सीमा शुल्क के प्रधान आयुक्त का कार्यालय
सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT
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A. File No.		GEN/ADJ/COMM/230/2025-Adjn-O/o Pr. Commr- Cus-Mundra
B. Order-in-Original No.		**MUN-CUSTM-000-COM-56-25-26**
C. Passed by		Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order Date of issue:		**05.02.2026** 05.02.2026
E. SCN No. & Date		GEN/ADT/PCA/497/2024-Gr.2 dated 27.02.2025
F. Noticee(s) / Party / Importer		**M/s Ramdev Plastics (IEC-3706000270)**
G. DIN		**20260271MO000000E721**

1. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

   This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

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

"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए। Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

   Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

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

   The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

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

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

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

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

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

BRIEF FACTS OF THE CASE:

M/s Ramdev Plastics, D-7, Plot No. 154-155, Ward-8A, Gandhidham, Gujarat-370201 (IEC-3706000270) (hereinafter referred to as "the importer" for the sake of brevity) filed various Bills of Entry at Mundra Port for clearance of "Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron", "Stock lot of plastic packaging material in mix size and gsm", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm", etc., classifying the same under different CTH 39201099, 39202090, 39206919 & 39207119 of the First Schedule of the Customs Tariff Act, 1975.

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

The Heading 3920 of Customs Tariff is reproduced below:

HS Code	*Item Description*	*BCD*	*SWS (10% of BCD)*	*IGST*
3920	*Other plates, sheets, film, foil*			

		and strip of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials			
392010	-	*Of polymers of ethylene*			
39201099	-	*Other*	*10%*	*1*	*18%*
392020	-	*Of polymers of propylene*			
39202090	-	*Others*	*10%*	*1*	*18%*
392069	-	*Of other polyesters*			
39206919	-	*Others*	*10%*	*1*	*18%*
392071	-	*Of regenerated cellulose*			
39207119	-	*Others*	*10%*	*1*	*18%*
392099	-	*Of other plastics:*			
39209999	--	***Other***	***15%***	***1.5***	***18%***

3. During the audit, it was observed that the importer failed to provide specific descriptions of the goods, such as sheet, film, plates, strip, or foil, and the specific composition of plastic, including polymer of ethylene, propylene, other polyesters, cellulose, or its chemical derivatives. Instead, they declared a generic description of the goods as 'Stock Lot of Plastic Packaging Material in mix size and gsm.' Consequently, the goods were misclassified under Sub-Headings 392010, 392020, 392069, and 392071, which is completely not in consonance with Rule 3 of General Rules for the interpretation of Import Tariff.

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

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

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

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

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

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

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

6. Thus, the importer had wrongly classified the goods under CTH 39201099, 39202090, 39206919, and 39207119, resulting in the

underpayment of Basic Customs Duty (BCD) at 10% instead of the applicable rate of 15%. This misclassification appears to have been made deliberately in an attempt to evade payment of the differential BCD of 5% and SWS & IGST thereon. Therefore, the importer is liable for payment of an additional duty of Rs. 96,99,365/-, as detailed in Annexure-A to the SCN.

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

8. Accordingly, M/s Ramdev Plastics was called upon to show cause as to why:

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

ii. The short payment of Basic Customs Duty amounting to Rs. 96,99,365/-(Rupees Ninety Six Lakh Ninety Nine Thousand Three Hundred and Sixty Five Only) by wrongly classifying the imported goods under CTH 39201099, 39202090, 39206919 & 39207119 instead of 39209999 and paid less BCD and SWS/IGST thereon should not be charged and recovered from them under Section 28(4) of the Customs Act, 1962;

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

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

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

RECORD OF PERSONAL HEARING-

9. Following the principles of natural justice, opportunities of personal hearing were granted to the importer. Shri Vikas Mehta, authorised representative of the importer, appeared for the personal hearing on 29.12.2025 through virtual mode. During the hearing, he contended that the demand proposed in the notice is clearly hit by limitation. He further submitted that the case had been handed over to him only recently and, therefore, requested a period of ten days to submit a detailed written reply, with a request that the same be taken on record while adjudicating the case.

