

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421</b> <b>Phone No.02838-271165/66/67/68</b> <b>FAX.No.02838-271169/62</b>	 <b>Azadi Ka Amrit Mahotsav</b>
File No.	:	GEN/ADJ/COMM/123/2023-Adjn-O/o Pr Commr-Cus - Mundra
Order-in-Original No.	:	MUN-CUSTM-000-COM-021-23-24
Passed by	:	K. Engineer Commissioner of Customs, Customs House, AP & SEZ, Mundra.
Date of order and Date of issue	:	14.02.2024 14.02.2024
SCN No. & Date	:	SCN No. GEN/ADJ/COMM/123/2023-Adjn dated 05.04.2023, issued by Commissioner of Customs, Customs.
Noticee(s) / Party / Importer	:	1. M/s Shree Salasar Tools, Surat Shop No. 203, 2 <sup>nd</sup> Floor Metro Tower, Ring Road, Surat, Gujarat-395002  2. M/s. Cargo Concepts (Bombay), Office No.M-5 & 6, Ratankala Arcade, Adani Port Road, Mundra, Gujarat
DIN	:	20240271MO0000823759

1. यह अपील आदेश संबन्धित को निःशुल्क 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 (1)6के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1)के अंतर्गत प्रपत्र सीए-3में 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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 1000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो -/5000 रूपये 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/- रूपये 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<sup>o</sup> 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 ड्यूटी/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. 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.

7. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ 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**

A specific information was received from the DRI, Ahmedabad Zonal Unit vide letter F.No.DRI/AZU/CI/INT-10/2020 dated 19.04.2021 that M/s Shree Salasar Tools (IEC NO: 5214022638), Shop No. 203, 2<sup>nd</sup> Floor Metro Tower, Ring Road, Surat, Gujarat-395002 (hereinafter referred to as 'the Importer or M/s. Salasar') have imported 2 consignment covered under Bills of Entry No. 3596182 and 3596372 both dated 16.04.2021 for item declared as "Decorative Balloons (Party Items)" under CTH 95059090 and vide said letter, they have suggested for examination of the cargo by the Officers of SIIB, Mundra.

**2.** On the basis of above said information, the SIIB Section, Mundra put on hold the consignment covered under Bills of Entry No. 3596182 and 3596372 both dated 16.04.2021 for further examination. The goods covered under BE No. 3596182 dated 16.04.2021 were examined under panchnama dated 28.04.2021 and the goods covered under BE No. 3596372 dated 16.04.2021 were examined under panchnama dated 29.04.2021 drawn at All Cargo CFS, Mundra. During examination, it has been found that the goods i.e. "Decorative balloons" appears to be mis-classified under CTH 9505 which cover "Festive, Carnival or other entertainment articles, including conjuring tricks and novelty jokes", whereas the said goods which is basically "Toy balloon" and merits its classification under CTH 9503 which covers "Toy balloons made of natural rubber latex".

**2.1** The relevant portion of CTH 9503 of the First Schedule to the Customs Tariff Act, 1975 is extracted below:

HS Code	Level	Item Description
9503	-	TRICYCLES, SCOOTERS, PEDAL CARS AND SIMILAR WHEELED TOYS; DOLLS' CARRIAGES; DOLLS; OTHER TOYS; REDUCED-SIZE ("SCALE") MODELS AND SIMILAR RECREATIONAL MODELS, WORKING OR NOT; PUZZLES OF ALL KINDS
9503 00	---	<i>Tricycles, scooters, pedal cars and similar wheeled toys; dolls carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds:</i>
9503 00 10	---	Of wood
9503 00 20	---	Of metal
9503 00 30	---	Of plastics
9503 00 90	---	Other

**2.2** The relevant extract from the HS Explanatory Notes of CTH 9503 is reproduced below:

***"95.03 - Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds.***

*This heading covers :*

- (A) Wheeled toys.**
- (B) Dolls' carriages (e.g., strollers), including folding types.**
- (C) Dolls**
- (D) Other toys.**

*This group covers toys intended essentially for the amusement of persons (children and adults). However, toys which, on account of their design ,*

shape or constituent material, are identifiable as intended exclusively for animals, e.g., pets do not fall under this heading, but are classified in their own appropriate heading. This group includes:

All toys not included in (A) to (C). Many of the toys are mechanically or electrically operated. These include :

- (i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.
- (ii) Toy pistols and guns.
- (iii) Constructional toys (construction sets, building blocks, etc.).
- (iv) Toy vehicles (other than those of group A), trains (whether or not electric), aircraft, boats, etc., and their accessories (e.g., railway tracks, signals).
- (v) Toys designed to be ridden by children but not mounted on wheels, e.g., rocking horses.
- (vi) Non-electric toy motors toy steam engines, etc
- (vii) **Toy balloons and toy kites.**"

**2.3** The relevant portion of CTH 9505 of the First Schedule to the Customs Tariff Act, 1975 is extracted below:

HS Code	Level	Item Description
9505	-	FESTIVE, CARNIVAL OR OTHER ENTERTAINMENT ARTICLES, INCLUDING CONJURING TRICKS AND NOVELTY JOKES
9505 10 00	-	Articles for Christmas festivities
9505 90	-	Other :
9505 90 10	---	Magical equipments
9505 90 90	---	Other

**2.4** The relevant extract from the HS Explanatory Notes of CTH 9505 is reproduced below:

**"95.05 - Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes.**

*This heading covers:*

- (A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:
  - (1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).

**2.5** In addition, the relevant extract from the HS Explanatory Notes of CTH 4016 is reproduced below:

**"40.16 - Other articles of vulcanised rubber other than hard rubber.**

*The following are also excluded from this heading:*

- (a) Articles of woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with rubber, falling in Section XI (see Note 3 to Chapter 56 and Note 4 to Chapter 59) and articles made from textile materials combined with rubber threads (Section XI).
- (b) Footwear and parts thereof of Chapter 64.

- (c) Headgear (including bathing caps) and parts of headgear, of Chapter 65.
- (d) Vacuum cup holders (suction grips) consisting of a base, a handle and a vacuum lever, of base metal, and rubber discs (Section XV).
- (e) Rubber boats and rafts (Chapter 89).
- (f) Parts and accessories of musical instruments (Chapter 92).
- (g) Mattresses, pillows and cushions of cellular rubber, whether or not covered, including electric bed-warming pads fitted internally with cellular rubber, of heading 94.04.
- (h) **Toys, games and sports requisites and parts thereof of Chapter 95.**
- (ij) Date, sealing or numbering stamps, and the like, designed for operating in the hand, and other articles of Chapter 96."

