	सीमा शुल्क के आयुक्त का कार्यालय **सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात** **OFFICE OF THE PR. COMMISSIONER OF CUSTOMS** **CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT** **Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj-mundra@gov.in**
A. File No.	GEN/ADJ/COMM/18/2025-Adjn-O/o Pr. Commr- Cus-Mundra
B. Order-in-Original No.	MUN-CUSTM-000-COM-50-25-26
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	07.01.2026 07.01.2026
E. SCN No. & Date	GEN/ADT/PCA/498/2024-Gr.2 dated 08.01.2025
F. Importer	M/s. Nitin International
G. DIN	20260171MO0000514215

1. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

   Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

   "केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004"

   "Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."
3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
   Appeal shall be filed within three months from the date of communication of this order.
4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

   Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than

Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं°-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

   The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the 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.

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

   While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s Nitin International, 29/21 (1-4) 20 (07), Jindpur Village, Delhi 110036 (IEC -515005312) (hereinafter referred to as "the importer" for the sake of brevity) filed various Bills of Entry at Mundra Port for clearance of "Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron", "Stock lot of plastic packaging material in mix size and gsm", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm", etc., classifying the same under different CTH 39201099, 39202090, 39206919 & 39207119 of the First Schedule of the Customs Tariff Act, 1975.

2. Whereas, during the course of Post Clearance Audit of the Bills of Entryfiled by the importer for the period from 2020 to 2023, it has been noticed that the importer had mis-classified the goods under different CTH 39201099, 39202090, 39206919 & 39207119 and paid duty @ **30.980%** (BCD @ 10% + SWS @ 10% + IGST @ 18%) instead of the correct classification under CTH 39209999, which attracts a duty @ **37.470%** (BCD @ 15% + SWS @ 10% + IGST @ 18%).

The Heading 3920 of Customs Tariff is reproduced below:

HS Code	*Item Description*	*BCD*	*SWS (10% of BCD)*	*IGST*
3920	*Other plates, sheets, film, foil and strip of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials*			
392010	*- Of polymers of ethylene*			
39201099	*- Other*	*10%*	*1*	*18%*
392020	*- Of polymers of propylene*			
39202090	*- Others*	*10%*	*1*	*18%*
392069	*- Of other polyesters*			
39206919	*- Others*	*10%*	*1*	*18%*
392071	*- Of regenerated cellulose*			
39207119	*- Others*	*10%*	*1*	*18%*
392099	*- Of other plastics:*			
39209999	***-- Other***	***15%***	***1.5***	***18%***

3. During the audit, it is observed that the importer failed to provide specific descriptions of the goods, such as sheet, film, plates, strip, or foil, and the specific composition of plastic, including polymer of ethylene, propylene, other polyesters, cellulose, or its chemical derivatives. Instead, they declared a generic description of the goods as 'Stock Lot of Plastic Packaging Material in mix size and gsm.' Consequently, the goods were misclassified under Sub-Headings 392010, 392020,

392069, and 392071, which is completely not in consonance with Rule 3 of General Rules for the interpretation of Import Tariff.

4. Rule 3 of General Rules for the Interpretation of Import Tariff which is re produced as under:-

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Pursuant to the aforementioned rule, when goods are classifiable under two or more headings and cannot be specifically classified, they shall be classified under the heading that occurs last in numerical order

5. Whereas, in the instant case, the description of goods is excessively generic in nature and cannot be classified under any specific heading as declared by the importer. Consequently, the goods can only be classified under the last relevant CTH, i.e., 39209999, pertaining to 'other' plastic materials, as they do not fit within any specific heading.

6. Thus, the importer had wrongly classified the goods under CTH 39201099, 39202090, 39206919, and 39207119, resulting in the underpayment of Basic Customs Duty (BCD) at 10% instead of the applicable rate of 15%. This misclassification appears to have been made deliberately in an attempt to evade payment of the differential BCD of 5% and SWS & IGST thereon. Therefore, the importer is liable for payment of an additional duty of Rs. 80,07,161/-, as detailed in Annexure-A.

7. RELEVANT LEGAL PROVISIONS

Provisions of Customs Act, 1962

i. *In terms of section 28(1) of the Customs Act, 1962, where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, partpaid or erroneously*

refunded, for any reason of collusions or any wilful mis-statement or suppression of facts,-

(a). the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-pad or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

PROVIDED that before issuing notice, the proper officer shall hold prenotice consultation with the person chargeable with duty or interest in such manner as may be prescribed.

