प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्क भवन ,"पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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DIN: 20250371MN0000666F0B

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-42/ICD-Khod/O&A/HQ/2021-22
B	कारण बताओ नोटिस संख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-42/ICD-Khod/O&A/HQ/2021-22 dated 29.11.2021
C	मूल आदेश संख्या/ Order-In-Original No.	:	**282/ADC/SRV/O&A/2024-25**
D	आदेश तिथि/ Date of Order-In-Original	:	**20.03.2025**
E	जारी करनेकी तारीख/ Date of Issue	:	**20.03.2025**
F	द्वारापारित/ Passed By	:	**SHREE RAM VISHNOI**, ADDITIONAL COMMISSIONER, CUSTOMS AHMEDABAD.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	**M/S. SOMI CONVEYOR BELTINGS LTD.,** 4F-15 OLIVER HOUSE, NEW POWER HOUSE ROAD, JODHPUR-342 001, RAJASTHAN
(1)	**यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।**		
(2)	**कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

BRIEF FACTS OF THE CASE:

M/s. Somi Conveyor Beltings Ltd., situated at 4F-15 Oliver House, New Power House Road, Jodhpur-342 001, is registered under G.S.T. and holds I.E.C. No. 1302002309 (hereinafter referred to as "M/s. SCBL" or "the importer" or "the noticee" for the sake of brevity). They have imported "Belting Fabric for Conveyor Belt" (Made of Polyester) (hereinafter referred to as "imported goods") from a foreign supplier namely, M/s. Jiangsu Taiji Industry New Materials, Jiangsu, China, at ICD Khodiyar under 15 Bills of Entry classifying the goods under C.T.H. 59069190 of the Customs Tariff Act,

1975 and availing benefit of Sr. No. 150 of Notification No. 082/2017-Customs dated 27.10.2017 (here in after referred to as "the said Notification"). The details of Bills of Entry are as per Table-A below:-

TABLE-A

Sr. No.	B/E. No. and Date	Quantity (Kgs)	Assessable Value (Rs.)	Duty Paid (Rs.)
1	2838685 Dt.15.04.19	10,372	22,87,026	5,56,205
2	3020561 Dt.27.04.19	2,764	6,09,462	1,48,221
3	3020561 Dt.27.04.19	3,430	7,56,315	1,83,936
4	3020561 Dt.27.04.19	4,148	9,14,634	2,22,439
5	3020561 Dt.27.04.19	2,062	4,54,671	1,10,576
6	3205430 Dt.13.05.19	20,296	44,75,268	10,88,385
7	3205430 Dt.13.05.19	2,512	5,53,896	1,34,708
8	3368750 Dt.24.05.19	3,423	7,59,624	1,84,741
9	3368750 Dt.24.05.19	1,640	3,63,945	88,511
10	3368750 Dt.24.05.19	3,166	7,02,591	1,70,870
11	3368750 Dt.24.05.19	6,091	13,51,699	3,28,733
12	3368750 Dt.24.05.19	4,020	8,92,108	2,16,961
13	3689679 Dt.17.06.19	2,950	6,54,657	1,59,213
14	3689679 Dt.17.06.19	12,544	26,68,849	6,49,064
15	3689679 Dt.17.06.19	3,099	6,87,722	1,67,254
	Total	**82,517**	**1,81,32,467**	**44,09,817**

2. The Office of the Principal Director (Central), Indian Audit & Accounts Department, Ahmedabad, vide Para 1 of Local Audit Report (L.A.R.) No. 17/2019-20 dated 27.09.2019, had raised an audit objection, involving period from April-19 to June-19, stating that the said importer had imported 82,517 Kgs. of "Belting Fabric for Conveyor Belt" (China Origin), classifying them under C.T.H. 5906 9190 and paying duty @ of 24.32% Ad Valorem, instead of classifying the same under C.T.H. 5910 and duty payable @ 36.64% Ad Valorem. *Transmission or Conveyor belts or belting of textile material, whether or not impregnated coated covered or laminated with plastics, or reinforced with metal or other material*; merits classification under C.T.H. 5910 and is chargeable to duty @ 36.64% Ad Valorem and *"Rubberised textile fabrics, other than those of heading 5920"* classified under C.T.H. 5906, is chargeable to duty @ 24.32% Ad Valorem, as per Sr. No. 150 of the said Notification, resulting in short levy of duty of Rs. 22,33,920/-, as per the table below:-

TABLE-B

S. N.	B/E. No. & Date	Qty. (kgs.)	Assessable Value (Rs.)	Duty paid (Rs.)	Duty payable (Rs.)	Difference (Rs.)
1	2	3	4	5	6	7 (6-5)
1	2838685 Dt. 15.04.19	10,372	22,87,026	5,56,205	8,37,966	2,81,762
2	3020561 Dt. 27.04.19	2,764	6,09,462	1,48,221	2,23,307	75,086
3	3020561 Dt. 27.04.19	3,430	7,56,315	1,83,936	2,77,114	93,178
4	3020561 Dt. 27.04.19	4,148	9,14,634	2,22,439	3,35,122	1,12,683
5	3020561 Dt. 27.04.19	2,062	4,54,671	1,10,576	1,66,591	56,015
6	3205430 Dt. 13.05.19	20,296	44,75,268	10,88,385	16,39,738	5,51,353
7	3205430 Dt. 13.05.19	2,512	5,53,896	1,34,708	2,02,947	68,240
8	3368750 Dt. 24.05.19	3,423	7,59,624	1,84,741	2,78,326	93,586
9	3368750 Dt. 24.05.19	1,640	3,63,945	88,511	1,33,349	44,838
10	3368750 Dt. 24.05.19	3,166	7,02,591	1,70,870	2,57,429	86,559
11	3368750 Dt. 24.05.19	6,091	13,51,699	3,28,733	4,95,263	1,66,529
12	3368750 Dt. 24.05.19	4,020	8,92,108	2,16,961	3,26,868	1,09,908
13	3689679 Dt. 17.06.19	2,950	6,54,657	1,59,213	2,39,866	80,654
14	3689679 Dt. 17.06.19	12,544	26,68,849	6,49,064	9,77,866	3,28,802
15	3689679 Dt. 17.06.19	3,099	6,87,722	1,67,254	2,51,981	84,727
	Total	**82,517**	**1,81,32,467**	**44,09,817**	**66,43,733**	**22,33,920**

3. The text of the relevant Notes under C.T.H. 59, is reproduced below:-

"4. For the purposes of heading 5906, the expression "rubberised textile fabrics" means:

(a) textile fabrics impregnated, coated, covered or laminated with rubber

(i) weighing not more than 1,500 g/m²; or

(ii) weighing more than 1,500 g/m² and containing more than 50% by weight of textile material:

(b) fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with rubber, of heading 5604; and

(c) fabrics composed of parallel textile yarns agglomerated with rubber, irrespective of their weight per square metre.

This heading does not, however, apply to plates, sheets or strip of cellular rubber combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 40), or textile products of heading 5811.

6. *Heading 5910 does not apply to:*

(a) Transmission or conveyor belting, of textile material, of a thickness of less than 3 mm; or

(b) Transmission or conveyor belts or belting of textile fabric impregnated, coated, covered or laminated with rubber or made from textile yarn or cord impregnated, coated, covered or sheathed with rubber (heading 4010).”

3.1 In the present case, the items imported were “Belting Fabrics for conveyor belt” (Made of Polyester) and not made of Rubber.

4. The issue of classification of the “Belting Fabric for Conveyor Belt” made of Polyester and not of Rubberised, is to be decided considering the description mentioned in the relevant C.T.H.

4.1 The relevant C.T.H. reads as under:-

5906 Rubberised textile fabrics, other than those of heading 59.02

5906 10 00	- Adhesive tape of a width not exceeding 20 cm
	- Other:
5906 91	-- Knitted or crocheted:
5906 9110	--- Of cotton
5906 9190	---Of other textile materials
5906 99	-- Other:
5906 9910	--- Insulating tape, electrical of cotton
5906 9920	--- Rubberised cotton fabrics, other than Knitted or crocheted
5906 9990	--- Other

5910 Transmission or conveyor belts or belting of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material

5910 00	- Transmission or conveyor belts or belting, of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material:
5910 0010	--- Cotton canvas ply belting
5910 0020	--- Rubberised cotton belting
5910 0030	--- Other transmission, conveyer or elevator belts or belting of cotton
5910 0040	--- Hair belting
5910 0050	--- Flax canvas ply belting
5910 0060	--- Fibre belt conveyor
5910 0090	--- Other

5. In this case, there is a sub-heading “Others” in the same series of C.T.H. 5910, which is for Transmission or conveyor belts or belting of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material, and when there is no more specific sub-heading for the same, Belting Fabric for Conveyor Belt is to be classified under the sub-heading 5910 0090 -

"Transmission or conveyor belts or belting, of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material -Other".

6. In view of the above, it is evident that the importer has mis- classified the goods under C.T.H. 5906 9190 and paid duty @ 24.32% Ad Valorem (B.C.D. @ 10% + S.W.S @ 1% (10% of B.C.D.) + I.G.S.T. @ 12%) availing benefit of Sr. No. 150 of the said Notification, whereas the goods are classifiable under the C.T.H. 5910 0090 and duty is payable @ 36.64% Ad Valorem (B.C.D. @ 20% + S.W.S @ 2% (10% of B.C.D.) + I.G.S.T. @ 12%). From the above, it appeared that the importer had resorted to mis-classification of the goods in order to evade the duty, resulting into clear violation of the said Notification.