### **3. DGFT Compliance requirements:**

**3.1** As per DGFT Notification No. 26/2015-2020 dated 01<sup>st</sup> September, 2017, the import Policy condition no. 2 to Chapter 95 of ITC (HS), 2017 has been amended and relevant portion of the same is reproduced as below:

Existing Policy Condition No.2	Revised Policy Condition No.2
<p>Import of Toys (all items under EXIM Codes 95030010, 95030020, 95030030 and 95030090) shall be permitted freely when accompanied by the following two types of certificates:</p> <p>(i) A certificate that the toys being imported conform to the standards prescribed in</p> <p>(a) ASTM F963 or (b) ISO 8124 (Parts I-III) or (c) IS 9873 (Parts I-III) or (d) EN 71; and</p> <p>(ii) A Certificate of Conformance from the manufacturer that representative sample of the toys being imported have been tested by an independent laboratory which is accredited under International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA) and found to meet the specifications indicated in (i) above (to know more on ILAC MRA visit the website: <a href="http://www.ilac.org/">http://www.ilac.org/</a>). The certificate would also link the toys in the consignment to the period of manufacture indicated in the Certificate of Conformity.</p>	<p>Import of Toys (all items under EXIM Codes 95030010, 95030020, 95030030 and 95030090) shall be permitted freely when accompanied by the following certificates:</p> <p>(i) A certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS):</p> <p>a) IS: 9873 (Part 1) – Safety of toys; Part – 1 Safety aspects related to mechanical and physical properties (Third Revision). b) IS: 9873 (Part 2) – Safety of Toys; Part – 2 Flammability (Third Revision) c) IS: 9873 (Part 3) – Safety of Toys; Part – 3 Migration of certain elements (Second Revision) d) IS: 9873 (Part 4) – Safety of Toys; Part – 4 Swings, Slides and similar activities Toys for indoor and outdoor family domestic use. e) IS: 9873 (Part 7) – Safety of Toys; Part – 7 Requirements and test methods for finger paints. f) IS: 9873 (Part 9) – Safety of Toys; Part – 9 Certain phthalates esters in toys and Children's products. g) IS: 15644 – Safety of Electric Toys. (ii) A Certificate that the toys being imported conform to the standards prescribed in IS: 9873 Part-1, Part-2, Part-3, Part-4, Part-7, Part-9 and 15644:2006. (iii) A Certificate of Conformance from the manufacturer that representative sample of the toys being imported have been tested by an independent laboratory which is accredited by NABL, India and found to meet the specifications indicated above. The Certificate would also link the toys in the consignment to the period of manufacture indicated in the Certificate of Conformity.</p>

**3.1.1** As per the above notification, import of balloons is freely permitted subject to a certificate that they conform to the standards prescribed by the Bureau of Indian Standards (BIS), a certificate that the toys being imported conform to the standards prescribed in IS 9873 and a Certificate of Conformance from the manufacturer that representative sample of toys have been tested by an independent laboratory which is accredited by NABL, India and found to meet the IS specifications.

**3.2** Subsequently, vide DGFT Notification No. 33/2015-2020 dated 2<sup>nd</sup> December, 2019, the import Policy condition no. 2 (iii) to Chapter 95 of ITC (HS), 2017 – Schedule was amended, and a new para 2 D was also added as under:

Existing Policy Condition No.2 (iii)	Revised Policy Condition No.2 (iii)
A Certificate of Conformance from the manufacturer that representative sample of the toys being imported have been tested by an independent laboratory which is accredited by NABL, India and found to meet the specifications indicated above. The Certificate would also link the toys in the consignment to the period of manufacture indicated in the Certificate of Conformity.	Sample will be randomly picked from each consignment and will be sent to NABL accredited Labs for testing and clearance may be given by Customs on the condition that the product cannot be sold in the market till successful testing of the sample. Further, if the sample drawn fails to meet the required standards, the consignment will be sent back or will be destroyed at the cost of importer.

2. A new para (capital-D) is added to Section 2 (Indian Quality Standards) to the General Notes Regarding Import Policy of ITC(HS), 2017 as under:

**2.(D) Import policy for Toys/Dolls etc: Import policy for Toys /Dolls and similar other recreational goods under any chapter will be governed by BIS standards as specified in Policy Conditions 2 of Chapter 95.**

**3.2.2** As per above new para, the import of balloons is freely permitted subject to a certificate that they conform to the standards prescribed by the Bureau of Indian Standards (BIS), a certificate that the toys being imported conform to the standards prescribed in IS 9873 and that samples would be randomly picked from each consignment and sent to NABL accredited labs for testing and that clearance may be given by Customs on the condition that the product cannot be sold in the market till successful testing of the same. If the sample fails the test, then the consignment would be sent back or will be destroyed at the cost of the importer.

**3.3** It is further appeared that as per import policy conditions, Toys (Quality Control) Order, 2020 has been issued by DPIIT, Ministry of Commerce and Industry vide notification dated 25<sup>th</sup> February 2020; through this Order, safety of Toys has been brought under compulsory BIS certification. The QCO states that Toys shall conform to the Indian Standards for Safety of Toys and shall bear the Standard Mark under a license from BIS as per Scheme-I of Schedule-II of BIS (Conformity Assessment) Regulations, 2018 w.e.f. 01 Jan 2021. **Accordingly, with effect from 01<sup>st</sup> January 2021, compulsory BIS certification is needed for Toys as per Toys (Quality Control) Order, 2020 issued by DPIIT, Ministry of Commerce and Industry.** Hence, for the import of toy balloons, with effect from 01/01/2021, BIS certification is mandatory; such goods shall bear the Standard Mark under a license from BIS.

**4.** From the above discussions, it appears that the classification of the goods "Decorative Balloons (Party Items)" under Custom Tariff Heading 95059090 which attracts 20% Basic Custom duty by the importer in the impugned bills of entry are not proper and the same is correctly classifiable under CTH 95030090 and goods are subject to 60% Basic Custom Duty. Further, with effect from 1st September, 2017, BIS certification is also required for import of Toys including balloons.

**5.** For further investigation in this case, summon dated 21.05.2021 was issued to M/s Shree Salasar Tools to appear on 22.05.2021 to submit documents and to give statement. In response to the summons issued to M/s Shree Salasar Tools, Surat Shri Govind Goyal S/o Sh. Satya Narayan Goyal, Authorised Representative of M/s Shree Salasar Tools, Surat appeared and his statement was recorded on 03.06.2021 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated:

- that M/s Shree Salasar Tools, Surat is HUF firm and he is the karta (Authorised signatory) of the said firm.

- that in this firm they procure the material from import as the material needed by their clients.
- that they had filed BE No. 3596182 dated 16.04.2021 and BE No.3596372 dated 16.04.2021 for clearance of Decorative Balloons (party item) through the CB M/s Cargo Concept (Bombay) Pvt. Ltd.
- that in the present consignment, they were not aware about classification is different than actual. That they had declared the CTH as per the documents supplied by the supplier. That he admitted the mis-declaration on his part and ready to rectify correct CTH.
- that he don't have deep knowledge of classifications. That he has perused the notification No.02/2021-Cus dated 01.02.2021 and agreed with the explanation of said notification agreed that their products is to be classifiable under CTH9503.
- that he agreed that misclassification and mis-declaration of the cargo is an offence under Customs Act,1962 and attracts penal action under the provisions of said act.
- that he was ready to pay differential duty and normal fine/penalty and requested to release the goods as early possible. That he don't want any SCN and personal hearing.
- that since last three years they had cleared about 10-15 BoE's of Decorative Balloons party items made from plastic foil which are in the form of Alphabets, Stars, Fish Birds etc. That they had imported the item viz. "Decorative Balloons (party items) made of natural rubber latex is first time.