(b). the person chargeable with the duty or interest, may pay, before service of notice under clause (a) on the basis of,

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,
the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid:

PROVIDED that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

ii. *In terms of section 28(4) of the Customs Act, 1962, where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

a. *collusion; or*
b. *any wilful mis-statement; or*
c. *suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

iii. *In terms of section 28(5) of the Customs Act, 1962, where the dutyhas not been levied or not paid or has been short-levied or short-paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person thereon under section 28AA and the penalty equal to fifteen percent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.*

iv. *In terms of section 28AA(1) of the Customs Act, 1962, notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay*

interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

v. *In terms of section 46(4) of the Customs Act, 1962, the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.*

vi. *In terms of section 46(4A) of the Customs Act, 1962, the importer who presents a bill of entry shall ensure the following, namely:— (a) the accuracy and completeness of the information given therein;*

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

vii. *In terms of section 111 of the Customs Act, 1962- Confiscation of improperly imported goods, etc.-*

The following goods brought from a place outside India shall be liable to confiscation:

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

viii. *In terms of section 112 of the Customs Act, 1962: - Penalty forimproper importation of goods, etc.-*

Any person, -

a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
b. *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable to penalty...*

(ii) In the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is the higher:

...

ix. *In terms of section 114 of the Customs Act, 1962:*

where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 3 [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

.....

8. In view of the discussions made in the foregoing paras, it appears that the importer had wrongly classified the imported goods under various CTH 39201099, 39202090, 39206919 & 39207119 and paid Customs duty at a lower rate of 30.980% (BCD @ 10% + SWS @ 10% + IGST @ 18%), instead of the applicable rate of 37.470% (BCD @ 15% + SWS @ 10% + IGST @ 18%) as per the correct classification under CTH 39209999. This misclassification appears to be a deliberate attempt by the importer to pay Customs duty at a lower rate.

9. Therefore, **M/s Nitin International,** 29/21 (1-4) 20 (07), Jindpur Village, Delhi - 110036 having IEC: 515005312, were called upon to show cause to **the Pr. Commissioner of Customs**, Custom House, Mundra having office at 5B, First Floor, PUB Building, Adani Port, Mundra, as to why:

i. The assessment in respect of Bills of Entry as mentioned in Annexure-A should not be rejected and the same should not be re-assessed under CTH 39209999;

ii. The short payment of Basic Customs Duty amounting to **Rs.80,07,161/-**(Rupees Eighty Lakh Seven Thousand One Hundred and Sixty One only) by wrongly classifying the imported goods under CTH 39201099, 39202090, 39206919 & 39207119 instead of 39209999 and paid less BCD and SWS/IGST thereon should not be charged and recovered from them under Section 28(4) of the Customs Act, 1962;

iii. Interest should not be recovered from them under Section 28AA of the Customs Act, 1962;

iv. The impugned goods should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of wilful mis-statement and suppression of facts;

v. Penalty should not be imposed upon them under the provisions of Section 112 or 114A of the Customs Act, 1962, for rendering imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962;

RECORD OF PERSONAL HEARING-

10. Following the principle of natural justice, opportunities of personal hearing were provided to M/s. Nitin International on 15.12.2025, 22.12.2025 and 01.01.2026 vide this office letters dated 03.12.2025, 16.12.2025 and 23.12.2025 respectively. On the said date, neither the noticee nor any authorised representative appeared for the personal hearing. It is observed that sufficient opportunities of personal hearing have already been afforded to the noticee. Therefore, the case is liable to be adjudicated on the basis of the records available on file.

WRITTEN SUBMISSION-

11. M/s. Nitin International vide their submission dated 23.01.2025, interalia, submitted -

i. That the allegation leveled in the show cause notice is vehemently denied as false and incorrect. There was no misclassification of goods with intention to pay lesser duty.

Ii That at the time of import of goods they had filed proper bills of entry for each consignment as per law and the assessment was done and goods were examined by the Customs Department. When it was found in order and duty was paid, thereafter goods were cleared by the department. On perusal of section 46 of Customs Act it would be seen that after import of goods, a bill of entry is required to be filed under section 46

Iii That they had filed bills of entry in respect of each and every consignment imported by them and after examining goods imported as well as covering documents the department assessed customs duty leviable on the same and after payment of duty the department permitted clearance of the same. In these circumstances it is not understood as to how the noticee misclassified goods in the bills of entry when the departmental officers themselves physically examined the goods and at no point of time objected to the declared classification of goods. Therefore, the allegation of misclassification of goods is baseless and unfounded on any evidence.

iv. That after assessment was made under section 47 of Customs Act, the goods were allowed clearance.

v. That after order of assessment of duty, no show cause notice can be issued for recovery of differential duty as it becomes a case of res judicata and only appeal can be filed against the assessment order.