7. The audit objection was conveyed to the importer for compliance. The said importer, vide their letter dated 02.03.2020, submitted :-

- What the conveyor belt is, in detail.
- Types of Textiles / Fibers used in Conveyor Belting
- Their manufacturing process in detail.
- Their process includes the mixing of raw rubber in to a mixture with chemical fillers and curing / vulcanizing agents. Thereafter in the calendaring process, the rubber compound mixture is coated or laminated on the fabrics based on the length and breadth required. Further, as per the specification of the fabric required, the laminated fabric plies are joined ply by ply and this process is known as Belt Building process. The laminated rubber compound helps in joining of fabrics ply by ply and based on the strength required the number of plies of fabrics to be joined are fixed. After calendaring process, the plied conveyor belting fabric is placed in to a curing chamber, where by heat generated through oil, the same is cured and final conveyor belting fabric is formed. Finally, the belting fabric is cut in to the size required on the cutting table, inspection is carried, repairs if any required are carried out and the fabrics are ready as Conveyor Belting.
- The stage-wise process is a) Hydraulic Bale Cutting Process b) Mixing Process (Intermesh, Intermix & Banbury) c) Calender process d) Belt building process e) Curling process f) Cutting Table / Inspection / Sampling / Repair / Packing.
- The description under C.T.H. 5910 clearly says that it covers conveyor belt or beltings made of textile material on which all the processes as mentioned above have been completed. Whereas, they are importing belting fabric of polyester which is to be used as principal input to produce their final product conveyor beltings. On the polyester fabrics imported by them, processes of coating / laminated of rubber compound of the fabrics and plying of the fabrics as per the strength requirement is carried out. Thereafter, curing and cutting of fabrics as per the required size specification is carried out. On completion of all the process explained above, the final conveyor belting

become ready for using the same as conveyor belting. Therefore, fabrics imported by them is not conveyor belts or beltings but the principal input material for forming conveyor belts or beltings. Further, the product imported by them is a rubberized polyester fabric, which is the raw material for conveyor belting. On the product imported by them, the process as above are carried out to convert it into conveyor belting. Therefore, rubberized polyester fabrics imported by them is covered under C.T.H. 5906 which covers rubberized textile fabrics other than cotton.

8. However, as discussed in foregoing paras 2 and 5, the goods imported by the said importer appeared to be classifiable under C.T.H. 5910 0090 and is liable to duty @ 36.64% Ad Valorem (B.C.D. @ 20% + S.W.S @ 2% (10% of B.C.D.) + I.G.S.T. @ 12%).

9. As per the provisions of the Customs Act, 1962, and rules made thereunder, the Importer was required to declare correct description of the goods and also to determine correct classification of the imported goods by them as well as pay applicable Customs duty and follow the provisions laid down in the Act and Rules.

10. LEGAL PROVISIONS AND INVOCATION OF EXTENDED PERIOD:

The legal provision under the Customs act, 1962 invocation are reciprocated as follows:

(a) Section 17(1):-

An importer entering any imported goods under section 46 or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on Such goods.

(b) Section 28(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 duly 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."

(c) Section 111(m):

"*The following goods brought from a place outside 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 transshipment, with the declaration for transshipment referred to in proviso to sub-section {1} of Section 54*;
...".

(d) Section 112:

It provides for penalty for improper importation of goods according to which, "*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
...
Shall be liable;-
...
(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114 A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:
PROVIDED that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty five per cent of the penalty so determined;
..."

(e) Section 114 A:

"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 willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined."

(f) Section 114AA:

"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, ***any declaration****, statement or document which is false or incorrect in any material particular, in the transaction of any*

business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

(g) Section 46(4)

"*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]."*

(h) Section 46(4A)

"*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.]"

11. CONTRAVENTION AND VIOLATION OF LAWS

In view of the above discussion, M/s. Somi Conveyor Beltings Limited, Jodhpur have violated the following provisions:

1) Section 46(4) of the Customs Act, 1962, in as much as the importer, while presenting the Bills of Entry mentioned at Table-A at Para 01 above, made a wrongful declaration regarding the contents mentioned in it.

2) Section 17(1) of the Customs Act, 1962, in as much as the Importer, has not made proper assessment of the goods imported by them as mentioned in Table-B at Para 02 above, at I.C.D.-Khodiyar. They have, for the purpose of evading Customs Duties, mis-classified the goods declared in the Bills of Entry.

3) They have mis-classified the imported goods and hence rendered the said goods liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

4) M/s. Somi Conveyor Beltings Ltd. willfully mis-classified the said imported goods with an intent to wrongly avail duty benefit under the said Notification. The differential Customs duty, amounting to Rs. 22,33,920/-, is required to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest payable thereon from the date of assessment of Bills of Entry to the actual date of payment of differential duty, in terms of Section 28AA ibid.

5) It appeared, therefore, that the importer has knowingly and intentionally with ulterior motive and by design, taken the benefit of Sr. No. 150 of the said Notification. It appeared to be a case of willful mis-statement and mis-classification of goods with intention to avail ineligible benefit of the said exemption to evade duty of Customs. This constitutes an offense of the nature covered in Section 111(m) and Section 111(o) of the

Customs Act, 1962 and the goods imported appeared to be liable for confiscation under Section 111(m) and 111(o) of the said Act.

6) For these acts of omission and commission, M/s. Somi Conveyor Beltings Ltd., appeared to be liable for penal action under Section 112(a)(ii) of the Customs Act, 1962 in as much as they have intentionally made and used false and incorrect declaration to evade payment of legitimate Customs duties as discussed in the foregoing paras.

7) Further, by these acts of the omission and commission of the importer, they appear to attract the provisions of Section 114AA of the Customs Act, 1962. The importer has mis-classified the goods in question with intent to avail undue benefit of the exemption Notification and thus the importer has rendered himself liable to penalty under Section 114AA of the Customs Act, 1962.

12. Thereafter, M/s. Somi Conveyor Beltings Ltd., 4F-15, Oliver House, New Power House Road, Jodhpur-342 001; were called upon to show cause to the Additional Commissioner Of Customs, having his office at Ground Floor, Customs House, Near All India Radio, Navrangpura, Ahmedabad- 380 009, as to why:-

(a) classification of imported goods, i.e. “Belting Fabric for Conveyor Belt” made by the importer under C.T.H. No. 59069190 of the First Schedule of the Customs Tariff Act, 1975; should not be rejected.

(b) the imported goods, i.e. “Belting Fabric for Conveyor Belt” should not be classified under C.T.H. No. 59100090 of the First Schedule of the Customs Tariff Act, 1975.

(c) the total amount of differential Custom duties amounting to Rs. 22,33,920/-, attributable to the concessional rate of Customs Duty wrongly claimed under Sr. No. 150 of Notification No. 82/2017-Cus. Dt. 27.10.2017; should not be demanded and recovered from them under Section 28(4) of the Custom Act, 1962 by denying the benefit of Sr. No. 150 of the said Notification.

(d) the total quantity of 82,517 Kgs. of above goods imported and having declared value of Rs. 1,81,32,467/-, should not be held liable to confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962 for the act of willful mis-statement and intentional suppression of facts with regard to classification of the said goods by way of submitting false declaration leading to unlawful, illegal and wrong availment of concessional duty benefit under Sr. No. 150 of the Notification No. 82/2017-Cus. Dt. 27.10.2017.

(e) interest at an appropriate rate as applicable, on the Customs duty evaded to the tune of Rs. 22,33,920/-, should not be recovered from them under Section 28AA of the Customs Act, 1962.

(f) penalty should not be imposed upon them under Section 112(a)(ii) of the Customs Act, 1962.

(g) penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962.

13. DEFENSE REPLY & PERSONAL HEARING BEFORE THE ORIGINAL ADJUDICATING AUTHORITY:-

13.1 The noticee submitted a written reply vide letter dated 27.12.2021, wherein they submitted that:

- the impugned show cause notice issued to them is wholly and totally erroneous and deserves to be set aside. It is alleged that they had imported 82517 kgs of "Belting Fabric for Conveyor Belt" (China Origin), classifying them under C.T.H. 59069190 and paying duty of 24.32% Ad Valorem, instead of classifying the same under C.T.H. 5910 and duty payable @ 36.64% Ad Valorem. It is alleged that the Transmission or conveyor belts or belting of textile material, whether or not impregnated coated covered or laminated with plastics, or reinforced with metal or other material; merits classification under C.T.H. 5910 and is chargeable to duty @ 36.64% Ad Valorem and "Rubberised textile fabrics, other than those of heading 5920" classified under C.T.H. 5906, is chargeable to duty @ 24.32% Ad Valorem, as per S. N. 150 of the said notification resulting in short levy of duty of Rs. 22,33,920/-. The entire show cause notice revolves around the classification of imported goods having description mentioned as "Belting Fabric for conveyor Belt (Made of Polyster)". They have classified the said imported goods under chapter heading 59069190 whereas the revenue authorities are of the opinion that the imported goods merit classification under chapter 5910 0090. It is submitted that different rate of customs duty is applicable for the goods falling under the above-mentioned chapter headings as per Notification No. 82/2017-Customs dated 27.10.2017 which reads as follows:-

Sr. No.	Ch. Heading	Description of Goods	Rate
150	[59 (except 5902, 5903 and 5910)]	All goods	10%
151B	591000	All goods	20%

- The imported goods have been correctly classified by them under chapter 59069190 "rubberised textile fabrics, other than those of heading 5902-of other textile materials" as they have imported raw material for manufacturing conveyor belts and not imported the conveyor belt itself. They have imported rubberised textile fabrics made of polyester which is further used by them in the manufacturing process of conveyor belts. However, the revenue authorities are classifying the imported goods under chapter heading 5910 00 pertaining to conveyor belts or belting of textile material which is in fact their final product after conducting manufacturing operations on the fabric imported by them. The act of the revenue authorities in classifying the imported goods as conveyor belts of textile material under chapter 5910 is outrightly not tenable and the impugned show cause notice deserves to be quashed.
- The impugned show cause notice has referred to the contents of the chapter tariff headings as follows:-

Ch. Head	Description
5906	Rubberised textile fabrics, other than those of heading 59.02
59061000	-Adhesive tape of a width not exceeding 20 cm - Other :
5906	-- Knitted or crocheted :
5906 9110	--- of cotton
5906 9190	--- of other textile materials
590699	-- other :
59069910	--- Insulating tape, electrical of cotton
59069920	-- Rubberised cotton fabrics, other than knitted or crocheted
59069990	--- other

- The text of the relevant notes under C.T.H. 59 is reproduced below:-

"4. ***For the purposes of heading 5906, the expression "rubberised textile fabrics" means:***

(a) Textile fabrics impregnated, coated, covered or laminated with rubber 1) weighing not more than 1500 g/m²; or

(ii) weighing more than 1500 g/m² and containing more than 50% by weight of textile material.