**6.** Summons dated 07.06.2021 was issued to CB M/s. Cargo Concepts (Bombay), having head office at Office No.01 Ground Floor, Monarch Plaza, Plot No.56, Sector-11, CBD Belapur, Navi Mumbai- 400614 who had filed Bills of Entry No. 3596182 dated 16.04.2021 and BE No.3596372 dated 16.04.2021. In response to the summons Shri Kanhiya Jagdish Kasera, G Card Holder No. K2057 and Director of M/s. Cargo Concepts (Bombay) appeared on 09.06.2021 for giving his statement under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- He is working as a G Card Holder No. K2057 (issued by the A.C., New Custom House, Mumbai) of Customs Broker M/s. Cargo Concepts (Bombay) and he is Director of M/s. Cargo Concepts (Bombay), company.
- that he has 18 years' experience in the Custom Broker field. The company is dealing in customs clearing. That they had started CB work at Mundra port since 2016.
- That his office staff is filing the bill of entries as per the directions given by him.
- That he had perused the impugned bill of entries and confirmed that said BE's filed by them on behalf of the importer for the import of Decorative Balloons (Party item) on the basis of documents provided by the importer.
- That they don't aware about the correct classification of item decorative balloons vide notification No.50/2017-Cus dated 30.06.2017 amended vide Noti. No. 02/2021- Cus dated 01.02.2021, however they had filed BE's on behalf of the importer on the basis of documents provided and directed by the importer. That they had filed 08-10 BE's on behalf of the said importer and assured for submission of details within 5 days. That they communicate with

importer on his mobile no. with Mr. Govind Goyal and his mail id.[rg.conceptz@gmail.com](mailto:rg.conceptz@gmail.com).

- o that the check list was prepared on the basis of documents and after getting approval, the said BE's were filed.
- o That he agreed that mis-classification of the cargo is an offence under customs act, 1962 attracts penal action under the provisions of said act.
- o that they had filed BE's under CTH 95059090 and the previous imports of Decorative Balloons were made from plastic foil/films which were in the form of Alphabets, stars, fish Birds etc. However, the present consignment viz. "Decorative Balloons (Party items) made of natural rubber latex which are different from the past consignments.
- o That his client is ready to modify the CTH and payment of differential duty and fine/penalty if any without SCN and PH.

7. Therefore, on a reasonable belief that the said goods viz. "Decorative Balloons (party items)" imported under Bills of Entry No. 3596182 dated 16.04.2021 and 3596372 dated 16.04.2021 is liable for confiscation under Section 111 of the Customs Act, the same were placed under seizure Memo's dated 09.08.2021.

8. The importer vide letter dated 04.10.2021 and letter dated 10.12.2021 requested for provisional release of the goods covered under BoE No. 3596182 dated 16.04.2021 and 3596372 dated 16.04.2021. On said request, letter dated 03.01.2022 issued to the importer and copy given to the CB M/s Cargo Concepts (Bombay) Pvt. Ltd., intimating them that the imported item viz. "Decorative Balloons" is classifiable under CTH 95030090 and as per Import Policy conditions, Toys (Quality Control) Order, 2020 issued by the DPIT, Ministry of Commerce and Industry with effect from 01.01.2021 compulsory BIS certificate required. They have been requested to provide the BIS certificate or if they don't have the same then inform this office to withdraw the representative samples for confirmation of standards prescribed in IS 9873 from NABL, India. The CB orally informed that the importer is not having BIS and requested for withdrawal of samples for early action in the case. Therefore, representative samples of said items had been drawn under Panchnama dated 04.01.2022 made at All Cargo- CFS, Mundra in the presence of independent panchas, Sh. Amol P. Patil CBR and CFS representative. The said representative samples had been sent on 06.01.2022 to NABL for the confirmation of standards prescribed in IS 9873. The NAB Lab has forwarded test reports of both items vide Test Report dated 10.02.2022 and as per that "Safety of Toys: Safety aspects related to mechanical and physical properties"- Test Method- IS 9873- Result found-'F' that means- "Does not meet requirement" in other words both samples failed to meet the required standards of BIS.

9. As the importer was not cooperating in the investigation and not submitted any records of the previous imports made by them, Therefore, a Show Cause Notice F.No. S/15-08/Enq-Shree Salasar/SIIB/CHM/21-22 dated 08.02.2022 in the matter of live Bills of Entry No. 3596182 dated 16.04.2021 and 3596372 dated 16.04.2021, was issued by Addl. Commissioner of Customs, SIIB, Mundra. Further, the subject matter was adjudicated vide O-in-O No. MCH/ADC/MK/130/2022-23-Adjn dated

28.12.2022 issued by Addl. Commissioner of Customs, Group-VI, Mundra Customs.

**10. Investigation of previous imports made by the importer:**

During investigation, it was noticed that the importer has engaged in the imports of "Decorative Balloons" for earlier period also. The details of earlier imports are as under:

**Table-A**

<b>Sr. No.</b>	<b>BE No.</b>	<b>BE Date</b>	<b>Quantity (in Kgs)</b>	<b>Assessable Value</b>	<b>Total duty paid @ BCD-20%, SWS-10% and IGST - 18% (total 43.96%)</b>
1	9200493	16.10.2020	14000	1195425	525509
2	9278367	22.10.2020	15900	1357661	596828
3	9684423	24.11.2020	15300	1323144	581654
4	986287	07.12.2020	10796	846784	372246
5	2324958	12.01.2021	26260	1943240	854248
6	2325143	12.01.2021	25298	1965655	864102
7	2559719	29.01.2021	23126	1793248	788312
8	2559720	29.01.2021	23430	1730306	760642
9	2559727	29.01.2021	25738	1995789	877349
10	2700777	09.02.2021	25880	2100938	923573
11	2816974	18.02.2021	26418	2144613	942772
12	3072146	09.03.2021	25480	1977121	869142
13	3079342	09.03.2021	23542	1652766	726555
14	3079344	09.03.2021	26370	1851306	813834
		<b>Total</b>	<b>307538</b>	<b>23877995</b>	<b>10496766</b>

**10.2** It is noticed that the importer is engaged in the import of "Decorative Balloons" since 16.10.2020 and during the period 16.10.2020 to 09.03.2021, he had filed 14 Bills of Entry, total quantity imported 3,07,538 KGs and paid duty @ BCD-20%+SWS-10%+IGST-18% = total @ 43.96% under CTH 9505 instead of payment of applicable duty @ BCD-60%+SWS-10%+IGST-5% = total @ 74.3% under CTH 9503.