They further submitted that it is settled law that once an assessment order was passed u/s 47 of Customs Act, any further proceedings can be initiated by review of the order and filing appeal against the same. It is not open to the department to issue a show cause notice and revive the proceedings. Since the department did not do so, this show cause notice is illegal and any proceedings emanated therefrom will also be illegal. They relied upon the case of Paro Food Products Vs. Commissioner of Central Excise Hyderabad (2005(184) ELT 50(Tri - Bang),

vi. That in classification matters onus is on the department to determine correct classification and extended period is also not invokable:

They submitted that the department has questioned the classification of plastic goods imported by them. However, they had filed proper Bills of Entry under Section 46 of the Customs Act, 1962, and the goods were examined by Customs officers. After scrutiny of the Bills of Entry and applicable duty rates, the department assessed and allowed clearance. Once classification was accepted after due examination, the department cannot later allege misclassification. The burden to determine the correct tariff classification lies on the department, not on the importer, who cannot be presumed to be an expert in customs law. If required, the department

is empowered to verify the description, nature, and use of the goods before assessment. Further, in classification disputes, the extended period is not invocable and the demand is time-barred. They relied on the following decisions:

(i) Hindustan Ferodo Ltd. v. CCE, Bombay – 1997 (89) ELT 16 (SC)
(ii) CCE, Nagpur v. Vicco Laboratories – 2005 (179) ELT 17 (SC)
(iii) Puma Ayurvedic Herbal (P) Ltd. v. CCE, Nagpur – 2006 (196) ELT 3 (SC)

vii. That Rule 3 of Interpretation Rules is not applicable in the present case .

They submitted that the department has issued this show cause notice on the basis of audit observation that as per rule 3 of interpretation rules, the goods meriting classification in two or more than heading and sub headings should be classified under that heading which occurs at the last. The department has not pointed out the possible headings/sub headings under which the goods imported can be classified so that the rule of last occurring heading could be applied. CTH 39209999 is a residuary sub heading under which only such goods are classified which cannot be classified elsewhere. Thus the observation of audit being vague and ambiguous is not relevant at all. Therefore, the goods imported being of different sizes and lots having different composition, cannot be classified under residuary sub heading 3920 99 99 at all.

Viii Demand is not sustainable in view of provisions of Customs Tariff :

They submitted that on perusal of Customs Tariff ,it would be seen that as per notification no. 57/2017Cus dated 30.06.2017 as amended the goods covered under CTH 39209999 were leviable to basic custom duty @10% adv. against sl. no. 10 (effective rate). This entry no. 10 was subsequently omitted vide notification no. 3/2021-Cus dated 01.02.2021 with effect from 02.02.2021 and the rate of 15% adv. was restored. Thus, prior to 02.02.2021, the goods imported were assessable to basic customs duty @10%. Therefore, no demand of differential duty can be raised in respect of bills of entry filed before 02.02.2021 even in respect of goods meriting classification under CTH 39209999.

Ix That in the departmental clarification letter DOF No. 334/02/2020-TRU dated 01.02.2021 it has been clarified as under—

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"(5) Sl. No. 10 of notification no. 57/2017-Cust is being omitted. This entry provided effective BCD rate of 10% on items of plastic falling under tariff item 3920 99 99" except specific parts of cellular mobile phone like back cover, battery cover etc. The specified parts of mobile under the said tariff item were attracting 15% BCD by

tariff. Consequently with this omission, these goods will now attract 15% BCD (S. No. (viii) of the notification no. 03/2021) — Customs dated 01.02.2021 refers)

From the above legal position it is very clear that the demand of differential customs duty up to sl. no. 151 of Annexure A to the show cause notice, cannot be raised as it would be contrary to law, hence not tenable.

X That Neither Demand is sustainable nor Penalty is imposable:

They further submitted that when demand is not legally tenable, imposition of penalty is also not sustainable in law, as held by Hon'ble Supreme Court in following cases —

(i) Collector of Central Excise VS. HMM Ltd. (1995 (76) 497 (SC)

(ii) Nagpur Alloy Cartings Ltd. Vs. Collector of Central Excise (2002(142) ELT 515 (SC)

Xi That extended limitation wrongly invoked – no suppression, fraud, or collusion involved in this case

They submitted that Hon'ble Supreme Court in HMM Ltd. held that extended period requires clear allegation and proof of suppression, willful mis-statement or collusion. In this case none exists. Mere "misclassification" is not a ground under Section 28(4). Hence demand is time-barred and unsustainable

Xii That when the noticee did not mis-declare anything to the Customs department regarding import of the goods in question, they are not liable to any penal action under section 112 or 114A of Customs Act, 1962:

They submitted that when the goods had been imported by them, they declared all the facts in their bill of entry to the department. The department could not establish that there was any misstatement on the part of the noticee.. Thus, the notice neither mis-declared anything nor did or omitted to do anything to render the goods liable to confiscation under section 111 of Customs Act 1962. Since goods were not liable to confiscation, the notice is not liable to any penal action under Section 112(a) and or 112(b) of the Act. Had the goods been liable to confiscation, the department would have seized them and would not release them. The department has also not alleged any particular activity enumerated u/s 112 with which the notice were concerned. In these circumstances if the particular situation with which the notice was concerned, is not specifically pointed out by the department, the notice cannot be penalized under Section 112 of the Customs Act 1962 .They also refer the case law Hon'ble Tribunal Kolkata in the case of Rajesh Kumar saini Vs. Commissioner Customs Patna (2019(370) ELT 1583 (T-Kolkata) Further, they also submitted that they are not liable

to any penal action under section 114A of the Act also as they knowingly and intentionally did not submit any such documents before customs.