(b) Fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with rubber, of heading 5604; and

(c) Fabrics composed of parallel textile yarns agglomerated with rubber, irrespective of their weight per square metre.

- This heading does not, however, apply to plates, sheets or strip of cellular rubber combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 40), or textile products of heading 5811.

Ch. Head	Description
5910	Transmission or conveyor belts or belting of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material
5910	- Transmission or conveyor belts or belting, of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material :
59100010	--- Cotton canvas ply belting
59100020	--- Rubberised cotton belting
59100030	--- Other transmission, conveyor or elevator belts or belting of cotton
59100040	--- Hair belting
59100050	--- Flax canvas ply belting
59100060	--- Fibre belt conveyor
59100090	**--- Other**

- It is alleged that there is a sub-heading "others" in the same series of C.T.H. 5910, which is for Transmission or conveyor belts or belting of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material, and when there is no more specific sub-heading for the same, Belting Fabric for Conveyor Belt is to be classified under the sub-heading 5910 0090-"Transmission or conveyor belts or belting, of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material-Other". Hence, it is alleged that the importer has mis-classified the goods under C.T.H. 5906 9190 and paid duty @ 24.32% Ad Valorem (B.C.D. @ 10% + S.W.S. @ 1% (10% OF B.C.D.) + IGST @ 12% availing benefit of serial no. 150 of the said notification, whereas the goods are classifiable under the C.T.H. 5910 0090 and duty is payable @ 36.64% Ad Valorem (B.C.D. @ 20% + S.W.S. @ 2% (10% of B.C.D.) + IGST @12%. It is alleged that the importer had resorted to mis-classification of the goods in order to evade the duty, resulting into clear violation of the said notification. In this respect, the allegation that the imported goods is classifiable under chapter 5910 0090 is totally baseless as they manufacture conveyor belts in their factory premises and they have imported the raw material, i.e., rubberised textile fabrics of other textile materials falling under chapter 5906 9190 which cannot by any stretch of imagination be considered as conveyor belt. The fabric imported by them is not stable and does not contain the strength to form a conveyor belt rather the imported fabric is being fastened with rubber and chemicals to form a three/four layered conveyor belt of polyester. They would substantiate this fact with the help of specimen of the imported fabric and the sample of manufactured conveyor belt from the said imported fabric as enclosed with their reply, for the sake of convenient reference. The sample clearly prove the fact that the imported rubberised textile fabric is very flexible and thin thereby lacking the strength required for conveyor belt. On the contrary, the sample of conveyor belt manufactured by using the imported fabric clearly demonstrates that the conveyor belt is formed by using layers of such imported fabric fastened with rubber and chemicals. As such, the allegation that they have mis-declared the imported goods and have wrongly availed the benefit of exemption Notification No. 82/2017-Customs dt. 27.10.2017 is not at all tenable and the same deserves to be quashed. A copy of photographs and the sample of imported good along with the sample of conveyor belt manufactured by them were enclosed with the reply.
- In continuation to the above, imported product, "Belting Fabric for conveyor belt (made of polyester)" is correctly classifiable under chapter 5906 as it duly satisfies the condition mentioned in the chapter note which reads as follows:-

"4. ***For the purposes of heading 5906, the expression "rubberised textile fabrics" means:***

(d)Textile fabrics impregnated, coated, covered or laminated with rubber (I) weighing not more than 1500 g/m²; or

- They submitted that the rubberised textile fabric imported by them is coated with rubber but the weight of the fabric is not more than 1500g/m^2. In this respect, they enclosed the Certificate by the foreign supplier, M/s. Jiangsu Jiaheng Fibre Co Ltd. that the goods imported does not weigh more than 1500g/m^2. In addition, they also explained the computation of GSM as regards the weight of imported rubberised textile fabric vide Bill of Entry No. 6044450 dated 12.12.2019 as follows:-

Particulars	Ref No.	Remarks
B/E No.	6044450 dated 12.12.2019	Item Sr. 1 of Demand SCN
Packing List	JH/SO/191103-01	Sr. No. 1 of P/List
Test Report	JH/SO/191103-01	Sr. No. 1 of Test Report
Item Description		EE160-815
GSM in TC	516 GM	Detailed calculation below

FORMULA TO CALCULATE GSM:-

Width	Net Weight (Kg)	Length (Mtr)	Weight Per Mtr	GSM
A	B	C	D = B/C	E = D/A
815	440	1012	0.4347	534

- They enclosed the details of above computation for all the bill of entries listed in the show cause notice under consideration. As they have fulfilled the requirement as mentioned in the note given under chapter 5906, they have correctly classified the imported goods under chapter 5906 9190 and the impugned show cause notice deserves to be set aside.
- Aligning with the above, they submitted that the imported goods under consideration, having description as "Belting Fabric for conveyor belt (Made of Polyster)", have been assessed in past by the customs authorities at Nhava Sheva Port under chapter heading 59069190 and no objection regarding classification was ever raised. They enclosed copy of Bill of Entry No. 8919842 dated 19.12.2018 for ready reference wherein the classification of the goods imported by them on earlier occasion was confirmed under chapter heading no. 59069190. When the said imported goods have been assessed by the Customs authorities at Nhava Sheva Port to be classifiable under chapter heading 59069190, the said goods cannot be disputed to be mis-classified by them when imported at Khodiyar Port (ICD-Ahmedabad). The assessment of customs duty should be uniform throughout India at all the ports of clearance and there cannot be different view taken by different ports as regards classification of the product. The customs authorities are

required to take consistent stand as regards classification issue and so the present show cause notice alleging that they have mis-classified the product " Dipped EE Duck (Belting Fabric for conveyor belt (made of polyester)" is not at all tenable and deserves to be quashed.

- They have been procuring the said goods from domestic suppliers also from the local market and even they are classifying the said goods under chapter heading no. 59069190. They enclosed specimen copies of invoices of such goods procured by them from domestic suppliers for ready reference. The goods procured having description "rubberised textile fabrics" in the said invoices have been classified under HSN 59069990. Hence, the practise of classifying the said "rubberised textile fabrics" under chapter 5906 is being adopted by the trade and industry and so it indicates that classification of the imported goods ought to be under chapter 5906 as per the "trade parlance theory". Hence, the impugned show cause notice alleging to classify the product under chapter 5910 is not at all sustainable and deserves to be set aside.
- They enclosed a detailed note on the manufacturing process for ready reference. The manufacturing process clearly demonstrates that the rubberised textile fabric imported is an intermediate raw material in the manufacture of conveyor belts and cannot be considered as conveyor belt itself. Hence, the classification of imported goods as proposed by the show cause notice under chapter heading no. 59100090 is not at all acceptable as proper and the same deserves to be quashed.
- The allegation of suppression of facts is totally baseless as it is not the first time they have imported such goods. In fact, the assessment of same goods imported via Nhava Sheva Port has been confirmed by classifying the said imported goods under HSN 59069190 as enclosed to the present reply. Even the domestic suppliers are classifying the said product under chapter 5906 for the reason that the weight of the fabric is less than 1500g/m^2 as stated in the notes to chapter 5906 of the Customs Tariff Act, 1962. While importing goods, the clearance is approved by the customs authorities and if at all there was any doubt regarding classification, it should have been pointed out then and there only. As the clearance was approved and verified by the customs authorities, the allegation of suppression is not at all viable and the impugned show cause notice deserves to be quashed.
- In view of the submissions made in the preceding paragraphs, it is very much clear that the classification of the imported goods under chapter 59069190 is backed by statutory provisions regarding rules of interpretation for classification of goods such as reference to notes to chapter. Moreover, the importer has applied due diligence while classifying their product as they have provided sound reasons for classification of their product under chapter 59069190. When there is classification dispute, no malafide intention can be attributed to the assessee and the allegation that there was intention to evade duty is not at all sustainable. Hence, the impugned show cause notice is liable to be set aside.
- They reiterated that they have categorically pointed out their bonafides in classifying their product under chapter 59069190 as reference to chapter note,

trade parlance theory and assessment made by customs authorities at other port of import. As such, there were justifiable reasons for resorting the classification of their product under chapter 59069190. On the contrary, the revenue authorities have failed to prove as to why the classification of the said product is governed by HSN 59100090. Therefore, the allegation of concealment of material facts with intention to evade duty is not legally tenable and the impugned show cause notice deserves to be quashed.

