter 44.

Further submissions post Personal Hearing:

12. The Noticee submitted that it is an admitted position that saw dust powder/wood powder ("goods") imported by M/s. Gangotri is also used in making

plywood, charcoal and other industrial purpose (para 8.2 of notice refers.); that thus it is not the case of the department that the goods are of a kind solely used in making agarbatti; that mere use of goods in making agarbatti is not sufficient to knock them out of Chapter 44 given the admitted position that the same are also used for other purposes as correctly state in para 8.2 of the notice; that as such the notice does not cite any evidence on the basis of which it can allege that goods are of a kind used primarily in perfumery. The Noticee contended that the goods imported by them are not fragrance bearing so as to carve out a niche category for itself and thereby fall within the expression "of a kind primarily used in perfumery" and get distinguished from saw dust powder/ wood waste powder that goes into making plywood, charcoal and other industrial purpose; that fragrance could have made the goods "of a kind used primarily" in perfumery, however the goods do not bear any fragrance and hence the goods used in making agarbatti are on the same footing as those used in making other items; that in the present case, the saw dust or wood waste powder is not capable of giving any fragrance and hence, applying the ratio of aforesaid decision, the same would not merit classification under Chapter 12 and have been correctly classified under Chapter 44. The Noticee prayed to give due consideration to their submissions and vacate the impugned notice issued to them.

Discussions and Findings:

13. Now, I proceed to decide the case on the basis of evidences on record and the submissions made by the Noticee. I have read the charges adduced in the Show Cause Notice dated 30.08.2024, perused the relied upon documents, the written submissions dated 18-11-2024 and 20-11-2024, filed by the Noticee, submission made at the time of personal hearing held on 20.12.2024 and considered other evidences available on record. I find that the core issue in the matter before me to be decided is whether the goods imported by the noticee i.e. Saw dust powder (Saw dust powder for making Incense Stick)" are classifiable as "Wood and articles of wood; wood charcoal, under CTH 4401, or classifiable as "Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, Fungicidal or similar purpose, fresh, chilled, frozen or dried, whether or not cut, crushed or powdered" under CTH 1211 of the Customs Tariff Act, 1975, as proposed in the SCN or otherwise.

14 The facts of the case are that the importer filed Bills of Entry for import of Saw Dust Powder/ Wood Waste Powder from Vietnam/ China, declaring them to be used for the manufacture of incense stick in the column of description of goods in these Bills of Entry, and classifying the same under CTH 44013900/44014100. Therefore, in the present case, it is an admitted fact that the goods imported were for the purpose of manufacture of incense sticks [Agarbatti sticks]. I also find that the levy of duties on goods imported under this CTH was Basic Customs Duty (BCD) @ 5%, SWS @ 10% of BCD and IGST @ 5%. I also find that the benefit of exemption of basic customs duty by virtue of Notification No. 046/2011- Customs was available on goods classified under the said CTH when imported from Vietnam/ China.

15 I find that on the other side, the levy of duties on goods imported if classified under CTH 1211 was Basic Customs Duty (BCD) @ 15%, SWS @ 10% of BCD & IGST @ 5% and the benefit of Exemption Notification was not extended to the goods classified under the said CTH.

16 Now, before dealing with the contention of the Noticee, I find it indispensible to have cursory look at the exclusion clauses mentioned in Note 1, particularly clause (a), to Chapter 44 of Section IX in Customs Tariff Act, 1975, which is stipulated as under:

SECTION IX
WOOD AND ARTICLES OF WOOD; WOOD CHARCOAL; CORK AND ARTICLES OF CORK; MANUFACTURERS OF STRAW, OF ESPARTO OR OF OTHER PLATING MATERIALS; BASKETWARE AND WICKERWORK
CHAPTER 44
Wood and articles of wood; wood charcoal

NOTES : 1. This Chapter does not cover:

- (a) **wood, in chips, in shavings, crushed, ground or powdered, of a kind used primarily in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes (heading 1211);**
- (b) **bamboos or other materials of a woody nature of a kind used primarily for plaiting, in the rough, whether or not split, sawn lengthwise or cut to length (heading 1401);**
- (c) **wood, in chips, in shavings, ground or powdered, of a kind used primarily in dyeing or in tanning (heading 1404);**
.....

16.1 Upon careful reading of Note 1 read with clauses to Note 1, it is explicit that the imported goods, though classifiable under CTH 44, if meant to be used for a definite purpose mentioned against these clauses, these goods are ineligible to be classified under CTH 44 due to the exclusion clause, but for the definite purpose these clauses itself mentions as to where it is to be classified. Further, Clause (a) to Note 1 of Chapter 44 states "**(a) wood, in chips, in shavings, crushed, ground or powdered, of a kind used primarily in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes (heading 1211);**" Again, upon careful reading of clause (a), it is evidently construed that wood in specific forms **viz. in the form of chips, shavings, crushed, ground or powdered** and used primarily in **perfumery, pharmacy, insecticidal, fungicidal or similar purpose**, shall be excluded from Chapter 44 and classified under CTH 1211. It is also construed that it is not crucial for all the goods required for manufacture of products in perfumery should essentially possess fragrance, as clause (a) explicitly express the word '**wood**', and does not specify anything about fragrance. Further, the Chapter Heading is not exclusive for goods used in perfumery alone, but also includes the goods used in pharmacy, goods used for insecticidal, fungicidal etc. The primary usage of the goods is relevant for the classification of the goods. Thus, if at all whether the goods (raw material) for the purpose of making of incense stick sought to be classified under CTH 1211 contains fragrance or otherwise, has no significance.