xiii. That Burden of proof is on the department

They submitted that the Department has produced no evidence of misclassification or intent to evade; that the Burden is on the Department not on the assessee.

they relied on following cases:

- K.P. Varghese v. ITO – (1981) 4 SCC 173
- Meenesh Construction Co. v. CCE, Jaipur-I – 2018 (12) GSTL 97 (Tri.-Del.)
- Manish Projects Pvt. Ltd. v. CCE & ST, Ghaziabad – 2019 (24) GSTL 741 (Tri.-All.)
- Nanya Imports & Exports Enterprises v. CCE, Chennai – 2006 (197) ELT 154 (SC)

Xiv That the orders passed by Higher appellate authority are binding on all adjudicating and appellate authorities within their respective jurisdiction.

They submitted that, in disposing of the quasi-judicial issues the revenue officers are bound by the decisions of the appellate authorities; that the order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal

Xv That Suppression or mis-statement cannot arise when dispute prevailed in the matter of classification —

They submitted that wrong classification by itself does not amount to suppression or willful mis-statement. They relied on following cases:

- Commissioner v. Ishan Research Lab (P) Ltd. – 2008 (230) ELT 7 (SC)
- Commissioner v. New Jack Printing Works (P) Ltd. – 2015 (323) ELT A185 (SC)

Xvi That Goods not available can neither be seized nor confiscated :

They submitted that goods were finally cleared without execution of bond or security. Hence confiscation or redemption fine is not legally permissible.

they relion on following cases:

- Weston Components Ltd. v. CC – 2000 (115) ELT 278 (SC)
- Shiv Kripa Ispat Pvt. Ltd. v. CCE – 2009 (235) ELT 623 (Tri.-LB)

Xvii. That Confiscation of goods is precondition of penalty under section 112 :

They submitted that Penalty under Section 112 arises only if goods are liable to confiscation under Section 111. Since confiscation is not sustainable, penalty under Section 112 fails.

They relied on following cases:

- Maersk India Ltd. v. CC, Nhava Sheva – 2001 (129) ELT 44 (Tri.-Mum.)
- .S. Gupta v. CC, New Delhi – 2001 (132) ELT 441 (Tri.-Del.)

Xviii. That No confiscation can be made under section Ill(m) of Customs Act 1962 •

They submitted that there is no mis-declaration in description, weight, value or quantity and no mens rea.They rlied on following case laws :
Northern India Steel Rolling Mills Ltd. v. CC, Amritsar – 2003 (162) ELT 507 (Tri.-Del.) Hence confiscation under Section 111(m) and penalty under Section 112 are unwarranted.

Xix That even where a product is capable of falling simultaneously under two entries, benefit should go to assesse

They submitted that where goods are capable of falling under two tariff entries, benefit must go to the assessee.
they relied upon on following case:
Commissioner v. Calcutta Springs Ltd. – 2008 (229) ELT 161 (SC)

Finally ,they submitted that the SCN is founded only on audit objection, with no new evidence, misapplication of extended limitation, and disregard of final assessments and binding precedents; that the demand under impugned show cause notice is therefore illegal and liable to be dropped.

DISCUSSION AND FINDINGS-

12. I have carefully gone through the Show Cause Notice dated 08.01.2025, written submission dated 23.01.2025 and all the evidences placed on record.

13. The issues which require adjudication in the present matter are as under:

(i) Whether the importer had correctly classified the impugned goods under CTH 39201099, 39202090, 39206919 & 39207119, or whether the goods are correctly classifiable under CTH 39209999 of the Customs Tariff Act, 1975.

(ii) Whether short-levied duty of **₹.80,07,161/-** is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

(iii) Whether the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.

(iv) Whether penalty is imposable upon the importer under Section 112 or 114A of the Customs Act, 1962.

14. The importer, M/s Nitin International, has filed various Bills of Entry (as detailed in Annexure-A) declaring the goods as "Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron", "Stock lot of plastic packaging material in mix size and gsm", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm", etc., and classified them under Customs Tariff Headings (CTH) 39201099, 39202090, 39206919 & 39207119. They discharged duty @ 30.980% (BCD 10% + SWS 10% + IGST 18%). However, findings of post clearance audit suggested that the imported goods merit classification under CTH 39209999 as "Others". Therefore, I proceed to determine the correct classification of goods.