**10.3** In view of above, as the importer had imported "Decorative Balloons" in past also, therefore further investigation of said imports was also initiated. However, the importer had not cooperated in the investigation for the previous imports, therefore the jurisdictional Customs Authority was requested to search the office premises of importer M/s Shree Salasar Tools situated at Surat. Hence, the jurisdictional Customs authority was requested to search the office premises of the importer and seize the import related documents from the premises. On the basis of that request, search at the office premises of M/s Shree Salasar Tools (IEC NO: 5214022638), Shop No. 307, 3<sup>rd</sup> Floor Metro Tower, Ring Road, Surat, Gujarat-395002 was conducted on 22.09.2021 by the SIIB, Customs Surat under search authorization in presence of independent panchas. During the course of search, it was seen that the said premises/office belongs to M/s Maheshwari & Co., Chartered Accountants and further informed that M/s Shree Salasar Tools was operating their office from the premises/office No.203, 2<sup>nd</sup> Floor of said same Tower. In the said office, one person was present there and introduced himself as Sh. Satya Narayan Goyal, Karta of M/s Shree Salasar Tools. On being asked by the custom officer, he informed that earlier they were operating from

307, 3<sup>rd</sup> floor, Metro Tower, however, in June-2020 they had shifted their office at 203, 2<sup>nd</sup> floor, Metro Tower. They had changed their address in GST Registration and also applied for change of address in IEC. During the search operation the officers found documents viz. sales/purchase ledgers, sales invoices etc. which they find relevant for the inquiry and put them in two made-up files and seized the same

**10.4** The Deputy Commissioner, Custom House, Surat vide letter F.No.VIII/09-01/SIIB/Shree Salasar/2021-22 dated 27.09.2021 forwarded seized documents viz. sales/purchase ledgers, sales invoices etc. for further investigation. On the scrutiny of said documents it is noticed that the said imported goods "Decorative Balloons" were sold to the buyers with the same description as "Decorative Balloons" mentioned in the sales invoices. The invoices were scrutinized and found that the item "Decorative Balloons" sold to the following buyers during the financial year 2020-21 and 2021-22:

**Table-B-1**

Tax invoice of Decorative balloons for F.Y. 2020-21 (from 24.10.2020 to 25.03.2021)						
Sr. No.	Invoice No.	Date	Quantity (KG)	Rate (Rs. per Kg)	Value	Buyer Name
1	15	24.10.20	14000	125	1750000	Rohit Trading Co., Mumbai
2	17	03.11.20	15900	115	1828500	Bharti Fashions Pvt. Ltd., Surat
3	21	01.12.20	2036	125	254500	Happy Birthday Stores, Raipur
4	22	01.12.20	2443	125	305375	K K Enterprise, Rajkot
5	23	02.12.20	1454	125	181750	Happy Birthday Stores, Raipur
6	25	04.12.20	8203	125	1025375	Anita International, Palghar
7	26	15.12.20	5759	125	719875	Celebrations Enterprises, Mumbai
8	28	22.12.20	4093	125	511625	Rohit Trading Co., Mumbai
9	31	19.01.21	2786.1	125	348262.5	Happy Birthday Stores, Raipur
10	33	22.01.21	8915.5	125	1114440	Celebrations Enterprises, Mumbai
11	42	02.02.21	6791	110	747010	Amrutam Enterprise, Surat
12	43	02.02.21	6791	115	780965	Kedar Enterprise, Mumbai
13	44	02.02.21	6791	115	780965	Kedar Enterprise, Mumbai
14	45	03.02.21	2730	115	313950	Kedar Enterprise, Mumbai
15	46	03.02.21	2716	115	312340	Kedar Enterprise, Mumbai
16	47	04.02.21	1184	110	130240	Pragati Industries, Delhi
17	48	04.02.21	906	110	99660	Umang Enterprises, Mumbai
18	49	05.02.21	8046	115	925290	Kedar Enterprise, Mumbai
19	50	07.02.21	2786	87	242382	Blue Sky India Balloons Pvt. Ltd., Navi Mumbai
20	51	08.02.21	7062	115	812130	Kalpana Baby Watch, Mumbai
21	52	08.02.21	2399	115	275885	Kedar Enterprise, Mumbai
22	53	10.02.21	3358	115	386170	Namrata Decorations, Mumbai
23	54	11.02.21	6285	115	722775	Kalpana Baby Watch, Mumbai
24	55	13.02.21	2946	100	294600	Shree Ambika Stores, Chennai
25	56	14.02.21	6612	90	595080	Agarwal Toys, Mumbai
26	57	15.02.21	6612	90	595080	Agarwal Toys, Mumbai
27	58	15.02.21	1640	80	131200	Shiv Industries, Cuttack
28	59	15.02.21	6468	90	582120	Kalpana Baby Watch, Mumbai
29	60	17.02.21	530	95	50350	Raghav Trading Company, Delhi
30	61	17.02.21	816	102	83262	Yatharth Trading Company, Delhi

31	62	17.02.21	5203.92	96	499576	Fine Rubber Works, Dahanu
32	63	17.02.21	2406	90	216540	Blue Sky India Balloons Pvt. Ltd., Navi Mumbai
33	64	18.02.21	4015	90	361350	Kalpana Baby Watch, Mumbai
34	65	18.02.21	6022	90	541980	Kalpana Baby Watch, Mumbai
35	66	20.02.21	4932	90	443880	Blue Sky India Balloons Pvt. Ltd., Navi Mumbai
36	67	24.02.21	5309	90	477810	Kalpana Baby Watch, Mumbai
37	68	24.02.21	3539	90	318510	Kalpana Baby Watch, Mumbai
38	69	26.02.21	4866	90	437940	Blue Sky India Balloons Pvt. Ltd., Navi Mumbai
39	70	27.02.21	542.37	90	48813	Nieve Enterprises, Nagpur
40	71	27.02.21	1356	90	122040	Shree Ambika Stores, Chennai
41	74	01.03.21	6328	90	569520	Fine Rubber Works, Dahanu
42	75	01.03.21	6636	90	597240	Agarwal Toys, Mumbai
43	76	05.03.21	9677	90	870930	Kalpana Baby Watch, Mumbai
44	77	06.03.21	3774	90	339660	Fine Rubber Works, Dahanu
45	78	06.03.21	3992.5	90	359325	Maa Durga Industries, Delhi
46	79	06.03.21	1693	90	152370	Shree Ambika Stores, Chennai
47	80	07.03.21	3870	90	348300	Kalpana Baby Watch, Mumbai
48	81	08.03.21	4632	90	416880	Blue Sky India Balloons Pvt. Ltd., Navi Mumbai
49	82	08.03.21	1935	90	174150	Blue Sky India Balloons Pvt. Ltd., Navi Mumbai
50	86	16.03.21	575	90	51750	Blue Sky India Balloons Pvt. Ltd., Navi Mumbai
51	88	20.03.21	5154	90	463860	Kalpana Baby Watch, Mumbai
52	89	20.03.21	7099	90	638910	Agarwal Toys, Mumbai
53	90	21.03.21	5849	90	526410	Blue Sky India Balloons Pvt. Ltd., Navi Mumbai
54	91	22.03.21	4980	90	448200	Blue Sky India Balloons Pvt. Ltd., Navi Mumbai
55	92	22.03.21	4765	90	428850	Kalpana Baby Watch, Mumbai
56	93	23.03.21	3097	90	278730	Shree Ambika Stores, Chennai
57	94	24.03.21	2907	90	261630	Fine Rubber Works, Dahanu
58	95	24.03.21	4229	90	380610	Blue Sky India Balloons Pvt. Ltd., Navi Mumbai
59	96	25.03.21	1856	90	167040	Happy Birthday Stores, Raipur
60	97	25.03.21	8578	90	772020	Fun Balloon, Mumbai
61	98	25.03.21	2021	90	181890	Amrutam Enterprise, Surat
62		<b>Total</b>	<b>280897</b>		<b>28797871</b>	