16.2 I would further like to ponder upon the heading of Chapter 33 and Note 4 to Chapter 33 of the Customs Tariff Act, 1975, to establish as to whether Agarbatti/ incense stick covers under Perfumery. For better comprehension, the relevant portion is stipulated as under:

Chapter 33

Essential Oils and Resinoids; Perfumery Cosmetic or Toilet Preparations

Notes:

1

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3

4 The expression "**perfumery, cosmetic or toilet preparation**" in heading 3307 applies, inter alia, to the following products; scented sachets; odoriferous preparations **which operate by burning**; perfumed papers and papers impregnated or coated with cosmetics; contact lens

or artificial eye solutions; wadding, felt and non-wovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations."

From the above it is amply clear and beyond the scope of any ambiguity that the product Agarbatti, which operates by burning, covers within the expression of word 'perfumery', is included in Chapter 3307, as Note 4 specifically explains that the expression of word '**perfumery' applies to the products, which include products which operate by burning.**

17. I find that the Noticee's entire submissions in their defence reply as well as during personal hearing focused primarily on the terminology 'of a kind' and construed that only such item which give fragrance shall be classified under CTH 1211, considering that primary requirement for manufacture of perfumery is 'fragrance' and since their goods viz. saw dust powder imported by them, not being fragrance bearing substance for use in Agarbatti, it cannot be excluded from Chapter 44. I also find that the Noticee placed reliance in the case of Sri Mahalakshmi Flour Mills v/s. Commissioner of Customs, Chennai, reported in 2004 (167) ELT 429 (Tri. Bang), in support of their claim. I find that the Noticee has conveniently grossly mis-construed by reading the term "of a kind" and "fragrance" in isolation to arrive at a conclusion that any goods though covered under Chapter 44 is excluded from the said Chapter, but will be covered under Chapter 12 in case only when such goods possess fragrance prior to manufacture of perfumery. However, the Noticee failed to appreciate and wilfully ignored that fact that the exclusion note of Chapter 44 does not only cover goods for the manufacture of perfumery, but also the goods for the manufacture of pharmaceutical, insecticidal, fungicidal products etc. Therefore, going by the contention of the Noticee, it gives the impression that goods with fragrance would only qualify to be classified in Chapter 12, even for manufacture of pharmaceutical, insecticidal, fungicidal products, which is evidently not the intent of the statute. Again, the contention of the Noticee that all the goods to qualify exclusion from Chapter 44 and instead classified in Chapter 1211 with heading "***Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, fresh or chilled whether or not cut, crushed or powdered***", ought to have fragrance before manufacture of final product of perfumery, itself is contrary in as much as careful reading of the said CTH transpires that various goods covered in the said CTH viz. Neem powder, Psyllium powder, Cascara sagrada bark etc. do not possess fragrance and yet classified under CTH 1211 for manufacture of perfumery etc. Further, I also find that the factor of emanating fragrance attain significance only when the goods manufactured accomplish the status of perfumery, which is again classified in CTH 33. Therefore, I find that the contention made by the Noticee that the distinction between the item that give fragrance and those which don't is critical for arriving at correct and lawful classification, when Chapter heading 1211 is being considered, is mis-placed and hold no merit. Further, contention regarding saw dust powder being earmarked at a specific place in tariff i.e. CTH 4401, I find that there is no dispute in the said classification, provided that the same should not fall in the exclusion clause (a) of Note 1 of Chapter 44, which has been examined and discussed in detail in para supra, hence, in the present case, the goods being saw dust powder, since imported for the purpose of manufacture of incense stick/ Agarbatti as admittedly declared in the Bills of Entry filed by the Noticee, do not qualify for classification in Chapter 44, but merit classification in Chapter 12. As regards, the contention of wrongly treating the incense stick as perfumery, as discussed in paras supra, I find that incense stick has been categorically classified in Chapter 33, more specifically in CTH 3307 and with explanation given in Note 4, there is no ambiguity in considering incense stick as perfumery. Therefore, I hold no merit in the contention of the Noticee.

18. Further, as regards the submission of the Noticee that Entry 121190209 is preceded by the entries i.e. 12119021 to 12119026 which deal with items namely Beladona leaves, Senna leaves and pods, Neem leaves, powder, Gymnema powder, Cubeb powder and Pyrethrum respectively and department proposed to classify Saw Dust Power meant for use in Aggarbatti against entry 1211 90 29, it is observed that these entries are specific one particularly for leaves or pods or powders of Beladona or Senna or Neem or Gymnema or Cubeb, whereas, the description of the goods declared in Bill of Entry or supporting documents nowhere indicate that the goods in question is leaves or pods as well as powder of Beladona or Senna or Neem or Gymnema or Cubeb to be appropriately classifiable against Entry 12119021 to 12119026. In this regard, I find that there is no specific declaration of exact origin of Saw Dust or Wood Powder and therefore, in absence of any other supporting documents regarding the type of Saw Dust Powder, I find that the imported goods is more specifically classifiable against Entry 12119029 only.