14.1 The description of goods falling under CTH 3920 as mentioned under Customs Tariff is reproduced as under:-

HS Code		Item Description	BCD	SWS (10% of BCD)	IGST
3920		Other plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials			
392010	-	Of polymers of ethylene			
39201099	----	Other	10%	1	18%
392020	-	Of polymers of propylene			
39202090	---	Others	10%	1	18%
392069	--	Of other polyesters			
39206919	----	Others	10%	1	18%
392071	--	Of regenerated cellulose			
39207119	----	Others	10%	1	18%
392099	---	Of other plastics:			
39209999	----	Other	15%	1.5	18%

14.2 The importer declared the goods as "Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron", "Stock lot of plastic packaging material in mix size and GSM", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and GSM", etc., and classified the same under Customs Tariff Headings (CTH) 39201099, 39202090, 39206919 and 39207119. On examination of the relevant tariff entries, it is observed that goods classifiable under CTH 39201099 specifically relate to polymers of ethylene, those under CTH 39202090 relate to polymers of propylene, goods under CTH 39206919 pertain to polyesters, and goods under CTH 39207119 pertain to regenerated cellulose. However, the importer has failed to declare essential particulars required for classification under Heading 3920, such as whether the goods were film, sheet, foil, plate or strip, which are mandatory classification parameters. Further, the importer has not specified the exact polymer composition of the imported goods, i.e., whether they were made of ethylene, propylene, polyester or regenerated cellulose, which is crucial to classify the goods under the respective entries. In this regard, it is pertinent to note that the submission dated 23.01.2025 of the importer is also silent on the same. As a result of such vague and incomplete declarations, the goods could not be specifically classified under any of the sub-headings 392010, 392020, 392069 or 392071 of Heading 3920, each of which requires clear identification of the constituent polymer. Thus, the classification declared by the importer in respect of the imported goods described as stock lot of plastic packaging material is found to be incorrect and liable to be rejected.

15. In order to determine the correct classification of the imported goods, it is necessary to examine the issue in the light of the General Rules for the Interpretation of the Import Tariff, which provide a structured and sequential framework for classification of goods under the Customs Tariff. The said Rules are required to be applied strictly in sequence, and recourse to a subsequent rule is permissible only when classification cannot be determined by application of the preceding rule. Accordingly, the classification of the impugned goods is examined herein below by sequential application of Rules 1, 2 and 3 of the General Rules for Interpretation.

15.1 Rule 1 of the General Rules for the Interpretation of the Import Tariff provides that classification shall be determined according to the terms of the headings and any relevant Section or Chapter Notes. Accordingly, the first step in classification is to examine whether the goods, as declared and supported by documents, clearly conform to the description of a particular heading or sub-heading of the Customs Tariff. In the present case, the importer declared the goods as stock lot / leftover stock of plastic packaging material in mixed size, mixed GSM and mixed micron. However, Heading 3920 covers plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials. Further, the relevant sub-headings under Heading 3920 are polymer-specific, namely polymers of ethylene, polymers of propylene, polyesters and regenerated cellulose. For classification under Rule 1, it is essential that the importer clearly have declared both the form of the goods (film, sheet, foil, plate or strip) and

the exact polymer composition. Since the importer failed to declare these essential particulars, classification under Rule 1 could not be conclusively determined.

15.2 Rule 2(b) provides that any reference in a heading to a material or substance shall be taken to include mixtures or combinations of that material or substance with other materials or substances. However, application of Rule 2 presupposes that the constituent material or dominant substance is known or identifiable. In the instant case, the importer did not disclose whether the goods were composed of ethylene, propylene, polyester, regenerated cellulose or any combination thereof. The description merely states that the goods are stock lot / leftover stock in mixed sizes and GSM, without indicating the nature or proportion of polymers involved. In the absence of such information, it is not possible to apply Rule 2(b), as the material composition of the goods remains indeterminate. Therefore, classification could not be finalized even by resorting to Rule 2.

15.3 Rule 3 of the General Rules for the Interpretation of the Import Tariff becomes applicable when goods are prima facie classifiable under two or more headings or sub-headings. In the present case, the imported goods, being plastic films in stock lots of mixed rolls, are prima facie classifiable under more than one sub-heading of Heading 3920, depending upon the polymer composition, such as polyethylene, polypropylene or other plastics. Rule 3(a) mandates that the heading which provides the most specific description shall be preferred. However, in the present case, due to the absence of declaration regarding the exact polymer composition and form of the goods, no single heading or sub-heading can be regarded as providing a more specific description. Accordingly, Rule 3(a) cannot be applied. Rule 3(b) provides that mixtures or composite goods shall be classified as if they consisted of the material or component which gives them their essential character. In the present case, since the importer has not disclosed the nature, proportion or predominance of any particular polymer, the essential character of the goods cannot be ascertained. Consequently, Rule 3(b) is also inapplicable. In such a situation, Rule 3(c) mandates that classification shall be effected under the heading which occurs last in numerical order among those which equally merit consideration. Since the goods do not satisfy the description of any specific sub-heading under Heading 3920 due to lack of essential particulars, they necessarily fall under the residual category, i.e. CTH 39209999, covering "Other" plastics.