**Table-B-2**

**Tax invoice of Decorative balloons for F.Y. 2021-22 (from 01.04.21 to 27.05.2021)**

Sr. No.	Invoice No.	Date	Quantity (KG)	Rate (per KG)	Value	Buyer Name
1	1	08.04.21	9093	90	818370	Fun Balloon, Mumbai
2	2	08.04.21	13640	90	1227600	Kalpana Baby Watch, Mumbai
3	3	08.04.21	1364	90	122760	Shree Ambika Stores, Chennai
4	12	03.05.21	2273	90	204570	Hi Choice Plus Stationery & More, Mumbai
5	14	27.05.21	230.29	100	23029	Joy Creation N X, Mumbai
		<b>Total</b>	<b>26600</b>		<b>2396329</b>	

**10.4.1** The importer had imported “Decorative Balloons” during the period 16.10.2020 to 09.03.2021 under 14 Bills of Entry, total quantity imported 3,07,538 KGs and as per details of tax invoices during the period 24.10.2020

to 25.03.2021, he had sold total quantity of said item 307497 KGs to various buyers as mentioned in Table above. In view of import details and imported goods sold details, it is very much clear on record that the importer has imported the identical goods under previous imports and therefore, the applicable customs duty on said imported "Decorative Balloons-CTH 9503" is required to be recovered at the applicable rate of duty viz. BCD@60% + SWS@10% + IGST@5% = 74.3%.

**10.4.2** It is further noticed that as per Import Ledger, the importer had imported the goods viz. "Decorative Balloons" only from supplier M/s SST Asia Trading FZE, China. Therefore, it is again established on record that the importer has imported the identical goods "Decorative Balloons" under previous imports.

**10.5** Whereas statement of importer was required for further investigation of previous imports made by the importer, hence summons dated 20.01.2022 issued to the importer, however the importer did not appear on the given date 02.02.2022. Further, summons issued on 19.03.2022 to appear before the IO on 05.04.2022 but the importer did not appear on the given date and also not given any response/request for further date. The said summons was forwarded by speed post and as per track consignment the summons delivered to the importer on 24.03.2022. Another summons issued on 09.04.2022 to appear before the IO on 26.04.2022 but again the importer did not appear on the given date and also not given any response/request for further date.

**10.6** As the importer has not responded to the summons issued by the I.O. of the case, it emerged that the importer is not cooperating with the investigation and they are not having any evidence in the support of their claim that the previously imported goods are other than "Decorative Balloons" as claimed by the importer in the statement dated 03.06.2021. Therefore, the applicable customs duty on said imported "Decorative Balloons-CTH 9503" is required to be recovered at the applicable rate of duty viz. BCD-60%+SWS-10%+IGST-5% = 74.3%. The differential duty on imports made by M/s. Shree Salasar Tools under 14 Bills of Entry works out as under:

**Table-C** **(Amount in Rs.)**

<b>Sr. No.</b>	<b>BE No.</b>	<b>BE Date</b>	<b>Assessable Value</b>	<b>Total duty paid @ BCD-20%, SWS-10% and IGST - 18% (total 43.96%)</b>	<b>Total duty payable @ BCD-60%, SWS-10% and IGST - 5% (Total @74.30%)</b>	<b>Differential duty payable</b>
1	9200493	16.10.2020	1195425	525509	888201	362692
2	9278367	22.10.2020	1357662	596828	1008742	411914
3	9684423	24.11.2020	1323144	581654	983096	401442
4	986287	07.12.2020	846784	372246	629161	256915
5	2324958	12.01.2021	1943240	854248	1443827	589579
6	2325143	12.01.2021	1965655	864102	1460481	596379
7	2559719	29.01.2021	1793247	788312	1332383	544071
8	2559720	29.01.2021	1730305	760642	1285617	524975
9	2559727	29.01.2021	1995789	877349	1482871	605522
10	2700777	09.02.2021	2100938	923573	1560997	637424
11	2816974	18.02.2021	2144613	942772	1593448	650676

12	3072146	09.03.2021	1977121	869142	1469001	599859
13	3079342	09.03.2021	1652766	726556	1228005	501449
14	3079344	09.03.2021	1851306	813834	1375520	561686
		<b>Total</b>	<b>23877995</b>	<b>10496767</b>	<b>17741350</b>	<b>7244583</b>

**10.7** This resulted in short payment of duty amounting to **Rs.72,44,583/-**, as detailed above, which is recoverable under Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA of the Customs Act, 1962.

**11.** In view of above, Show Cause Notice F.No. GEN/ADJ/COMM/123/2023-Adj dated 05.04.2023 was issued to M/s Shree Salasar Tools (IEC NO: 5214022638) wherein they were called upon to show cause to the Commissioner of Customs, Custom House Mundra, having his office at Office of the Principal Commissioner of Customs, Custom House, 5B, Port User Building, Mundra Port, Mundra, Gujarat - 370421 as to why:-

- i) the goods valued to **Rs. 2,38,77,995/-** covered under impugned bills of entry as detailed in Table-A, should not be confiscated under the provisions of Section 111(d) and (m) of the Customs Act, 1962;
- ii) the item "Decorative Balloons (party items)" should not be classified under CTI 95030090 instead of CTI 95059090 under the Customs Tariff Act, 1975;
- iii) Differential Customs duty of **Rs. 72,44,583/- (Rupees Seventy Two Lakhs Forty Four Thousand Five Hundred Eighty three only)** on the aforesaid imported goods as detailed in Table-C, should not be demanded, confirmed and recovered from them under Section 28 (4) of the Customs Act, 1962;
- iv) Interest at appropriate rates should not be levied and recovered from them under Section 28AA of the Customs Act, 1962;
- v) Penalty should not be imposed on them under Section 112(a) and/or 112(b), 114A of the Customs Act, 1962.

#### **PERSONAL HEARING AND WRITTEN SUBMISSION**

12. Opportunity of personal hearing in the matter was granted to all notices. The date of personal hearing was fixed on 26.07.2023, 16.08.2023 & 06.02.2024 in the present matter. However, no one appeared in the personal hearing fixed on above said dates. Therefore, it is observed that sufficient opportunity has been given to all the notices. Further, the noticees have even not filed written submissions. Therefore, I hold that principles of natural justice have been fulfilled. Considering the scenario, there is no option but to proceed with the adjudication proceedings in terms of merit of the case ex parte.

#### **DISCUSSION AND FINDINGS**

13. I have carefully gone through Show Cause Notice; relied upon documents, legal provisions and the records available before me.

14. I find that following main issues are involved in SCN, which are required to be decided:

- i) Whether the goods valued to Rs. 2,38,77,995/- covered under impugned bills of entry as detailed in Table-A to the Show Cause Notice are liable for confiscation under the provisions of Section 111(d) and (m) of the Customs Act, 1962;
- ii) Whether the item "Decorative Balloons (party items)" classified under CTI 95030090 by the importer are liable to be re-classified under CTI 95059090 under the Customs Tariff Act, 1975;
- iii) Whether differential Customs duty of **Rs. 72,44,583/- (Rupees Seventy Two Lakhs Forty Four Thousand Five Hundred Eighty three only) alongwith applicable interest is required to be demanded and recovered** on the imported goods as detailed in Table-C to the Show Cause Notice under Section 28 (4) of the Customs Act, 1962;
- iv) Whether the importer is liable for penalty under Section 112(a) and/or 112(b), 114A of the Customs Act, 1962.