- When no objection has been raised by the Nhava Sheva Port on import of same goods by classifying them under chapter 59069190, the said objection is not tenable in the present case. Moreover, the clearance of imported goods is under the supervision of customs authorities and the imported goods are released for home consumption after rigorous verification and checks adopted by the customs officers. When the bill of entry was assessed, the classification of the product was clearly mentioned and there cannot be any suppression of facts to evade duty. As such, when the assessment of bill of entry has been done under the supervision of customs authorities, allegation of suppression of facts is not legally sustainable and the impugned show cause notice deserves to be quashed.
- They reiterated that the difference in the imported goods being "rubberised textile fabrics" and the final product manufactured by the importer being "conveyor belts" is clearly visible as depicted and explained in the preceding paragraphs. Hence, the classification of imported goods as "conveyor belt" is totally absurd as the imported fabric does not possess the strength of a conveyor belt. The specifications of the imported product meet the requirements of chapter note 5906 and even the domestic suppliers have been classifying "rubberised textile fabrics" under chapter 5906. As such, according to trade parlance test, the product imported merits classification under chapter 5906. As they have provided the justifiable reasons for classifying their product under chapter 5906 as the technical specifications of the product are best known to them, the allegation of mis-classification of goods is not sustainable and the impugned show cause notice should be set aside.
- Against invocation of Section 111(m) and Section 111(o), the impugned show cause notice has wrongly invoked the provisions contained in the above-mentioned sections. On perusal of the above provisions, it is found that neither there is any allegation as regards wrong declaration of value nor there is any allegation that they have not fulfilled any condition of exemption notification. The issue involved is limited to classification dispute which is not covered under any of the two sub-sections. As such, the above-mentioned sections have been wrongly invoked and the impugned show cause notice deserves to be set aside.
- The penalty under Section 112(a)(ii) of the Customs Act, 1962 cannot be imposed as it is relevant when there is improper importation of goods which leads to confiscation under section 111 of the Customs Act, 1952. They have categorically mentioned in the preceding paragraph that the imported goods are not liable for confiscation under Section 111(m) or 111(o) of the Customs Act, 1962. As such, when the imported goods are not liable for confiscation under section 111, penalty under section 112(a)(ii) of the Customs Act, 1962 cannot be imposed on them and

the impugned show cause notice is liable to be set aside. The issue involved herein is that of interpretation of legal provisions and where interpretation of legal provisions is involved penalty cannot be imposed on the assessee. This contention has been upheld in the case of :-

UNIFLEX CABLES LTD V/S COMMISSIONER OF CENTRAL EXCISE, SURATT-II [2011-TIOL-85-SC-CX]= [2011 (271) E.L.T. 767 (S.C)]

M/S ITEL TNDUSTRTES LTD V/S CCE, CALICUT [2010-TIOL-236-CESTAT-BANG]= [2010 (251) E.L.T. 429 (TRI.-BANG)].

CCE, LUCKNOW V/S M/S. ROSA SUGAR WORKS [2010-TIOL-82-CESTAT-DEL]

M/s HINDUSTAN LEVER LTD V/S CCE, LUCKNOW [2009-TIOL-1795-CESTAT-DEL]

- M/s GHCL LTD V/S CCE, BHAVNAGAR [2009 (16) STR 588(TRI-AHMD.)]

  Accordingly, the penalty proposed to be imposed on them is required to be set aside.
- For not imposing penalty under Section 114AA upon them, they relied upon decision given in the case of :-

  SIRTHAI SUPERWARE INDIA LTD. VERSUS COMMR. OF CUSTOMS, NHAVA SHEVA-III [2020 (371) E.L.T. 324 (TRI. –MUMBAI)]

13.2 Personal Hearing in the matter was held in virtual mode and the same was attended by Shri Pradeep Jain, CA, representative of the said importer, on 12.05.2022. He re-iterated their written submission and requested to take the same on record.

ORIGINAL ADJUDICATION ORDER:-

14. The adjudicating authority vide Order-in-Original (OIO) No. 1O/ADC/PMR/O&A/2022-23 dated 31.05.2022 passed the following order:-

(a) He rejected the classification of the imported goods, i.e. “Belting Fabric for Conveyor Belt (made of polyester)” covered under 15 Bills of Entry as per Table-A at Para 1 above, made by M/s. Somi Conveyor Beltings Ltd. under C.T.H. 5906 9190 of the First Schedule of the Customs Tariff Act, 1975.

(b) He confirmed the classification of the imported goods, i.e. “Belting Fabric for Conveyor Belt (made of polyester)” covered under 15 Bills of Entry as per Table-A at Para 1 above, under C.T.H. 5910 0090 of the First Schedule of the Customs Tariff Act, 1975.

(c) He ordered that the imported goods, i.e. “Belting Fabric for Conveyor Belt (made of Polyester)” covered under 15 Bills of Entry as per Table-A at Para 1 above, should be assessed to duty @ 36.64% (B.C.D. @ 20% + S.W.S. @ 2% + I.G.S.T. @ 12%) under C.T.H. 5910 0090 and confirmed the demand and ordered to recover the total amount of

differential Custom duties of Rs. 22,33,920/- under Section 28(4) of the Custom Act, 1962 by denying the benefit of Sr. No. 150 of the Notification No. 82/2017-Cus. Dt. 27.10.2017.

(d) He ordered confiscation of the total quantity of 82,517 Kgs. of imported goods having declared value of Rs. 1,81,32,467/- under Section 111(m) and Section 111(o) of the Customs Act, 1962 for the act of willful mis-statement and intentional suppression of facts with regard to classification of the said goods by way of submitting false declaration leading to unlawful, illegal and wrong availment of concessional duty benefit under Sr. No. 150 of the Notification No. 82/2017-Cus. Dt. 27.10.2017, as amended. As the goods are not available physically for confiscation, he allowed the importer to redeem the same on payment of redemption fine of Rs. 20,00,000/- under Section 125(1) of the Customs Act, 1962 in lieu of confiscation.

(e) He ordered to recover interest at an appropriate rate as applicable, on the Customs duty evaded to the tune of Rs. 22,33,920/-, from them under Section 28AA of the Customs Act, 1962.

(f) He imposed penalty of Rs. 2,00,000/- upon them under Section 112(a)(ii) of the Customs Act, 1962. The said importer has an option to pay amount of duty and interest thereon under Section 28AA, within 30 days from the date of communication of this order and if done so, the amount of penalty liable to be paid under this Section shall be 25% of the penalty imposed.

(g) He imposed penalty of Rs. 50,00,000/- upon them under Section 114AA of the Customs Act, 1962.

APPEAL AGAINST THE OIO AND ORDER-IN-APPEAL:

15. Being aggrieved by the above said order, the noticee filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad against the said OIO, which vide its Order-in-Appeal (OIA) No. AHM-CUSTM-000-APP-437-23-24 dated 07.02.2024, remanded the matter back to adjudicating authority for passing fresh adjudication order after examining the available facts, documents and submissions made by the noticee.

SUBMISSION AND PERSONAL HEARING BEFORE THE DENOVO ADJUDICATION AUTHORITY:

16. The noticee submitted a written reply vide letter dated 06.02.2025 and ad-joiner dated 18.02.2025, wherein they submitted that:

- The noticee have imported 'Dipped EE Duck (Belting Fabric made from twisted yarn)'. These goods are 'rubberised textile fabric' which is made up of polyester and which is further used in manufacturing process of conveyor belts. The noticee

have classified the said imported goods under tariff heading 59069190. The chapter tariff headings is produced as follows:-

Ch. Head	Description
5906	Rubberised textile fabrics, other than those of heading 59.02
59061000	-Adhesive tape of a width not exceeding 20 cm - Other :
5907	-- Knitted or crocheted :
5906 9110	--- of cotton
5906 9190	--- of other textile materials
590699	-- other :
59069910	--- Insulating tape, electrical of cotton
59069920	-- Rubberised cotton fabrics, other than knitted or crocheted
59069990	--- other

- These goods are correctly classifiable under Chapter heading 5906 as it duly satisfies the condition mentioned in the chapter note which reads as follows:-

"4. ***For the purposes of heading 5906, the expression "rubberised textile fabrics" means:***

(a) Textile fabrics impregnated, coated, covered or laminated with rubber 1) weighing not more than 1500 g/m²; or

- They submitted that the rubberised textile fabric imported by them is coated with rubber but the weight of the fabric is not more than 1500g/m². In this respect, they enclosed the Certificate by the foreign supplier, M/s. Jiangsu Jiaheng Fibre Co Ltd. that the goods imported does not weigh more than 1500g/m². In addition, they also explained the computation of GSM as regards the weight of imported rubberised textile fabric vide Bill of Entry No. 2838685 dated 15.04.2019 as follows:-

Particulars	Ref No.	Remarks
B/E No.	2838685	Item Sr. 1 of Demand SCN
Packing List	JSTJ19036	Item Sr. 20 of P/List
Test Report	JSTJ19036	Item Sr. 7 of Test Report
Item Description		EE-150-1215
GSM in TC	518 GM	Detailed calculation below

FORMULA TO CALCULATE GSM:-

Width	Net Weight (Kg)	Length (Mtr)	Weight Per Mtr	GSM
A	B	C	D = B/C	E = D/A
1215	504	800	0.63	0.5185

Aforesaid GSM given in enclosed Test Report Item Sr. No. 7 (Second Last Column of Table)

- They enclosed the details of above computation for all the bill of entries listed in the show cause notice under consideration. As they have fulfilled the requirement as mentioned in the note given under chapter 5906, they have correctly classified the imported goods under chapter 5906 9190 and the impugned show cause notice deserves to be set aside.
- Aligning with the above, they submitted that the imported goods under consideration, having description as "Belting Fabric for conveyor belt (Made of Polyster)", have been assessed in past by the customs authorities at Nhava Sheva Port under chapter heading 59069190 and no objection regarding classification was ever raised. They enclosed copy of Bill of Entry No. 8919842 dated 19.12.2018 for ready reference wherein the classification of the goods imported by them on earlier occasion was confirmed under chapter heading no. 59069190. When the said imported goods have been assessed by the Customs authorities at Nhava Sheva Port to be classifiable under chapter heading 59069190, the said goods cannot be disputed to be mis-classified by them when imported at Khodiyar Port (ICD-Ahmedabad). The assessment of customs duty should be uniform throughout India at all the ports of clearance and there cannot be different view taken by different ports as regards classification of the product. The customs authorities are required to take consistent stand as regards classification issue and so the present show cause notice alleging that they have mis-classified the product " Belting Fabric for conveyor belt (made of polyester)" is not at all tenable and deserves to be quashed.
- They have been procuring the said goods from domestic suppliers also from the local market and even they are classifying the said goods under chapter heading no. 59069190. They enclosed specimen copies of invoices of such goods procured by them from domestic suppliers for ready reference. The goods procured having description "rubberised textile fabrics" in the said invoices have been classified under HSN 59069990. Hence, the practise of classifying the said "rubberised textile fabrics" under chapter 5906 is being adopted by the trade and industry and so it indicates that classification of the imported goods ought to be under chapter 5906 as per the "trade parlance theory". Hence, the impugned show cause notice alleging to classify the product under chapter 5910 is not at all sustainable and deserves to be set aside.
- Revenue authorities are classifying the imported goods under chapter heading 5910 00 which pertains to conveyor belts or belting of textile material. However, conveyor belts are their final product emerging after undertaking manufacturing operations on the fabric imported by them. In this regard, they explained manufacturing process in order to prove that the goods imported is merely a fabric of polyester which is used with rubber and chemical compounds to form a conveyor belt as follows:

- The raw rubber (Natural / Synthetic) with Carbon Black, Rubber Chemicals and Oils are mixed according to recipe (depends upon type of material to be handled such as Cold, Hot or Fire Prone Material) using various machines like bale cutting for cutting of raw rubber into small pieces, intermix for blending all raw materials as above and open roll mills for homogeneous mixing of rubber and chemical. The output of this section is called rubber compound.
- The rubber compound further used for lamination (skimming) on RFL dipped fabric (Nylon / Polyester) for bonding between fabric with rubber compound and bonding two or more layers (Ply) according to customer specification such as width, length, strength and grade. The laminated layers together with thick rubber layer for carrying / driven side are joined together for further processing.
- The green belt is further put into a vulcanizing machine called "Press" for bonding of fabric layers and rubber with each other by vulcanizing.
- The detailed process notes of each and every machine is attached for further reference.
- Generally, the fabric (RFL Dipped) is used having weight less than 1500 g/m^2. This fabric is imported as well as sourced through local vendors under the HSN Code "5906" only as the weight is less than L500 g/m2. Therefore, RFL dipped fabric only cannot be called as Conveyor Belt as defined in HSN "5910".

- They enclosed a detailed note on the manufacturing process for ready reference. The manufacturing process demonstrates that the rubberised textile fabric imported is an intermediate raw material in the manufacture of conveyor belts and cannot be considered as conveyor belt itself. Hence, the classification of imported goods as proposed by the show cause notice under chapter heading no. 59100090 is not at all acceptable as proper and the same deserves to be quashed.
- It is submitted that their imported goods cannot be classified under chapter heading 5910 as the chapter note to this tariff mentions that it does not cover the transmission or conveyor belting of textile material of a thickness of less than 3mm. The relevant chapter note 5 to the Chapter 59 reads as follows:-

  6. Heading 5910 does not apply to:

  (a) transmission of conveyor belting, of textile material, of a thickness Of less than 3 mm; or

  (b) transmission or conveyor belts or belting of textile fabric impregnated, coated, covered or laminated with rubber or mode from textile yarn or cord impregnated, coated, covered or sheathed with rubber (heading 4010).
- An analysis of the technical specifications of the imported goods submitted with these written submissions clarifies that the goods under consideration have thickness of less than 3mm. To illustrate, the test certificate issued by M/s Jiangsu Jiaheng Fibre Co Ltd. mentions that the thickness of the material in mm ranges from 0.73 to 0.87 and so the product imported by them will not be covered under chapter 5910 in view of the above chapter note 6 to the chapter heading 59. The

appellant submits that they have categorically proved that their product is covered by chapter note 4 pertaining to 5906 and is clearly excluded from chapter 5910 by way of chapter note 6. Therefore, they have correctly classified their product under chapter 5906 and have correctly discharged their duty liability while the impugned show cause notice classifying the same under chapter heading 5910 is not at all proper and deserves to be set aside.

- as per the clarification issued vide Master Circular no. 7053/02/2077-CX doted 70.03.2077, pre-show cause notice consultation is necessary with respect to cases involving demand of duty above Rs. 50 Lakhs so that the frivolous objections may be resolved at the initial stage itself. However, the conduct of pre-show cause notice consultation in the present case was a mere formality as the personal hearing was convened on 07.12.2021 at 12 pm while the show cause notice was issued on 08.12.2021 itself. Moreover, the show cause notice does not mention any of the submissions made by the authorised representative during the course of pre-show cause notice consultation hearing convened. As such, the pre- show cause notice consultation is sheer eye-wash and is considered as mere formality rather than taking it in true sense so as to serve the purpose with which it was created. Hence, the present show cause notice is not tenable on this count also.
- The assessment of bills of entries involved in the issue has been finalized, the matter of classification should not have been questioned or reopened without challenging the assessment by way of filing the appeal by Revenue Department. In this regard, it is submitted that when the assessment order has not been challenged or reviewed, any reduction or enhancement in the duty liability is not possible. In this context, reliance is placed on the Apex Court decision given in the case of M/S PRIYA BLUE INDUSTRIES LTD. VERSUS COMMISSIONER OF CUSTOMS (PREVENTTVE) [2004 (172) E.L.T. 745 (SC)] wherein it was held that it is not possible to claim refund contrary to the assessment order which was not modified or reviewed.
- The appellant submits that since their bill of entries were assessed by classifying their product under chapter 5906, the said assessment order is final as it was not challenged or reviewed. Consequently, it is not possible to demand differential customs duty by changing the classification of the product as falling under chapter 5910. Therefore, the present demand confirmed against the appellant is not legally tenable and deserves to be quashed. Similar view was taken by the hon'ble Supreme Court in the case of COLLECTOR OF CENTRAL EXCISE, KANPUR VERSUS FLOCK (INDIA) PVT. LTD. [2000 (720) E.L.T. 285 (S.C.)].
- The ratio of the above cited decision is applicable in the present case as when the assessment of bill of entries determining classification of imported goods under chapter 5906 was not challenged by the revenue authorities, it is not permissible to raise demand for differential customs duty by changing the said classification of imported goods. Thus, the impugned show cause notice changing classification of goods without challenging the assessment of bill of entries is not proper and deserves to be set aside.

- The allegation of suppression of facts is totally baseless as it is not the first time they have imported such goods. In fact, the assessment of same goods imported via Nhava Sheva Port has been confirmed by classifying the said imported goods under HSN 59069190 as enclosed to the present reply. Even the domestic suppliers are classifying the said product under chapter 5906 for the reason that the weight of the fabric is less than 1500g/m^2 as stated in the notes to chapter 5906 of the Customs Tariff Act, 1962. While importing goods, the clearance is approved by the customs authorities and if at all there was any doubt regarding classification, it should have been pointed out then and there only. As the clearance was approved and verified by the customs authorities, the allegation of suppression is not at all viable and the impugned show cause notice deserves to be quashed.
- The confiscation of imported goods is not sustainable as the claim of classification or claim of exemption notification cannot be treated as mis-declaration. They relied upon the case on *Stonex India Pvt. Ltd (2024) 25 Centax 359 (Tri.-Ahmd).*
- the impugned show cause notice is not tenable in imposing penalty without proving mens rea. It has been held by various appellate authorities that malafide intention is not attributable to the cases where the issue relates to classification of imported goods. They relied upon following case laws:-
  - Apollo Tyres Ltd Versus Commissioner of Customs [(2024) 79 Centax 93 (Tri.-Ahmd)]
  - Aureole Inspecs India Pvt. Ltd. Versus Principal Commissioner, Customs [(2023) 77 Centax 277 (Tri.-Del)]
  - COMMR. OF CUS. (IMPORT), NHAVA SHEVA Versus VODAFONE ESSAR GUTARAT LTD. [2020 (373) E.1.T.427 (Tri. - Mumbai)]
  - KORES (INDIA) LTD. Versus COMMISSIONER OF CUS. (I), NHAVA SHEVA [2019 (370) E.I.T.7444 (Tri. - Mumbai)]
- The impugned show cause notice is imposing penalty under section 112(a)(ii) of Customs Act, 7952. However, as per verdicts of hon'ble Supreme Court, the penalty is not imposable unless *mens rea* is proved by the Revenue Department.
  - COMMISSIONER OF CUSTOMS UMPORT), CHENNAI-II Versus CETC RENEWABLE ENERGY TECHNOLOGY (I) PVT. LTD. 2024 (388) E.L.T.134 (S.C.)
- The imposition of penalty on an artificial juridical person under section 114AA of Customs Act, 1962 is not tenable. In this regard, it is submitted that the penalty under section 114AA of the Customs Act, 1962 is applicable only to a natural person. An analysis of this section clarifies that it is applicable to a person who "knowingly or intentionally" acts in a manner specified in this section. Only a natural person can "know" or have an "intention". An artificial juridical person cannot do anything "knowingly or intentionally". Thus, the use of this language indicates that the penalty under this section is imposable only on the natural persons and the artificial juridical persons are not covered in it. In the instant case, impugned show cause notice has been issued to a body corporate, imposition of

penalty under section 114AA of the Customs Act, 1962 is not sustainable and deserves to be quashed.

- the language of section 114AA uses the words "knowingly or intentionally". This means that to impose the penalty under this section, the person should be guilty of malafide intention. In the instant case, the tariff heading was correctly mentioned based upon custom clearances made previously and based upon the invoices issued by domestic suppliers. Further, the correctness of tariff heading is substantiated by the process carried out by them. This clearly shows there was no malafide intention. In absence of malafide intention, the huge penalty under section 114AA of Customs Act, 1962 is not imposable. They relied upon:-
  - SACHIN KSHIRSAGAR Versus COMMISSIONER OF CUSTOMS (IMPORT-I), MUMBAI [2023 (383) E.1.T.790 (Tri. - Mumbai)]
  - BOSCH CHASSTS ESYSTEMS INDIA LTD, Versus COMMR. OF CUS., NEW DELHT (ICD TKD) [2015 (325) E.L.T. 372 (Tri. - Del.)]
- They also submitted certificate of foreign supplier M/s. Jiangsu Jiaheg Fiber Co. Ltd. for all Bill of Entries, computation of GSM, copy of BOE 8919842 dated 19.12.2018 at Nhava Sheva, 5671309 dated 25.04.2013 of ICD CONCOR, Jodhpur, copy of specimen copy of invoices of domestic suppliers, detailed note on manufacturing process. They have also enclosed samples at various stages of manufacturing process.