16. The importer, by adopting incorrect classification, had discharged duty at the effective rate of 30.980% instead of the correct 37.470%. This deliberate mis-statement has resulted in short levy of Customs Duty amounting to ₹ **80,07,161/-** on an assessable value of the imported goods as detailed in Annexure A to the SCN. The computation of differential duty, as brought out in the SCN, has been verified and found to be correct.

DISCUSSION ON SUBMISSION OF THE IMPORTER-

17 The contention of the noticee that the filing of Bills of Entry cures the misclassification is misconceived and untenable. Mere filing of Bills of Entry under

Section 46 of the Customs Act, 1962 and clearance of goods after assessment does not confer any immunity upon the importer nor does it obliterate the consequences of misdeclaration or misclassification. The assessment at the time of import is necessarily based on the declarations made by the importer. If, upon subsequent scrutiny or investigation, it is revealed that the goods were misclassified or duty was short-paid, the Department is legally empowered to initiate reassessment and demand proceedings under Section 28 of the Act.

17.1 The importer has contended that since the goods were physically examined by the Customs officers at the port, and were also subject to X-Ray scanning, therefore, the allegations of mis-classification made in the Show Cause Notice are unsustainable. I find that this contention is not acceptable. It is an admitted position that the goods were examined and the Bills of Entry were assessed by the proper officer at the time of import. However, such examination and assessment were necessarily undertaken on the basis of the particulars declared by the importer in the Bills of Entry and accompanying documents. Physical examination and X-ray scanning at the time of clearance are primarily intended to verify the identity, quantity and general nature of the goods and cannot, by themselves, reveal the exact polymer composition or technical characteristics of plastic materials, especially where the consignments comprise stock lots consisting of mixed rolls. In the absence of a clear declaration regarding the specific polymer composition, the assessing officer could not have ascertained the precise nature of the plastic material through visual examination alone. Examination at the port is conducted within practical and time-bound constraints and does not involve detailed technical scrutiny or verification of manufacturing specifications. On the other hand, post-clearance audit is a specialized mechanism involving in-depth scrutiny of import documents, technical literature, product descriptions, past import data and statutory records, which enables the detection of discrepancies not apparent at the time of assessment. It is in the course of such detailed post-clearance verification that the mis-classification came to light. Therefore, the mere fact that the goods were examined and assessed at the time of import does not absolve the noticee of the consequences arising from incorrect declaration, mis-classification or suppression of material particulars, nor does it render the findings of post-clearance audit unsustainable.

17.2 I find no force in the contention of the noticee that clearance of goods under Section 47 of the Customs Act, 1962 bars the reopening of assessment. Clearance under Section 47 merely signifies that duty was discharged on the basis of the assessment then made; it does not confer finality where duty has been short-levied or not levied due to misclassification or misdeclaration. The statute expressly empowers the Department, under Section 28 of the Customs Act, to initiate proceedings for demand/recovery of duties so short-levied or not levied. Accordingly, clearance of goods cannot be construed as a bar to issuance of a show cause notice or to reassessment, where subsequent scrutiny reveals misclassification or short payment of duty.

17.3 I find no merit in the contention of the noticee that the doctrine of *res judicata* applies to customs assessment proceedings. Customs assessment is an administrative/quasi-judicial determination based on the declarations and material placed at the time of import. Such assessment can lawfully be reopened where duty has not been levied, has been short-levied, or where an erroneous classification has occurred. Therefore, the plea that the assessment attains irrevocable finality and cannot be revisited is misconceived and contrary to law.

17.4 The further contention of the noticee that the only available remedy is by way of appeal or review is also misplaced. Section 28 of the Customs Act, 1962 confers specific statutory authority upon the Department to issue a show cause notice for demand/recovery of duties not levied, short-levied, or short-paid on account of misclassification or misdeclaration. Initiation of proceedings under Section 28 is thus a valid and independent statutory mechanism and is not subordinate to appellate provisions. Accordingly, the show cause notice issued in the present case is legal, proper, and sustainable.

17.5 I find no substance in the contention of the noticee regarding the burden of classification. While it is correct that the Department determines the appropriate tariff classification, the primary obligation to correctly describe the goods and declare the proper classification lies squarely on the importer. Where the declaration is incorrect or incomplete and material particulars are not fully disclosed, the onus shifts to the importer. In such circumstances, if the acts or omissions of the importer result in non-levy or short-levy of duty, invocation of the extended period of limitation and consequential demand are legally justified. Accordingly, the plea that extended limitation is not invokable is devoid of merit.