15. After having framed the main issues to be decided, now, I proceed to deal with each of the issues herein below. The foremost issue before me to decide in this case is as to whether the goods imported by the Importer are mis-classified and the same is to be re-classified.

#### **CLASSIFICATION OF "TOY BALLOON" MIS-DECLARED AS "DECORATIVE BALLOONS (PARTY ITEMS)"**

15.1 M/s Shree Salasar Tools (IEC NO: 5214022638), filed the Bills of Entry No. 3596182 and 3596372 both dated 16.04.2021 through their CB M/s. Cargo Concepts (Bombay) Pvt Ltd for the import of "Decorative Balloons (Party Items)" under HS Code 95059090 attracting Custom duty @ (BCD 20%+SWS 10%+IGST 18%). On the basis of information received from DRI, Ahmedabad the goods procured under the said Bills of Entry were examined by the SIIB, Mundra panchnama dated 29.04.2021. During examination, it has been found that the declared goods i.e. "Decorative balloons" appears to be mis-classified under CTH 9505 which cover "Festive, Carnival or other entertainment articles, including conjuring tricks and novelty jokes", whereas the said goods which is basically "Toy balloon" and merits its classification under CTH 9503 which covers "Toy balloons made of natural rubber latex". Therefore, a Show Cause Notice bearing F.No. S/15-08/Enq-Shree Salasar/SIIB/CHM/21-22 dated 08.02.2022 in the matter of live Bills of Entry No. 3596182 dated 16.04.2021 and 3596372 dated 16.04.2021 was issued to the importer by the Additional Commissioner of Customs, SIIB, Mundra. During investigation, it was also noticed that the M/s. Salasar had imported the goods under description "Decorative Balloons" in earlier period also. As there was a reasonable doubt the investigation was extended for import made by M/s. Salasar for previous period wherein it emerged that M/s. Salasar had procured the goods declaring same description, total quantity imported 3,07,538 KGs, under 14 Bills of Entry during the period 16.10.2020 to 09.03.2021. The classification of the goods imported under

such 14 Bills of entry, declared as "Decorative Balloons", is to be decided in the present Show Cause Notice.

15.2 I find that goods imported under BE no. 3596182 dated 16.04.2021 and 3596372 dated 16.04.2021 were supplied by M/s SST Asia Trading FZE, China. During the examination of goods imported under the said two Bills of Entry by SIIB, it was found that the goods were described as "Decorative Balloons" however the same were not "Decorative Balloons" but "toy balloons made of natural rubber latex". The supplier of 14 Bills of entry whose classification of the goods in question is also M/s SST Asia Trading FZE, China with same description of "Decorative Balloons". Further, during the course of investigation, the importer did not attend on dates of Summons's. Therefore, I observe that they have not put forth any substantial records/evidences to prove before the investigating officer that the goods were actually "Decorative Balloons". Further, they have neither refuted nor challenged the description of goods. Hence I hold that the goods procured under 14 Bills of entry were "toy balloons made of natural rubber latex".

15.3 I find that the whole matter hinges upon the classification of imported goods under HS Code 95059090 or 95030090 Customs Tariff Act, 1975 and the requirement of BIS as per Toys (Quality Control) Order, 2020 issued by DPIIT, Ministry of Commerce and Industry. Hence, at this juncture, it will be appropriate to examine the relevant provisions of both the Customs Tariff Headings.

15.3.1 The relevant portion of CTH 9503 of the First Schedule to the Customs Tariff Act, 1975 is produced as under:

HS Code	Level	Item Description
9503	-	TRICYCLES, SCOOTERS, PEDAL CARS AND SIMILAR WHEELED TOYS; DOLLS' CARRIAGES; DOLLS; OTHER TOYS; REDUCED-SIZE ("SCALE") MODELS AND SIMILAR RECREATIONAL MODELS, WORKING OR NOT; PUZZLES OF ALL KINDS
9503 00	---	<i>Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds:</i>
9503 00 10	---	Of wood
9503 00 20	---	Of metal
9503 00 30	---	Of plastics
9503 00 90	---	Other

15.3.2 The relevant extract from the HS Explanatory Notes of CTH 9503 is reproduced below:

**"95.03 - Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds.**

*This heading covers :*

**(E) Wheeled toys.**

(F) **Dolls' carriages (e.g., strollers), including folding types.**

(G) **Dolls**

(H) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children and adults). However, toys which, on account of their design, shape or constituent material, are identifiable as intended exclusively for animals, e.g., pets do not fall under this heading, but are classified in their own appropriate heading. This group includes:

All toys not included in (A) to (C). Many of the toys are mechanically or electrically operated. These include :

(i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

(ii) Toy pistols and guns.

(iii) Constructional toys (construction sets, building blocks, etc.).

(iv) Toy vehicles (other than those of group A), trains (whether or not electric), aircraft, boats, etc., and their accessories (e.g., railway tracks, signals).

(v) Toys designed to be ridden by children but not mounted on wheels, e.g., rocking horses.

(vi) Non-electric toy motors toy steam engines, etc

(vii) Toy balloons and toy kites."

15.3.3 The relevant portion of CTH 9505 of the First Schedule to the Customs Tariff Act, 1975 is extracted below:

HS Code	Level	Item Description
9505	-	FESTIVE, CARNIVAL OR OTHER ENTERTAINMENT ARTICLES, INCLUDING CONJURING TRICKS AND NOVELTY JOKES
9505 10	-	Articles for Christmas festivities
9505 90	-	Other :
9505 90	---	Magical equipments
9505 90	---	Other

15.3.4 The relevant extract from the HS Explanatory Notes of CTH 9505 is reproduced below:

**"95.05 - Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes.**

This heading covers:

(B) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

(1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).

15.3.5. In addition, the relevant extract from the HS Explanatory Notes of CTH 4016 is reproduced below:

**“40.16 - Other articles of vulcanised rubber other than hard rubber.**

The following are also excluded from this heading:

- (i) Articles of woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with rubber, falling in Section XI (see Note 3 to Chapter 56 and Note 4 to Chapter 59) and articles made from textile materials combined with rubber threads (Section XI).
- (j) Footwear and parts thereof of Chapter 64.
- (k) Headgear (including bathing caps) and parts of headgear, of Chapter 65.
- (l) Vacuum cup holders (suction grips) consisting of a base, a handle and a vacuum lever, of base metal, and rubber discs (Section XV).
- (m) Rubber boats and rafts (Chapter 89).
- (n) Parts and accessories of musical instruments (Chapter 92).
- (o) Mattresses, pillows and cushions of cellular rubber, whether or not covered, including electric bed-warming pads fitted internally with cellular rubber, of heading 94.04.
- (p) **Toys, games and sports requisites and parts thereof of Chapter 95.**
- (q) Date, sealing or numbering stamps, and the like, designed for operating in the hand, and other articles of Chapter 96.”