19. In view of the above discussions and findings, I hold that the imported goods i.e. saw dust powder (Saw dust powder for making Incense Stick), being the goods meant to be used for manufacture of Aggarbatti, as declared by the Noticee in the face of the Bills of Entry, requires to be classified under CTH 12112990 of the First Schedule to the Customs Tariff Act, 1975 and the Bills of Entry covered under the subject show cause notice should be re-assessed accordingly. Further, as regards interest on short payment of Customs duty, I find that the interest is compensatory in nature, which is imposed on the Noticee who has short paid duty of Customs, such liability arises automatically by operation of law. Under the Customs Act, 1962, the liability for payment of interest arises in view of the provisions of Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of Pratibha Processors Vs UOI – 1996 (88) ELT 12 (SC). Hence, I hold that the Noticee is also liable to pay interest at appropriate rate in terms of Section 28AA of the Customs Act, 1962 and I hold accordingly.

20. I further find that the Noticee by relying upon in the case of Shri Mahalaxmi Flour Mills v/s Commr. Of Cus. Chennai, 2004 (167) ELT 429 (Tri-Bang) has once again conveniently mis-construed that the goods being sandalwood saplings, only such item which give fragrance shall be classified under CTH 1211. The relevant portion of the case law is once again reproduced hereunder:

"4. We have carefully considered the submissions made by both sides. From the records, we find that the appellants have imported "Desapped Sandal Wood (Roots)". The appellants have stated that the imported goods would be converted into powder and used in the manufacture of 'Aggarbatti'. Plants/parts of plants of a kind used primarily in perfumery, etc. are covered by Chapter 12 of the Customs Tariff Act. Since the goods are to be used in the manufacture of 'Aggarbatti' for giving fragrance, therefore, they are primarily used for the purpose of perfumery....

In the present case, the entry in Heading 12.11 of the Customs Tariff Act, is as under -

"plants and parts of plants (including seeds and fruits) of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered".

Since the Sandal Wood Roots, after being powdered, are to be used in the manufacture of 'Aggarbatti' and it can only be used as perfumery for giving fragrance, the interpretation of the perfumery as given by the Apex Court in the case of Pardip Aggarbatti (supra) is not applicable in the present case. We do not find any merit in the appeal filed by the party. Accordingly the appeal is rejected."

20.1 Upon careful reading of the above case law, I find that the Tribunal had precisely held that plants/ parts of plants of a kind used primarily in perfumery, in pharmacy etc. are covered by Chapter 12 of the Customs Tariff Act. The Tribunal has also rightly held that since the goods being sandal wood roots, which are part of plants, and **used after being powdered in the manufacture of 'Aggarbatti'**, as has been declared by the party themselves, has qualified to be in the exclusion list of Chapter 44 and rightly held to be classified under Chapter 12. Further, it also held that since the goods are to be used in the manufacture of 'Aggarbatti', it can only be used as perfumery and once the goods attains the status of perfumery i.e. 'Aggarbatti', they emanate fragrance. Therefore, I find that the above decision of the Tribunal is akin to my above discussions and findings and contrary to the contentions of the Noticee.

21. In view of the above, I pass the following order:

O R D E R

- (i) I order that the goods imported by M/s. Gangotri Industries, Ahmedabad, under different bills of entry as detailed in Annexure-A attached to the Show Cause Notice No. COMM-02/2024-25 dated 30.08.2024, be reclassified under CTH 12112990 as held at Para 19 of this Order and I reject the respective classifications claimed by the Noticee.
- (ii) I confirm the demand of differential customs duty Rs. 55,55,305/- (Rupees Fifty Five Lacs, Fifty Five Thousand, Three Hundred and Five only) and order recovery, under section 28(1) of the Customs Act, 1962.
- (iii) I order to charge and recover interest as applicable, leviable on the confirmed amount of duty as detailed in (ii) above, under Section 28AA of the Customs Act, 1962 which should be paid by/ recovered from M/s Gangotri Industries, Ahmedabad.

22 This order is issued without prejudice to any other action that may be taken against the Noticee or any other person under the Customs Act, 1962 or any other law for the time being in force.



[Dhirendra Lal]
Commissioner

F. No. CUS/4210/2024-Adjn.

Date: 07-01-2025

By Regd. Post A.D./ E-Mail/HAND DELIVERY

To
M/s. Gangotri Industries,
383-Mehta Tiles Compound, Gujarat Housing Board,
Singarwa-Kathwada Road,
Ahmedabad 380024.

Copy submitted to:

1. The Chief Commissioner, Customs Gujarat Zone, Ahmedabad.
2. The Assistant Commissioner, Custom House, GPPL, Pipavav.
3. The Assistant Commissioner, Systems/ STF, Customs (Prev.), Jamnagar.
4. Guard File.