17.6 I further find no force in the contention of the noticee disputing the applicability of Rule 3 of the General Rules for the Interpretation of the Import Tariff. Where goods are *prima facie* classifiable under more than one heading, Rule 3 specifically prescribes the method of preference and must be applied to arrive at the correct classification. The Department is not bound to accept the classification claimed by the importer merely because it has been declared in the Bill of Entry. The argument that Heading 3920 99 99 is "residuary" and therefore inapplicable is misconceived; classification under a residuary entry is permissible where the product does not specifically and more appropriately fall elsewhere. In the present case, application of Rule 3 correctly leads to the impugned classification, and the contrary plea of the noticee is rejected.

17.7 The contention of the noticee that the demand of differential customs duty is not sustainable in view of the provisions of the Customs Tariff and Notification No. 57/2017-Cus dated 30.06.2017 is misplaced and untenable. It is observed that although Sl. No. 10 of Notification No. 57/2017-Cus (as amended) prescribed an effective rate of Basic Customs Duty (BCD) of 10% ad valorem for goods falling under CTH 39209999 during the relevant period prior to 02.02.2021, the said benefit was subject to correct declaration of description, end-use and compliance with the

conditions attached to the notification. In the present case, the importer had suppressed and mis-declared material facts at the time of filing the Bills of Entry, thereby rendering the assessment incorrect and vitiating the claim of exemption/concessional rate ab initio.

17.8 I find no merit in the contentions raised by the noticee. Where misclassification results in short-levy or non-levy of duty, penalty becomes imposable subject to satisfaction of the statutory ingredients. Penalty under Section 114A and/or Section 112 of the Customs Act, 1962 is attracted where suppression, misdeclaration, or willful misstatement leading to evasion of duty is established. The judgments relied upon by the noticee pertain to distinguishable factual contexts and do not confer any blanket immunity from penal consequences. Once misdeclaration or suppression is established, the concomitant liability to pay differential duty along with penalty automatically follows in law.

17.10 The record clearly demonstrates that there was misclassification of the imported goods, which led to short-payment of duty. Accordingly, invocation of the extended period of limitation under Section 28(4) of the Act is fully justified, as the short-levy emanated from suppression of material facts and incorrect declaration of classification. Non-disclosure of the true nature, composition, or technical specifications of the product constitutes suppression for the purposes of Section 28(4).

17.11 The plea that misdeclaration exists only when quantity or value is incorrectly stated is untenable. Misdeclaration under the Customs Act includes wrong classification made with the intent to discharge duty at a lower rate. Even if quantity and value are otherwise correctly declared, an incorrect classification leading to payment of lesser duty amounts to misdeclaration, rendering the goods liable to confiscation under Section 111(m). Consequently, penalties under Sections 112 and 114A are legally sustainable.

17.12 I further find that the Department has satisfactorily discharged the burden of proof. The proposed classification and allegation of intent to evade duty are supported by test reports, product literature, tariff notes, and HSN Explanatory Notes. Once such foundational facts are established, the burden shifts to the importer to rebut the same with cogent evidence, which has not been done in the present case. The case laws cited by the noticee are factually distinguishable and do not advance their cause.

17.13 While judicial precedents are binding, reliance on earlier or isolated decisions cannot assist the importer where subsequent judgments, differing facts, or statutory amendments exist. Selective citation of precedents cannot be used to justify an otherwise incorrect classification.

17.14 It is also well settled that persistent and repeated classification of goods under an incorrect heading resulting in lower payment of duty evidences knowledge and intent and cannot be brushed aside as a mere "classification dispute." Such

continuous conduct constitutes suppression of facts and justifies invocation of the extended period as well as imposition of penalties.

17.15 The plea that penalty under Section 112 requires prior physical confiscation is equally untenable. It is sufficient in law that the goods are *liable* to confiscation; actual confiscation is not a precondition. Once the requirements of Section 111 are met, penalty under Section 112 validly follows. Section 111(m) has been rightly invoked in the present case, as incorrect description or classification affecting assessment and duty liability squarely amounts to misdeclaration of particulars required to be declared under the law.

17.16 In view of the above discussion, I hold that the show cause notice is legal, valid, and sustainable. There is clear misclassification resulting in short-payment of duty, proper invocation of the extended period, and justified proposal for demand of differential duty along with interest, confiscation of goods, and imposition of penalties.