15.4 The JS TRU, vide letter D.O.F. No. 334/02/2020-TRU dated 01/02/2021 had circulated the changes proposed vide Finance Bill 2021 that has been made effective from 01.02.2021. In Annexure A to this letter in respect of Chapter 40, the following is explicitly mentioned:

“(1) An explanation is being added to S. No. 284 of notification No. 50/2017-Customs so as to explicitly clarify that the said exemption entry does not include ‘toy balloons made of natural rubber latex’. **Toy balloons are classified under customs tariff heading 9503 and attract a basic customs duty of 60%.** [S. No. 29 of notification No. 2/2021-Customs, dated 1st February, 2021 refers].”

15.5 Further, GST Taxation laws which also adopts Harmonized System of Nomenclature also classify Toy balloons made of natural rubber latex under HSN 9503.

15.6 I have carefully gone through the above legal provisions and clarification of TRU as stated in above paras and I find that on careful reading of the description of ITC HS Code 95030090 and 95059090 as provided in Customs Tariff Act, 1975 and Explanatory Notes of the HSN of CTH 9503, it is evident that toy balloons are correctly classifiable under the CTH 9503 (4-digit level), more particularly under HS Code 9503 00 90. Furthermore, as per description of CTH 9505 as provided in Customs Tariff Act, 1975, it is noted that there is no mention of Toys Balloon in the said CTH. An explanation is also being added to S.No. 284 of Notification No. 50/2017 dated 30.06.2017 vide **Notification No. 02/2021-Customs dated 01.02.2021** wherein it was clarified that “**toys balloon are classified under Customs Tariff Heading 9503**”. The facts of mis-classification of item i.e. Decorative Balloon (party item) under HS Code 95059090 had been admitted by Shri Govind Goyal, Karta of HUF M/s Shree Salasar Tools, Surat in his statement recorded on 03.06.2021. He also admitted that they had imported the item i.e. Decorative Balloon (party item) made of natural rubber latex and same is rightly classifiable under CTH 9503. It is evident that the

item cannot be classified under HS Code 95059090 of Customs Tariff Act, 1975.

15.7 In view above findings, I hold that the goods imported by M/s. Salasar under 14 Bills of Entry as mentioned in Table-C is rightly classifiable under Tariff 95030090.

**Applicability of extended period under section 28(4) of the Customs Act, 1962**

16. The present Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

*"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*

*(4) 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, by reason of,—*

- (a) collusion; or*
- (b) any willful 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.*

**The term "relevant date" For the purpose of Section 28 ibid, has been defined in Explanation 1, as under:**

**Explanation 1 . - For the purposes of this section, "relevant date" means,-**

*(a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;*

*(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*

*(c) in a case where duty or interest has been erroneously refunded, the date of refund;*

*(d) in any other case, the date of payment of duty or interest.*

16.1 I find that with the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was the obligatory on the part of the importer to declare the actual description and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. Therefore, by not disclosing the true and correct facts to the proper officer, at the time of clearance of imported goods, the importer appears to have indulged in mis-declaration and mis-classification by way of suppression of facts and wilfully mis-declared and

mis-classified the imported goods with intent to evade the payment of applicable Custom duties. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. **Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011** cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self assessment, is required to ensure that he declared the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.

16.2 The facts and evidences placed before me clearly states that the Importer was willfully indulged in mis-stating the description of goods in Bills of Entries for the period from 16.10.2020 to 09.03.2021 and has suppressed the actual description of goods by way of mentioning wrong description "Decorative Balloons (Party Items)" instead of actual description "Toy balloon" with sole intension to evade the payment of duty. Their act of suppression of facts was unearthed only after the investigation by SIIB, Mundra. I find that the Importer has breached the trust reposed on him after introducing of self-assessment.

16.3 In view of above, I hold that there are no flaws in invoking Section 28(4) of Customs Act, 1962 in the instant case.

**Determination of duty under Section 28(8) Customs Act, 1962 read with Section 28(4) of Customs Act, 1962.**

17. In foregoing paras, I have held that the goods imported by M/s. Salasar is correctly classifiable under Tariff Item **95030090** of the first Schedule of Customs Tariff, 1975, therefore, I hold that the importer is liable to pay the duty of all the 14 Bills of Entry as tabulated below in terms of Section 28(8) read with Section 28(4) of Customs Act, 1962 :

**TABLE-D**

Sr. No.	BE No.	BE Date	Assessable Value	Total duty paid @ BCD- 20%, SWS- 10% and IGST - 18% (total 43.96%)	Total duty payable @ BCD-60%, SWS-10% and IGST - 5% (Total @74.30%)	Differential duty payable (In Rs.)
1	9200493	16.10.2020	1195425	525509	888201	362692
2	9278367	22.10.2020	1357662	596828	1008742	411914
3	9684423	24.11.2020	1323144	581654	983096	401442
4	986287	07.12.2020	846784	372246	629161	256915
5	2324958	12.01.2021	1943240	854248	1443827	589579
6	2325143	12.01.2021	1965655	864102	1460481	596379
7	2559719	29.01.2021	1793247	788312	1332383	544071
8	2559720	29.01.2021	1730305	760642	1285617	524975
9	2559727	29.01.2021	1995789	877349	1482871	605522
10	2700777	09.02.2021	2100938	923573	1560997	637424
11	2816974	18.02.2021	2144613	942772	1593448	650676
12	3072146	09.03.2021	1977121	869142	1469001	599859
13	3079342	09.03.2021	1652766	726556	1228005	501449
14	3079344	09.03.2021	1851306	813834	1375520	561686
		<b>Total</b>	<b>23877995</b>	<b>10496767</b>	<b>17741350</b>	<b>7244583</b>

**Confiscation of the goods under section 111(d) and 111 (m) of the customs act, 1962:**

18. I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(d) & 111(m) of the Customs Act, 1962 are reproduced below: -

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*(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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"*

18.1 On plain reading of the above provisions of the Section 111(d) and 111(m) of the Customs Act, 1962 it is clear that any goods which are imported by way of the mis-declaration, will be liable to confiscation.

18.2 I find that, with effect from 01st January 2021, compulsory BIS certification is needed for Toys as per Toys (Quality Control) Order, 2020 issued by DPIIT, Ministry of Commerce and Industry. Hence, for the import of toy balloons, with effect from 01.01.2021, BIS certification is mandatory and such goods shall bear the Standard Mark under a license from BIS. I find that in the present case, the importer has failed to submit the BIS certificate for the subject goods and also failed to submit the requisite test report for confirmation of BIS requirements.

18.3 I find that the "Decorative Balloons (party items)" imported by M/s Shree Salasar Tools, Surat has been deliberately mis-classified under HS Code 95059090 of the first schedule of Customs Tariff Act, 1975 to evade/short pay applicable duty. I also find that as per import policy, BIS is mandatory condition for import of toy balloons. Section 2(33) provides that "prohibited goods" means any goods the import or export of which is subject to any prohibition under the Customs Act, 1962 Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. Since in this case, the condition of BIS compliance has not been complied with, the subject goods are liable to be treated as prohibited goods. The Section 111(d) provides for confiscation of goods which are imported /attempted to be imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force. The Section 111(m) provides for confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under this Act. I therefore hold that in absence of BIS and intentional mis-classification of imported goods, the goods i.e. Decorative Balloons covered under 14 Bills of Entry having assessable value of Rs. 2,38,77,995/-, are liable for confiscation under provisions of Section 111 (d) & (m) of the

Customs Act.