DEFENCE SUBMISSION

10. M/s Ramdev Plastics, in their written submission dated 06.02.2026, inter alia, have submitted as follows:

(i) At the outset, the noticee has denied all allegations and averments made in the Show Cause Notice. Save and except what is specifically admitted, no part of the notice which is not expressly dealt with shall be deemed to have been admitted. The submissions made hereinafter are independent of and without prejudice to one another.

(ii) The noticee has submitted that there is no dispute regarding the description of the goods. It is admitted in para 3 of the notice that the noticee had declared the generic description of the goods. Further, para 5 of the notice again records that the description of the goods is “excessively”

(sic) generic in nature. On this basis, allegations of mis-classification have been raised.

(iii) It is contended that the dispute, if any, is strictly limited to classification and not description. The notice neither proposes rejection of the declared description nor determines any alternative or "correct" description. The noticee has submitted that generic declaration, per se, cannot be equated with mis-declaration, and in the absence of any evidence to establish falsity of declaration, the allegations of mis-declaration are unsustainable. Accordingly, the goods are not liable to confiscation under Section 111(m) of the Customs Act, 1962, and consequently, no penalty is imposable under Section 112(a) of the Act.

(iv) The noticee has submitted that CTH 39209999 is a residuary heading, applicable only when goods are not classifiable under any of the preceding specific sub-headings dealing with polymers of ethylene, propylene, other polyesters, regenerated cellulose and other plastics.

It is contended that the Show Cause Notice does not rely upon any test report, chemical analysis, or technical evidence to discard the applicability of the declared specific entries before proposing classification under the residuary entry. Instead, reliance has been placed on Rule 3 of the General Rules for Interpretation on the premise that the goods are classifiable under more than one heading. The noticee has submitted that classification under a residuary heading without first exhausting specific headings and without technical evidence is not legally sustainable. Therefore, the proposal to reject the declared classification and re-classify the goods under CTH 39209999 is devoid of legal merit.

(v) The noticee has submitted that the goods were imported and cleared during the period May 2020 to March 2023 against Bills of Entry filed along with complete documents such as commercial invoices, packing lists, bills of lading, etc. Clearance was allowed after due scrutiny by the department, and all declarations were found to be in order.

It is further submitted that the impugned notice is entirely based on the documents already submitted at the time of assessment and not on any new evidence or discovery. Hence, there is no suppression of facts or wilful mis-statement on the part of the noticee. Consequently, the statutory ingredients for invoking the extended period under Section 28(4) of the Customs Act, 1962 are absent, and the demand of differential duty is time-barred. Reliance has been placed on *M/s. Aspen International Pvt. Ltd.*, 2024 (11) TMI 1148 – CESTAT Ahmedabad and *M/s. Shaf Broadcast Pvt. Ltd.*, 2007 (207) ELT 554 (Tri.-Mumbai).

(vi) The noticee has submitted that the assessments in all the Bills of Entry under consideration have attained finality and cannot be disturbed without being set aside by a competent appellate authority. Reliance has been placed on the decision of the Hon'ble Tribunal in *M/s. Asha Enterprises*, 2025 (3) TMI 344 – CESTAT Kolkata, wherein it was held that re-classification is not permissible without challenging the assessment by way of appeal.

It has further been contended that there is neither any challenge to the assessments nor any appellate order setting them aside. The impugned notice, therefore, runs contrary to settled judicial precedents including *Hijaz Kuroda Gloves Company Pvt. Ltd.*, 2024 (12) TMI 478 – Madras High Court; *SJS International*, 2021 (12) TMI 1339 – Gujarat High Court; *Sova Solar Limited*, 2025 (12) TMI 381 – CESTAT Kolkata; *Shri Rumen Ray*, 2023 (7) TMI 70 – CESTAT Kolkata; and *Décor India and Others*, 1987 (31) ELT 400 (T). The notice is thus stated to be contrary to judicial discipline.

(vii) The noticee has further submitted that even assuming, without admitting, that there was an error in classification, the same does not amount to mis-declaration so as to warrant confiscation under Section 111(m) or penalty under Section 112 of the Customs Act, 1962. Reliance has been placed on *Shakthi Tech Manufacturing India Pvt. Ltd. v. Commissioner of GST & Central Excise*, Final Order No. 40003/2025 dated 14.10.2024 / 02.01.2025.