DEMAND OF DUTY UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962-

18. I find that the non-declaration of the specific polymer material is not a technical lapse, but a material omission which impacts classification and applicable rate of duty. By deliberately declaring the goods in a generic manner as "stock lot of plastic rolls" without specifying the polymer composition, the noticee effectively withheld material information which was required to be disclosed under the Customs law. This act of the importer squarely falls within the ambit of suppression of facts under Section 28(4) of the Customs Act, 1962. Notwithstanding the fact that the Bills of Entry were assessed earlier. Assessment based on mis-declared or suppressed facts does not bar subsequent demand under the extended period, once such suppression comes to light. The importer, despite being fully aware of the true nature and composition of the goods, deliberately chose concessional subheadings such as 39201099, 39202090, 39206919 and 39207119, accompanied by vague and incomplete descriptions like "stock lot of plastic packaging material in mix size and gsm," to claim undue benefit of lower duty. Such deliberate concealment of the true nature and composition of goods, coupled with mis-declaration in classification, establishes a clear element of mens rea and amounts to willful misstatement and suppression of material facts within the meaning of Section 28(4) of the Customs Act, 1962. The argument of the importer that Section 28(4) has been invoked as an afterthought is not sustainable. The importer consistently declared vague and generic descriptions over a prolonged period, despite the tariff structure clearly requiring polymer-specific classification. Such repeated non-disclosure of material particulars constitutes wilful mis-statement and suppression of facts, justifying invocation of Section 28(4) of the Customs Act, 1962. In view of the above, I hold that the importer is liable to pay differential duty of Rs. 80,07,161/- under the provisions of Section 28(4) of the Customs Act, 1962 along with interest under section 28AA of the Customs Act, 1962.

19. Since the duty has been short levied by reason of suppression and wilful mis-statement and the importer is liable to pay differential duty of Rs 80,07,161/- as determined under Section 28(8) of the Customs Act, 1962, the importer is liable for penalty equal to the duty amount of Rs. 80,07,161/- under Section 114A of the Customs Act, 1962. However, in terms of fifth proviso to Section 114A, once penalty is imposed under Section 114A, no penalty under Section 112 is imposable.

CONFISCATION AND REDEMPTION FINE:

20. As discussed earlier, it is clear that the importer had declared a vague and generic description of the imported goods as "stock lot of plastic packaging material in mix size and gsm," without disclosing their actual nature, composition, or polymer type, thereby concealing the true character of the goods. This deliberate omission directly resulted in the misclassification of the goods under inapplicable headings 39201099, 39202090, 39206919, and 39207119, attracting a lower rate of Basic Customs Duty (10%) instead of the applicable rate (15%) under CTH 39209999. Hence, the mis-declaration in respect of the description and classification of goods squarely attracts the provisions of Section 111(m) of the Customs Act, 1962, rendering the goods liable to confiscation. However, the goods are not physically available for confiscation. Thus option of redemption fine in lieu of confiscation cannot be given to the owner of goods as provided under Section 125(1) of the Customs Act, 1962. Therefore, redemption fine is not imposable in the instant case. In this regard, I rely upon the decision of Hon'ble High Court of Bombay in the matter of Commissioner of Customs (Import), Mumbai vs Finesse Creation (Inc.) 2009 (248) E.L.T 122 (Bom.) wherein Para 5 and 6, the Hon'ble Court held that-

> "5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.
>
> 6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently, appeal stands dismissed."

The above decision of the Hon'ble High Court of Bombay has been affirmed by the Hon'ble Supreme Court of India 2010 (255) E.L.T. A120 (S.C.) [12-05-2010].

21. In view of the above discussion and findings, I hereby pass the following order:-

-:ORDER:-

i. I order to reject the assessment in respect of Bills of Entry as mentioned in Annexure-A and order to re-assess the same under CTH-39209999;

ii. I determine and confirm the short payment of Basic Customs Duty amounting to Rs. 80,07,161/- (Rupees Eighty Lakhs Seven Thousand One Hundred and Sixty One only) under Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s Nitin International under Section 28(4) of the Customs Act, 1962;

iii. I order to recover interest at the applicable rate, on the amount of Rs. 80,07,161/- confirmed above, from them under Section 28AA of the Customs Act, 1962;

iv. I hold that the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962. Since the goods have been cleared in the past and not available for confiscation, I refrain from imposing Redemption fine under Section 125 of the Customs Act, 1962.

v. I impose a penalty of Rs. 80,07,161/- (Rupees Eighty Lakhs Seven Thousand One Hundred and Sixty One only) upon M/s Nitin International under Section 114A of the Customs Act, 1962. However, in terms of fifth proviso to Section 114A, I don't impose penalty under Section 112 of the Customs Act, 1962.

22. This order is issued without prejudice to any action that can be taken against them under the provisions of this Act or any other law for the time being in force.

7/1/26

(NITIN SAINI)
Commissioner of Customs,
Custom House Mundra.

F.No. GEN/ADJ/Comm/18/2025-Adjn-O/o Pr.Commr-Cus-Mundra
DIN: 20260171MO0000514215

To,
M/s Nitin International (IEC: 515005312),
29/21 (1-4) 20 (07), Jindpur Village,
Delhi – 110 036

Copy to:-

1. The Chief Commissioner, Custom Zone, Ahmedabad

2. The Deputy/Asst. Commissioner (PCA), Custom House, Mundra.

3. The Deputy/Asst. Commissioner (EDI/TRC/Legal/Prosecution/Group-2), Custom House, Mundra.

4. Guard File.