17. Personal Hearing in the matter was held in virtual mode and the same was attended by Shri Pradeep Jain, CA, representative of the noticee, on 21.02.2025. He re-iterated their written submission and requested to drop the proceedings initiated vide the SCN.

DISCUSSION & FINDINGS:

18. I have carefully gone through the facts of the case, defense submission made by the noticee, oral submission made during Personal hearing, Order-in-Appeal and evidence available on the records.

19. I find that the Commissioner of Customs (Appeals) remanded the matter for passing fresh adjudication order after examining the available facts, documents and submissions made by the noticee. Now, the issues to be decided before me are:

(a) Whether classification of imported goods, i.e. “Belting Fabric for Conveyor Belt” done by the importer under C.T.H. No. 59069190 of the First Schedule of the Customs Tariff Act, 1975; is proper or should be classified under C.T.H. No. 59100090 of the First Schedule of the Customs Tariff Act, 1975.

(b) Whether Differential Custom duties amounting to Rs. 22,33,920/-, attributable to the concessional rate of Customs Duty wrongly claimed under Sr. No. 150 of Notification No. 82/2017-Cus. Dt. 27.10.2017; is recoverable under Section 28(4)

of the Custom Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.

(c) Whether imported goods 82,517 Kgs. and having declared value of Rs. 1,81,32,467/-, are liable to confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

(d) Whether penalty is imposable under Section 112(a)(ii)/114AA of the Customs Act, 1962.

19.1 Now I proceed to decide whether classification of imported goods, i.e. "Belting Fabric for Conveyor Belt" done by the importer under C.T.H. No. 59069190 of the First Schedule of the Customs Tariff Act, 1975 is proper or should be classified under C.T.H. No. 59100090 of the First Schedule of the Customs Tariff Act, 1975.

19.1.1 I find that the Show Cause Notice has proposed the classification of the imported goods "Belting fabric for conveyor belt" (Made of Polyester) under C.T.H. 59100090 instead of classification under C.T.H. 5906 9190, as declared by the noticee. As per open source information, 'Belting fabric for conveyor belt' is defined as:

> *"Belting is a term used to describe a type of fabric that is designed for use in industrial settings, particularly in conveyor belt systems. These fabrics are typically made from synthetic fibers such as polyester or nylon, which are woven together to create a strong, durable material.*
>
> *Belting fabrics are used in a variety of applications, including transportation of materials such as coal, grain, and minerals in mining and agricultural settings, as well as in manufacturing and processing facilities for products such as paper, food, and textiles. The fabrics are often coated with various materials to provide additional properties such as heat resistance, oil resistance, and abrasion resistance, depending on the specific application."*

19.1.2 I find that Chapter 59 covers the textile fabrics used in industrial process. I will discuss both subheading 5906 and 5910. The Tariff headings 5906 is given under:-

5906 Rubberised textile fabrics, other than those of heading 59.02

5906 10 00	- Adhesive tape of a width not exceeding 20 cm
	- Other:
5906 91	-- Knitted or crocheted:
5906 9110	--- Of cotton
5906 9190	---Of other textile materials
5906 99	-- Other:
5906 9910	--- Insulating tape, electrical of cotton
5906 9920	--- Rubberised cotton fabrics, other than Knitted or crocheted
5906 9990	--- Other

The text of the relevant Notes under C.T.H. 59, is reproduced below:-

"4. For the purposes of heading 5906, the expression "rubberised textile fabrics" means:

(a) textile fabrics impregnated, coated, covered or laminated with rubber

(i) weighing not more than 1,500 g/m^2; or

(ii) weighing more than 1,500 g/m^2 and containing more than 50% by weight of textile material:

(b) fabrics made from yarn, strip or the like, impregnated, coated, covered or sheathed with rubber, of heading 5604; and

(c) fabrics composed of parallel textile yarns agglomerated with rubber, irrespective of their weight per square metre.

This heading does not, however, apply to plates, sheets or strip of cellular rubber combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 40), or textile products of heading 5811.

19.1.3 In the present case, I find that the belting fabric is made of 'Polyester' as declared by the noticee in the Bills of Entry. I further find that the noticee has called the imported goods as 'RFL dipped Fabric' in their submission i.e. the belting fabric imported is dipped in the Resorcinol Formaldehyde Latex (RFL) Solution. I find from the open source website that:-

"Resorcinol Formaldehyde Latex (RFL) is a commonly used treatment for rubber to fabric adhesions generally used on high-tenacity synthetic fabric to facilitate adhesion between fabric and rubber by improving the "grab" of rubber to textile. RFL is applied at the fabric mill where the treated fabric is dried and heat set at the same time, producing an orange tint to the fabric.

…

The word "latex" in RFL can have different meanings. The American Heritage Dictionary of the English Language, Fourth Edition (2000) defines "latex" as follows: The colorless or milky sap of certain plants, such as the poinsettia or milkweed, that coagulates on exposure to air.

An emulsion of rubber or plastic globules in water, used in paints, adhesives, and various synthetic rubber products.

Concerning RFL, CBP believes that the word "latex" is not intended to signify that natural rubber is a component or ingredient of the RFL solution. Rather, CBP finds that "latex" is a descriptive term signifying that the resorcinol formaldehyde solution is in the form of an emulsion containing some amount of synthetic rubber or plastic products."

In view of the above, I find that the fabric as imported by the noticee is NOT **'**impregnated, coated, covered or sheathed with rubber' *as* natural rubber is NOT a component or ingredient of the RFL solution, but signifies that resorcinol formaldehyde solution is in the form of an emulsion containing some amount of synthetic rubber or plastic products. I also hold that the contentions of the noticee regarding classification under 5906 based on GSM calculations as provided by the noticee are not sustainable.

19.1.4 Now I discuss the CTH 5910. The Tariff headings 5906 is given under:-

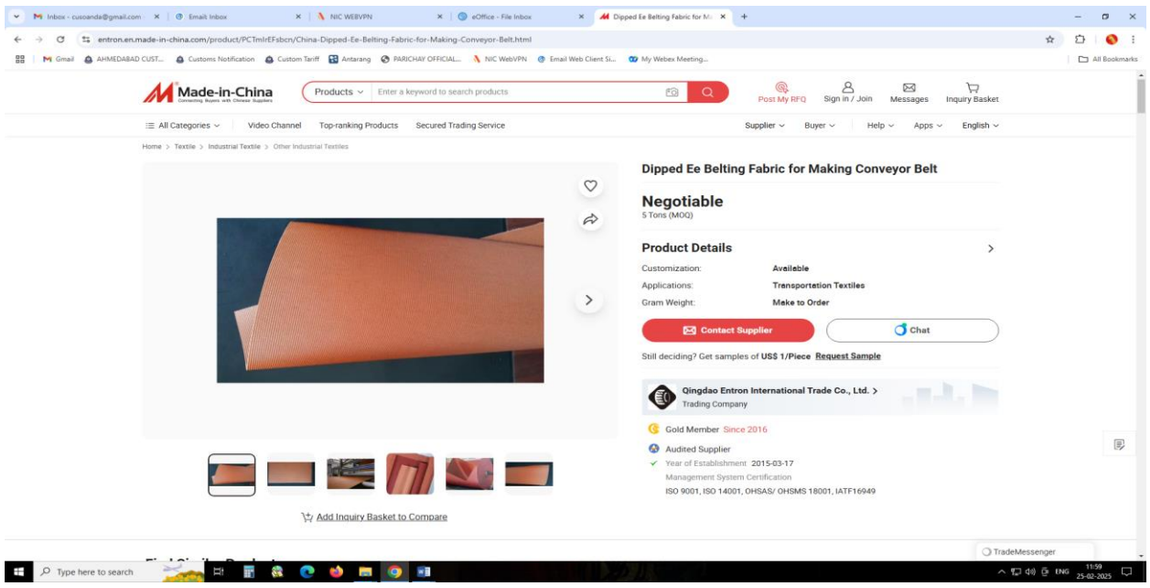
5910 Transmission or conveyor belts or belting of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material

5910 00 - Transmission or conveyor belts or belting, of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material:
5910 0010 --- Cotton canvas ply belting
5910 0020 --- Rubberised cotton belting
5910 0030 --- Other transmission, conveyer or elevator belts or belting of cotton
5910 0040 --- Hair belting
5910 0050 --- Flax canvas ply belting
5910 0060 --- Fibre belt conveyor
5910 0090 --- Other