It has also been submitted that where the goods are not available, no redemption fine is imposable, as held in *Shiv Kripa Ispat Pvt. Ltd.*, 2009 (235) ELT 623 (Tri.-LB) and *Finesse Creations Ltd.*, 2009 (248) ELT 122 (Bom.), affirmed by the Hon'ble Supreme Court in 2010 (255) ELT A 120 (SC).

(viii) Accordingly, the noticee has prayed that the goods be held not liable to confiscation under Section 111(m) and that no penalty be imposed under Section 112 of the Customs Act, 1962; that the demand of differential duty under Section 28(4) be dropped on merits as well as on limitation with consequential relief of interest under Section 28AA and penalty under Section 114A; and that simultaneous invocation of Sections 112 and 114A be held as impermissible in law.

(ix) On the grounds as mentioned above, the Noticee has requested to vacate the Notice by dropping the proceeding initiated vide the impugned SCN.

DISCUSSION AND FINDINGS

11. I have carefully gone through the facts of the case, Show Cause Notice and the noticee's submissions filed both, in written and in person advanced during the course of personal hearing. The principles of natural justice, particularly *audi alteram partem*, have been duly complied with by granting adequate opportunity to the noticees to present their defence. Accordingly, I proceed to examine the issues involved in the present case in the light of the available records, statutory provisions, and judicial precedents. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

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

ii. Whether short-levied duty of Rs. 96,99,365/- is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA or otherwise.

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

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

11.1 The importer, M/s Ramdev Plastics (IEC-3706000270), had filed various Bills of Entry declaring the goods as "Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron", "Stock lot of plastic packaging material in mix size and gsm", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm", etc., and classified them under Customs Tariff Headings (CTH) 39201099, 39202090, 39206919 & 39207119. They discharged duty @ 30.980% (BCD 10% + SWS 10% + IGST 18%). However, findings of post clearance audit suggested that the imported goods merit classification under CTH 39209999 as "Others". Therefore, I proceed to determine the correct classification of goods.

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

HS Code		Item Description	BCD	SWS (10% of BCD)	IGST
3920		Other plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials			
392010	-	Of polymers of ethylene			

39201099	----	Other	10%	1	18%
392020	-	Of polymers of propylene			
39202090	---	Others	10%	1	18%
392069	--	Of other polyesters			
39206919	----	Others	10%	1	18%
392071	--	Of regenerated cellulose			
39207119	----	Others	10%	1	18%
392099	---	Of other plastics:			
39209999	----	Other	15%	1.5	18%

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

constituent polymer. Thus, the classification declared by the importer in respect of the imported goods described as stock lot of plastic packaging material is found to be incorrect and liable to be rejected.

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

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

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

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

the description of any specific sub-heading under Heading 3920 due to lack of essential particulars, they necessarily fall under the residual category, i.e. CTH 39209999, covering "Other" plastics. Accordingly, the impugned goods are correctly classifiable under the residual tariff item CTH 39209999. The classification claimed by the importer is therefore rejected as legally untenable.

13. The importer, by adopting incorrect classification, had discharged duty at the effective rate of 30.980% instead of the correct 37.470%. This deliberate mis-statement has resulted in short levy of Customs Duty amounting to **Rs. 96,99,365/-** on an assessable value of the imported goods as detailed in Annexure A to the SCN.

14. DISCUSSION ON SUBMISSION OF THE IMPORTER-

14.1 The contention of the noticee that there is no mis-declaration and that the dispute is limited to classification is not acceptable. The obligation cast upon an importer under the Customs Act, 1962 is not limited to declaring any description of goods, but to make a true, correct and complete declaration in all material particulars including nature, form and composition of the goods. In the present case, the noticee declared the goods in a vague and generic manner as "stock lot of plastic packaging material in mix size and GSM" without specifying the polymer composition. Such incomplete declaration directly impacts tariff classification and rate of duty. A generic declaration which withholds essential classification amounts to mis-declaration within the meaning of Section 111(m) of the Customs Act, 1962.