18.4 As the impugned goods are found to be liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962, I find that it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the goods mentioned in Table-D. The Section 125 ibid reads as under:-

*"Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1/or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."*

18.5 A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

18.6 I find that any goods could be held liable for confiscation only when the goods were physically available for being confiscated. If the imported goods were seized and then released provisionally, then also such goods may be held liable for confiscation because they were released on provisional basis. But in this case, the goods imported by them have never been seized; on the contrary, the goods imported by them have been legally allowed to be cleared for home consumption. These goods are not available for confiscation at this stage. In case of Manjula Showa Ltd. 2008 (227) ELT 330, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of Shiv Kripalspat Pvt. Ltd. 2009(235) ELT 623 has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not have any legs to stand.

18.7 In this regard, I find that the goods imported mentioned in Table-D, were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A ibid covering recovery of redemption fine is available. I, therefore, find that redemption fine cannot be imposed in respect of imported goods mentioned in Table-D

**Imposition of Penalty under Section 112(a) and/or 112(b), 114A importer under the Customs Act, 1962.**

19. I find that section 112(a) stipulates the penalty for improper importation of goods on any person who in relation to 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 omissions of such an act.

19.1 In the instant case it is pertinent to mention that the importer has imported the subject goods in violation of Section 111 of the Customs Act, 1962. For the said violation, the goods are liable to confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that for these acts and omissions, the importer is liable for penal action under Section 112(a) of the Customs Act, 1962.

19.2 The import of Balloons (Toys) without BIS is restricted as per Import Policy of Chapter 95. I find that the importer had intentionally mis-declared the goods to circumvent the prohibition imposed by the Foreign Trade Policy. By this act, the importer has violated the provision of Section 46(4) of the Customs Act, 1962. For the said deliberate act, I find that the importer M/s Shree Salasar Tools is liable for penalty under Section 112(a) of the Customs Act, 1962. Therefore, the proposition of penalty under Section 112(a) of Customs Act, 1962 is legitimate and thus, the same is confirmed.

19.3 In above paras, I have held that the Importer mislead the department at the time of filing of Bills of Entry of imported goods by mentioning wrong CTH- 9505 instead of correct CTH-9503, thereby evading the Customs duty. Had the investigating agency i.e. DRI not initiated investigation against the Importer, the evasion of Customs Duty would not have come to the knowledge of the department they are liable to pay duty determined under section 28(8) of the customs act, 1962.

19.4 I find that section 114A stipulates that the person who is liable to pay duty by reason of collusion or any willful mis-statement or suppression of facts as determined under section 28(8) ibid, is also be liable to pay penalty under section 114A. I find that for these acts and omissions, the Importer is liable for penal action under Section 114A of the Customs Act, 1962.

19.5 I hold that for these acts and omissions, the importer is liable for penal action under Section 114A of the Customs Act, 1962.

19.6 However, I find that as per 5th proviso of section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under section 112 is not imposable.

19.7 I find that there is a mandatory provision of penalty under section 114A of customs act, 1962 where duty is determined under section 28 of customs act, 1962. Therefore, I refrain from imposing penalty under section 112(a)/ 112(b) of Customs act, 1962.

**Imposition of Penalty under Section 117 on M/s Cargo Concepts (Bombay) under the Customs Act, 1962.**

20. I have carefully examined the proposal for imposition of penalty on M/s Cargo Concepts (Bombay) under Section 117 of Customs Act, 1962 for filing

Bills of Entry for import of "Decorative Balloons (party items)" on behalf of M/s Shree Salasar Tools, Surat in which the importer has mis-classified the items.

20.1 I find that the Custom Broker has filed Bills of Entry on behalf of importer noticee on the basis of documents submitted by the importer. The invoices submitted by the importer to customs brokers clearly mentioned "Decorative Balloons (Party Items)" along with description of goods. The item under dispute being technical in nature, Custom Broker having limited technical knowledge appears to have acted as per the content of documents as supplied by the importer. There is nothing on record in the Show Cause Notice that Customs Brokers were in knowledge of wrong declaration by importer in documents furnished by importer and they connived with importer to mis-classify the goods.

20.2 I find that during investigation, no connivance of CB with importer in evasion of duty by way of misclassification has come out, therefore, the Customs Brokers cannot be penalised.

20.3 In view of above, I hold that CB M/s Cargo Concepts (Bombay) is not liable for penalty under Section 117 of the Customs Act, 1962.

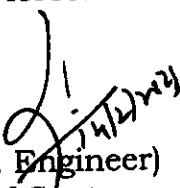
21. In view of discussion and findings supra, I pass the following order:

**ORDER**

- i) I order to confiscate the goods valued to **Rs. 2,38,77,995/-** covered under impugned bills of entry as detailed in Table-A of Show Cause Notice, under the provisions of Section 111(d) and (m) of the Customs Act, 1962;
- ii) I reject the classification of goods "Decorative Balloons (party items)" under CTI 95059090 of Customs Tariff Act, 1975 and order to re-classify the same under CTI 95030090 of Customs Tariff Act, 1975 with consequential duty.
- iii) I confirm the demand of differential Customs duty amounting to **Rs. 72,44,583/- (Rupees Seventy-Two Lakhs Forty-Four Thousand Five Hundred Eighty-three only)** on the imported goods and order to recover the same under Section 28(8) of Customs Act, 1962 read with Section 28(4) Customs Act, 1962 with interest at appropriate rates under Section 28AA of the Customs Act, 1962.
- iv) I impose penalty of **Rs. 72,44,583/- (Rupees Seventy-Two Lakhs Forty-Four Thousand Five Hundred Eighty-three only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (iii) above on M/s Shree Salasar Tools (IEC NO: 5214022638), Shop No. 203, 2<sup>nd</sup> Floor Metro Tower, Ring Road, Surat, Gujarat-395002 under Section 114A of the Customs Act, 1962.
- v) I refrain from imposing penalty on M/s Shree Salasar Tools (IEC NO: 5214022638) under Section 112(a) and/or 112(b) of Customs Act, 1962 for the reasons discussed in paras supra.

vi) I refrain from imposing penalty on CB, M/s Cargo Concepts (Bombay) under Section 117 of the Customs Act, 1962 for the reasons discussed in para supra.

This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

  
(K. Engineer)  
Commissioner of Customs  
Custom House Mundra

**To,**

1. M/s Shree Salasar Tools, Surat  
Shop No. 203, 2nd Floor Metro Tower,  
Ring Road, Surat, Gujarat-395002
2. M/s. Cargo Concepts (Bombay),  
Office No.11-12, Ground Floor,  
Sadguru Empire, 54/1/2/1  
Adani Port Road, Mundra, Gujarat

**Copy to:**

1. The Deputy Commissioner (Import Gr.VI), Custom House, Mundra.
2. The Deputy Commissioner (SIIB), Custom House, Mundra.
3. Guard file.