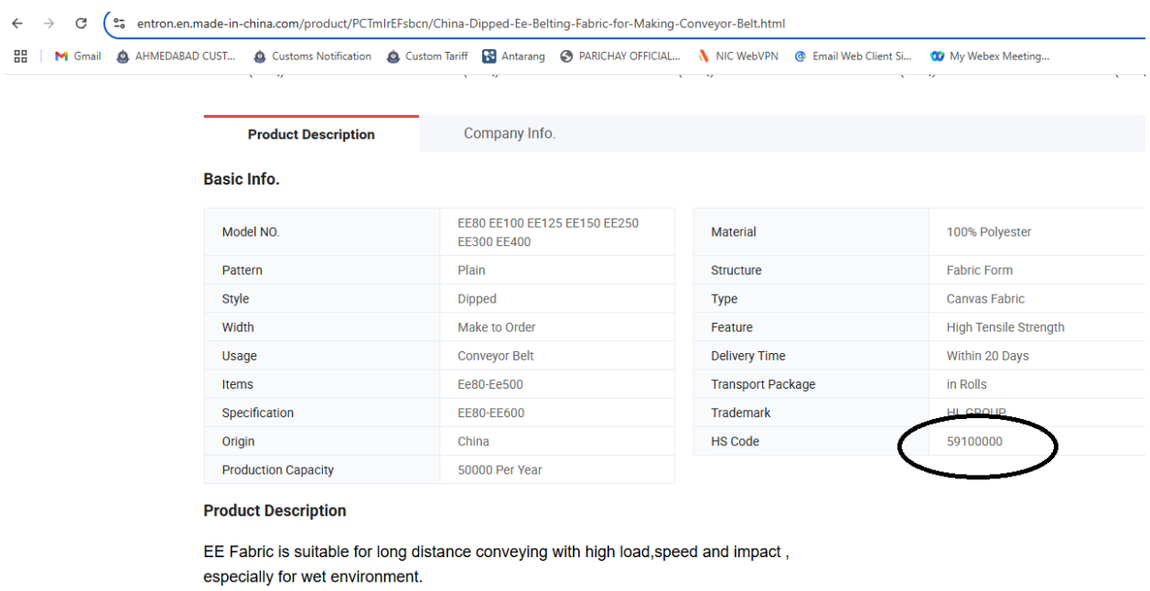
I find that in the present case, the items imported were "Belting Fabrics for conveyor belt" made of Polyester and not made of Rubber. There is a sub-heading "Others" in the same series of C.T.H. 5910, which is for Transmission or conveyor belts or belting of textile material, whether or not impregnated, coated covered or laminated with plastics, or reinforced with metal or other material, and when there is no more specific sub-heading for the same, Belting Fabric for Conveyor Belt is to be classified under the sub-heading 5910 0090.

19.1.5 I find that the noticee has provided link to a supplier website "*https://entron.en.made-in-china.com/product/PCTmIrEFsbcn/China-Dipped-Ee-Belting-Fabric-for-Making-Conveyor-Belt.html*" canvassing their imported goods. The screenshots from the website are given below:-

SCREENSHOT-1



SCREENSHOT-2



It is evident from the website that the supplier themselves have classified the same product in Chapter 5910. In this case, I find that the goods are more accurately classifiable in 5910.

19.1.6 I also find that the invoices of domestic suppliers provided by the noticee clearly mention the product name as 'Rubberised Textile Fabrics', which are different that the impugned goods and classifiable under 5906. Therefore, I hold that the imported goods 'Belting Fabric for Conveyor Belt' are classifiable under CTH 5910 0090 and not under CTH 5906 9190.

19.1.7 In view of the above, it is evident that the importer has mis- classified the goods under C.T.H. 5906 9190 and paid duty @ 24.32% Ad Valorem (B.C.D. @ 10% + S.W.S @ 1% (10% of B.C.D.) + I.G.S.T. @ 12%) availing benefit of Sr. No. 150 of the said Notification, whereas the goods are classifiable under the C.T.H. 5910 0090 and duty is payable @ 36.64% Ad Valorem (B.C.D. @ 20% + S.W.S @ 2% (10% of B.C.D.) + I.G.S.T. @ 12%). From the above, it transpired that the importer had resorted to mis-

classification of the goods in order to evade the duty, resulting into clear violation of the said Notification.

19.1.8 I find that it is the responsibility of the importer to correctly classify, determine and pay the duty applicable in respect of the imported goods. M/s. Somi Conveyor Beltings Ltd. have subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 and by above omission and commission, they have violated provisions of Section 46(4) also. It is the importer who is liable to ensure that they scrupulously follow each and every condition of the Notification, benefit of which he intends to avail.

19.1.9 I rely in this connection on the judgment of Hon'ble Supreme Court, in the case of ***M/S. GANESH METAL PROCESSORS INDUSTRIES VS U.O.I. (2003 (151) E.L.T. 21 (S.C.)*** wherein it was held that "The Notification had to be read as whole. If any of the condition laid down in the Notification is not fulfilled, the party is not entitled to the benefit of that notification."

19.1.10 I further rely on the judgment of Hon'ble Supreme Court in the matter of ***M/S. NOVOPAN INDIA LTD. REPORTED AT 1994 (73) ELT 769 (SC)***, wherein the Hon'ble SC held that:

> *"18. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave [1978 (2) E.L.T. (J 350) (SC) = 1969 (2) S.C.R. 253) that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."*

19.1.11 Further, I would like to rely on the judgment of the Constitutional Bench in Hon'ble Supreme Court in the matter of ***M/S. DILIP KUMAR & COMPANY. REPORTED AT 2018 (361) ELT 577 (SC)***, wherein the Hon'ble SC held that:

"48. The next authority, which needs to be referred is the case in Mangalore Chemicals (supra). As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, clear. Exemptions from taxation have tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.

49. The ratio in Mangalore Chemicals case (supra) was approved by a three-Judge Bench in Novopan India Ltd. v. Collector of Central Excise and Customs, 1994 Supp (3) SCC 606 = 1994 (73) E.L.T. 769 (S.C.). In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/ assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows :

"We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers, referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State...."

50. In Tata Iron & Steel Co. Ltd. v. State of Jharkhand, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held -

"The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See Novopan India Ltd. v. CCE and Customs)."

...

52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/ assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

19.1.12 Further, I would like to quote the lines from the case of ***COLLECTOR OF CUSTOMS, BANGALORE & ANR. VS. M/S. MAESTRO MOTORS LTD. & ANR. 2004 (10) SCALE 253***, wherein the Court held:

"It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the Notification. Further, a Notification has to be interpreted in terms of its language."

19.1.13 In the case of ***GODREJ & BOYCE MFG. CO. LTD. VS THE COMMISSIONER OF CUSTOMS (EXPORT), MUMBAI, REPORTED IN 2013 (293) ELT 46***, the Tribunal held as under:-

" Since it is the appellant who has claimed the benefit of duty exemption, the onus of leading evidence to prove eligibility to exemption lies on the appellant and not on the Revenue. As held by the Apex Court in the case of Mysore Metal Industries (1988 (36) ELT 369 (S.C.)) "the burden" is on the party who claims exemption, to prove the facts that entitled to him to exemption." Suffice to say that the appellant has miserably failed to discharge this onus. "

19.1.14 In view of the above discussion, I find that the noticee is liable to pay differential Customs duty as they had imported the goods by wrongly classifying them under C.T.H. 5906 9190 and were not eligible for exemption from payment of duty as claimed under Sr. No. 150 of the Notification No. 82/2017-Customs dated 27.10.2017.

19.2 Now I proceed to decide whether Differential Custom duties amounting to Rs. 22,33,920/-, attributable to the concessional rate of Customs Duty wrongly claimed under Sr. No. 150 of Notification No. 82/2017-Cus. Dt. 27.10.2017; is recoverable under Section 28(4) of the Custom Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.

19.2.1 I find that Differential duty of **Rs. 22,33,920/-** has been proposed to be recovered under Show Cause Notice under Section 28(4) of the Customs Act, 1962,

attributable to the concessional rate of Customs Duty wrongly claimed under Sr. No. 150 of Notification No. 82/2017-Cus. Dt. 27.10.2017. I find from the foregoing paras that the noticee is liable to pay differential Customs duty as they had imported the goods by wrongly classifying them under C.T.H. 5906 9190 and were not eligible for exemption from payment of duty as claimed under Sr. No. 150 of the Notification No. 82/2017-Customs dated 27.10.2017.

19.2.2 Further, I find that the noticee in spite of being fully aware misclassified their imported goods, which establishes the clear intent to evade the payment of Customs Duty and therefore differential duty is rightly demanded under Section 28 (4) of the Custom Act, 1962 invoking the extended period. Therefore, I find that proposed differential duty of **Rs. 22,33,920/-** is required to be recovered along-with interest under Section 28AA of the Customs Act, 1962.

19.2.3 I find that the noticee has contended that there is no mala fide claim or intention in classifying the imported goods under CTH 5906 and therefore, there is no scope of invocation of the extended period of limitation in the present case and have cited several case laws. To rebut the above contention of the noticee that there is no scope of invocation of extended period, I rely on the ratio of the decision of jurisdictional Hon'ble Gujarat High Court rendered in case of ***M/S. COMMISSIONER OF C.EX. SURAT-I VS. NEMINATH FABRICS PVT. LTD. REPORTED IN 2010 (256) E.L.T. 369 (GUJ.).*** Though the said case is relating to Section 11A of the Central Excise Act, 1944 but Section11A of the Central Excise Act, 1944 is *pari materia* with Section 28 of the Customs Act, 1962 as held by the Hon'ble Supreme Court in the case of ***UNIWORTH TEXTILES LTD. VS. COMMISSIONER REPORTED IN 2013 (288) E.L.T. 161 (S.C.).*** Hon'ble Gujarat High Court in the said case, interalia has held as under:

> ***"11.*** *A plain reading of sub-section (1) of Section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.*
>
> ***12.*** *The Proviso under the said sub-section stipulates that in case of such non levy, etc. of duty which is by reason of fraud, collusion, or any mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made thereunder, the provisions of sub-section (1) of Section 11A of the Act shall have effect as if the words "one year" have been substituted by the words "five years".*

13. *The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.*

14. *Thus the scheme that unfolds is that in case of non levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words "one year" by the words "five years". In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.*

15. *To put it differently, the proviso merely provides for a situation whereunder the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of "one year" or "five years" as the case may be.*

16. *The termini from which the period of "one year" or "five years" has to be computed is the relevant date which has been defined in sub-section (3)(ii) of Section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of Section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.*

17. The proviso cannot be read to mean that because there is knowledge, the suppression which stands established disappears*. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.*

18. *The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely*

alleged and are disputed by an assessee. ***Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term "relevant date" nugatory and such an interpretation is not permissible.***

19. The language employed in the proviso to sub-section (1) of Section 11A, is, clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. *Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of Section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of Section 11A would be applicable. However such reasoning appears to be fallacious inasmuch as once the suppression is admitted,* ***merely because the department acquires knowledge of the irregularities the suppression would not be obliterated****."*

19.2.4 It is well known that with the introduction of the Self-Assessment Scheme, the onus is on the importer to comply with the various laws, to determine his tax liability correctly and to discharge the same. Section 17 of the Customs Act, effective from 8.4.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. As per Section 17 of the Customs Act, 1962, an importer entering any imported goods under Section 46 of the Act shall self-assess the duty leviable on such goods. Under self-assessment, the importers are required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is supported by Section 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011.