14.2 The argument that generic declaration cannot be equated with mis-declaration is misplaced. In the instant case, the tariff entries under Heading 3920 are polymer-specific. Without declaring the polymer composition, the importer could not have legitimately claimed classification under specific sub-headings such as 392010, 392020,

392069 or 392071. The deliberate omission to disclose these material particulars resulted in short-levy of duty.

14.3 The noticee's contention that classification under CTH 39209999 is unsustainable in the absence of a test report is devoid of merit. The importer itself has not appreciated the fact that they have not produced any specific test report to determine the nature of polymer from which the imported goods were made. In the present case, the importer did not declare the polymer composition at all. Classification under a residuary entry is warranted where goods do not satisfy the description of specific entries due to lack of essential particulars. Therefore, in the absence of disclosure of polymer type, goods are rightly classifiable under the residual tariff item 39209999.

14.4 The further contention of the noticee that the assessment has attained finality and same cannot be reversed without an order passed by higher authority by way of appeal or review. Section 28 of the Customs Act, 1962 provides a statutory mechanism for recovery of duties not levied or short-levied due to mis-declaration, mis-classification or suppression of facts. An assessment based on incomplete or incorrect declaration does not acquire immunity merely because goods were cleared. Once it is established that duty was short-paid on account of suppression or mis-statement, the Department is fully empowered to invoke Section 28. Hence, the reliance placed on finality of assessment is does not hold merits.

14.5 I find no substance in the contention of the noticee that error in classification does not amount to mis-declaration so as to warrant confiscation under Section 111 of the Customs Act, 1962. While it is correct that the Department determines the appropriate tariff classification, the primary obligation to correctly describe the goods and declare the proper classification lies squarely on the importer. Where the declaration is incorrect or incomplete and material particulars are not fully disclosed, the resultant mis-classification cannot be treated as

innocent or accidental. Such conduct clearly amounts to mis-declaration of particulars and attracts the provisions of Sections 111(m) and 28(4) of the Customs Act, 1962.

14.6 I further find that the Department has satisfactorily discharged the burden of proof. The proposed classification and allegation of intent to evade duty has been discussed under the foregoing paras. Notice have failed to produce any documentary evidence (i.e. test report etc.) at the time of import to ascertain the classification and nature of the polymer from which the imported material was made. Thus, the burden shifts to the importer to rebut the same with cogent evidence, which has not been done in the present case.

15. I find that the non-declaration of the specific polymer material is not a technical lapse, but a material omission which impacts classification and applicable rate of duty. By deliberately declaring the goods in a generic manner as “stock lot of plastic rolls” without specifying the polymer composition, the noticee effectively withheld material information which was required to be disclosed under the Customs law. This act of the importer squarely falls within the ambit of suppression of facts under Section 28(4) of the Customs Act, 1962. Notwithstanding the fact that the Bills of Entry were assessed earlier. Assessment based on mis-declared or suppressed facts does not bar subsequent demand under the extended period, once such suppression comes to light. The importer, despite being fully aware of the true nature and composition of the goods, deliberately chose concessional subheadings such as 39201099, 39202090, 39206919 and 39207119, accompanied by vague and incomplete descriptions like “stock lot of plastic packaging material in mix size and gsm,” to claim undue benefit of lower duty. Such deliberate concealment of the true nature and composition of goods, coupled with mis-declaration in classification, establishes a clear element of mens rea and amounts to willful misstatement and suppression of material facts within the meaning of Section 28(4) of the Customs Act, 1962. The argument of the importer that Section 28(4) has been invoked as an

afterthought is not sustainable. The importer consistently declared vague and generic descriptions over a prolonged period, despite the tariff structure clearly requiring polymer-specific classification. Such repeated non-disclosure of material particulars constitutes wilful mis-statement and suppression of facts, justifying invocation of Section 28(4) of the Customs Act, 1962. In view of the above, I hold that the importer is liable to pay differential duty of Rs. 96,99,365/- under the provisions of Section 28(4) of the Customs Act, 1962 along with interest under section 28AA of the Customs Act, 1962.