The Importer is squarely responsible for self-assessment of duty on imported goods and filing all declaration and related documents and confirming these are true, correct, and complete. Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent importers would face penal action on account of wrong self-assessment made with intent to evade duty **or avoid compliance of conditions of notifications,** Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the allied acts.

19.2.5 The import of goods has been defined in the Integrated Goods and Service Tax Act, 2017 (herein after referred to as the "IGST Act, 2017") as bringing goods in the India from a place outside India. All imports shall be deemed as inter-state supplies and accordingly integrated tax shall be levied in addition to the applicable Customs duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of Customs are levied on the said goods under the Customs Act, 1962. Section 5 of the Integrated Goods and Service Tax Act, 2017 'Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962.'

19.2.6 Under Sub-Section 7 of Section 3 of the Customs Tariff Act, 1975, any article which has been imported into India shall, in addition, be liable to Integrated tax at applicable rate, as is leviable under Section 5 of the Integrated Goods and Service Tax, 2017 on a like article on its supply in India, on the value of the Imported article as determined under sub-section 8 or sub-section 8A as the case may be.

19.2.7 Therefore, I hold that M/s. SCBL is liable to Customs duty payment of **Rs. 22,33,920/-** which is recoverable under the provisions of Section 28(4) of the Customs Act, 1962 from them as they have resorted to intentional mis-classification of the imported goods by suppressing the facts.

19.2.8 The importer has contended that the assessment of the Bills of Entry involved has been finalized and hence the matter of classification should not have been questioned or reopened without having been challenged the assessment in appeal. I do not agree with this contention of the said importer in the light of the judgment of Apex Court in the matter of ***U.O.I VS. JAIN SHUDH VANASPATI LTD. (CIVIL APPEAL NO. 2360 OF 1980, DECIDED ON 8-8-1996) [1996 (86) E.L.T. 460 (S.C.)]***

> *"Demand - Show Cause Notice under Section 28 of the Customs Act, 1962 for demand of duty can be issued without revising under Section 130, the order of clearance passed under Section 47 of the Customs Act, 1962."*

It was held that "It is patent that a show cause notice under the provisions of Section 28 for payment of Customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance under Section 47 of the concerned goods. Further, Section 28 provides time limits for the issuance of the show cause notice thereunder commencing from the "relevant date"; "relevant date" is defined by sub-section (3) of Section 28 for the purpose of Section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under Section 47. The High Court was, therefore, in error in coming to the conclusion that no show cause notice under Section 28 could have been issued until and unless the order under Section 47 had been first revised under Section 130. "

19.2.9 Further, the importer is also liable to pay interest at the appropriate rate on the duty as provided under Section 28AA of the Customs Act, 1962.

19.3 Whether imported goods 82,517 Kgs. and having declared value of Rs. 1,81,32,467/-, are liable to confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

19.3.1 The Notice has also proposed for confiscation of imported goods under Section 111(o) of the Customs Act, 1962. The said provision reads as under:-

" (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer; "

19.3.2 The Notice has also proposed for confiscation of imported goods under Section 111(m) of the Customs Act, 1962. The said provision reads as under:-

" (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"

19.3.3 I find that in terms of Section 17 of the Customs Act, "self-assessment" has been provided for the duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit, or exemption notification claimed, if any in respect of the

imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the noticee and aforesaid fact came to light only subsequent to the in-depth investigation. I find that the said importer is liable to pay differential Customs duty as they had imported the goods by wrongly classifying them under C.T.H. 5906 9190 and were not eligible for exemption from payment of duty as claimed under Sr. No. 150 of the Notification No. 82/2017-Customs dated 27.10.2017. Thus, I find that the noticee have violated the provisions of Section 46 (4) of the Customs Act, 1962 and these acts on part of the noticee, I hold the imported goods valued at **Rs. 1,81,32,467/-,** are liable to confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

19.3.4 As the impugned goods are found liable to confiscation under Section 111 (0) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. The Section 125 (1) of the Customs Act, 1962 reads as under:-

"***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 [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…"

19.3.5 I find that though, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of ***M/S. VISTEON AUTOMOTIVE SYSTEMS INDIA LTD. REPORTED AT 2018 (009) GSTL 0142 (MAD)*** wherein the Hon'ble High Court of Madras has observed as under:

"….

….

….

23. *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, , by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever*

confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

....

...."

19.3.6 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of ***SYNERGY FERTICHEM LTD. VS. UNION OF INDIA, REPORTED IN 2020 (33) G.S.T.L. 513 (GUJ.),*** has followed the dictum as laid down by the Madras High Court. In view of the above, I find that subject goods can be allowed to be redeemed on payment of redemption fine under Section 125 of the Customs Act, 1962, hence redemption fine in lieu of confiscation is imposable on the said imported goods.

19.4 Whether penalty is imposable on the importer under Section 112(a)(ii)/114AA of the Customs Act, 1962.

19.4.1 Section 112 reads as follows:

*"**SECTION 112. Penalty for improper 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*

...

shall be liable, -

...

[2] [(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher

..."

19.4.2 I find from the foregoing Paras that the noticee is liable to pay differential Customs duty as they had imported the goods by wrongly classifying them under C.T.H. 5906 9190 and were not eligible for exemption from payment of duty as claimed under Sr. No. 150 of the Notification No. 82/2017-Customs dated 27.10.2017, therefore, the

goods were liable to confiscation under Section 111(m) and 111(o) and the importer is liable for penalty under Section 12(a)(ii) of the Customs Act, 1962.

19.4.3 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

> **Section 114AA of the Customs Act, 1962**:
> *"114AA. Penalty for use of false and incorrect material.—If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

19.4.4 I find that the noticee in spite of being fully aware of the products purchased/imported, deliberately declared the goods under wrong C.T.H. 5906 9190 at the time of filing the said Bill of Entry in order to avail ineligible Duty exemption. Further, I find that they have failed to declare the actual details to the Customs Authorities for assessment. Thus, I find that the noticee has deliberately withheld from disclosing to the Department, the technical nature of the items imported so as to avail the ineligible benefit of Sr. No. 150 of Notification No.82/2017-Cus 4 as amended. Hence, for the said act of contravention on their part, the noticee is liable for penalty under Section 114AA of the Customs Act, 1962.

19.4.5 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of **Principal Commissioner of Customs, New Delhi (Import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi)** wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority".*

19.5 I also find that the ratio of case laws cited by the noticee in their submission are not squarely applicable in this case.

20. Therefore, I pass the following order -

ORDER

(a) I reject the classification of the imported goods, i.e. "Belting Fabric for Conveyor Belt (made of polyester)" covered under 15 Bills of Entry as per Table-A at Para 1 above, declared by M/s. Somi Conveyor Beltings Ltd. under C.T.H. 5906 9190 of the First Schedule of the Customs Tariff Act, 1975.

(b) I order to re-assess the imported goods, i.e. "Belting Fabric for Conveyor Belt (made of polyester)" covered under 15 Bills of Entry as per Table-A at Para 1 above, under C.T.H. 5910 0090 of the First Schedule of the Customs Tariff Act, 1975.

(c) I confirm the demand the total amount of differential Custom duties of **Rs. 22,33,920/- (Rupees Twenty Two Lakhs Thirty Three Thousand Nine Hundred Twenty Only**) and order to recover from M/s. Somi Conveyor Beltings Ltd under Section 28(4) of the Custom Act, 1962 by denying the benefit of Sr. No. 150 of the Notification No. 82/2017-Cus. Dt. 27.10.2017.

(d) I order confiscation of the total quantity of 82,517 Kgs. of imported goods having declared value of **Rs. 1,81,32,467/- (Rupees One Crore Eighty One Lakhs Thirty Two Thousand Four Hundred Sixty Seven Only)** under Section 111(m) and Section 111(o) of the Customs Act, 1962 as discussed in foregoing Paras. I allow the importer to redeem the same on payment of redemption fine of **Rs. 20,00,000/- (Rupees Twenty Lakh Only)** under Section 125(1) of the Customs Act, 1962 in lieu of confiscation.

(e) I order to recover interest at an appropriate rate as applicable on the duty confirmed at (c) above from M/s. Somi Conveyor Beltings Ltd, under Section 28AA of the Customs Act, 1962.

(f) I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** upon them under Section 112(a)(ii) of the Customs Act, 1962.

(g) I impose penalty of **Rs. 50,00,000/- (Rupees Fifty Lakhs Only)** upon them under Section 114AA of the Customs Act, 1962.

21. The Show Cause Notice No. VIII/10-42/ICD-Khod/O&A/HQ/21-22 dated 29.11.2021 is disposed of in terms of the para above.

Signed by
Shree Ram Vishnoi
Date: 20-03-2025 12:06:17

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

DIN: 20250371MN0000666F0B

F. No. VIII/10-42/ICD-Khod/O&A/HQ/2021-22 Date:**20.03.2025**

M/S. SOMI CONVEYOR BELTINGS LTD.,
4F-15 OLIVER HOUSE,
NEW POWER HOUSE ROAD,
JODHPUR-342 001, RAJASTHAN

Copy to:-

(i) The Principal Commissioner, Customs Ahmedabad (Kind Attention: RRA Section).

(ii) The Deputy Commissioner of Customs, ICD – Khodiyar, Ahmedabad

(iii) The Superintendent, Customs, H.Q. (Systems), Ahmedabad, in PDF format for uploading on website of Customs Commissionerate, Ahmedabad

(iv) The Superintendent (Task Force), Customs-Ahmedabad

(v) Guard File