CONFISCATION AND REDEMPTION FINE:

16. As discussed earlier, it is clear that the importer had declared a vague and generic description of the imported goods as "stock lot of plastic packaging material in mix size and gsm," without disclosing their actual nature, composition, or polymer type, thereby concealing the true character of the goods. This deliberate omission directly resulted in the misclassification of the goods under inapplicable headings 39201099, 39202090, 39206919, and 39207119, attracting a lower rate of Basic Customs Duty (10%) instead of the applicable rate (15%) under CTH 39209999. Hence, the mis-declaration in respect of the description and classification of goods squarely attracts the provisions of Section 111(m) of the Customs Act, 1962, rendering the goods liable to confiscation.

16.1 As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of *M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad* [Customs Appeal No. 10679 of 2024-DB], has held that

redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]***. Para 23 of the said Judgment is as follows:

> *"The penalty directed against the importer under* Section 112 *and the fine payable under* Section 125 *operate 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, whereas, 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."*

16.2 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513

(Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements. I find that goods are liable for confiscation and redemption fine can be imposed. I note that the case involves mis-classification due to non-disclosure of material particulars at the time of import, but does not involve prohibited goods or smuggled goods. I find it appropriate to maintain proportionality between the gravity of offence and the extent of revenue implication. Considering the nature of the violation and the principle that redemption fine should not be excessive, the ends of justice would be met if the redemption fine is restricted to approx. 50% of the differential duty.

17. Since the duty has been short levied by reason of suppression and wilful mis-statement and the importer is liable to pay differential duty of Rs. 96,99,365/- (Rupees Ninety Six Lakh Ninety Nine Thousand Three Hundred Sixty Five only) as determined under Section 28(8) of the Customs Act, 1962, the importer is liable for penalty equal to the duty amount under the provisions of Section 114A of the Customs Act, 1962. However, in terms of fifth proviso to Section 114A, once penalty is imposed under Section 114A, no penalty under Section 112 is imposable.

ORDER

(i) I reject the declared classification and order to classify the said goods under CTH 39209999 of the Customs Tariff Act, 1975 and order to re-assess the Bills of Entry at the correct rate of duty under this heading without the benefit of the wrongly claimed classification.

(ii) I hold that the goods having assessable value of Rs. 14,94,50,925/- are liable for confiscation under Section 111(m) of the Customs Act, 1962. I impose redemption fine of **Rs. 50,00,000/- (Rupees Fifty Lakhs only)** under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

(iii) I confirm the demand of differential duty amounting to **Rs. 96,99,365/- (Rupees Ninety Six Lakh Ninety Nine Thousand Three Hundred Sixty Five only)** under Section 28(4) of the Customs Act, 1962 and order to recover the same from the importer.

(iv) I order to recover interest at the appropriate rate on the short-paid duty from the importer under Section 28AA of the Customs Act, 1962.

(v) I impose penalty of **Rs. 96,99,365/- (Rupees Ninety Six Lakh Ninety Nine Thousand Three Hundred Sixty Five only)** under Section 114A of the Customs Act, 1962. However, in case the said importer pays the duty along with interest within 30 days of the communication of the order, the amount of penalty payable shall be reduced to 25% of the penalty amount, as per provisions of Section 114A of the Customs Act, 1962.

(vi) I don't impose penalty under Section 112 of the Customs Act, 1962 in terms of fifth proviso to Section 114A of the Customs Act, 1962.

18. This Order-in-Original is issued without prejudice to any other action that may be taken against the importer under the Customs Act, 1962 or any other law for the time being in force.

Digitally signed by
Nitin Saini
Date: 05-02-2026
19:01:20

(Nitin Saini)
Commissioner of Customs,
Customs House, Mundra

DIN: 20260271MO000000E721

To,

M/s Ramdev Plastics,
D-7, Plot No. 154-155, Ward-8A,
Gandhidham, Gujarat-370 201

Copy to:-

i. The Chief Commissioner of Customs Gujarat Customs Zone, Ahmedabad.

ii. The Superintendent (EDI/Disposal/Recovery/Legal), Customs House, Mundra.

iii. The Dy. Commissioner of Customs, Audit, Customs House, Mundra.