सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281
DIN – 20260371MN000000FB0C

क	फ़ाइल संख्या FILE NO.	S/49-318/CUS/AHD/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-707-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No.: 03/AC/ICD-Dashrath/2024-25 dt. 10.01.2025 passed by the Assistant Commissioner, Customs, ICD-Dashrath, Village Dashrath, Vadodara.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Natroyal Industries Pvt Ltd., Plot No.: 318/319, Village-Baska, Taluka-Halol, District-Panchmahal, Gujarat-389 350.

कार्यालय आयुक्त (अपील), सीमा शुल्क * अहमदाबाद *

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage
(ख(	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग (	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing

	a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	**मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं**	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

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Order-In-Appeal

M/s Natroyal Industries Pvt Ltd., Plot No.: 318/319, Village-Baska, Taluka-Halol, District-Panchmahal, Gujarat-389 350 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order-In-Original No.: 03/AC/ICD-Dashrath/ 2024-25 dt. 10.01.2025 (herein after referred to as "the impugned order") passed by passed by the Assistant Commissioner, Customs, ICD-Dashrath, Village Dashrath, Vadodara (herein after referred to as "the "adjudicating authority").

2. Facts of the case, in brief, are that the Appellant filed 13 Bills of Entry, details as per Table-A below, for importation of goods "PLASTISOL PVC COMPOUND" by classifying the same under CTH 3812 2090 attracting BCD @7.5%, SWS @10% and IGST @18%. An audit was conducted by the Indian Audit and Accounts Department (IA&AD), Ahmedabad who vide LAR No.: 06/2023-24 dated 31.05.2023 raised audit query that the imported goods would be more appropriately classified under CTH 3904 2200 attract BCD @10%, SWS @10% and IGST @18% instead of what the appellant claimed.

TABLE – A

BE NO	BE Date	CTH	Qty in Kgs	Assessable Value	Duty Paid @27.73%	Total Duty Paid	Duty Leviable @ 30.98%	Short Levy of Duty
3237443	15-05-2019	38122090	19937	574692	111979	159391	178040	18649
4490903	14-08-2019	38122090	9855	269150	52444	74649	83383	8734
4490903	14-08-2019	38122090	10421	284608	78936	78936	88171	9235
4491359	14-08-2019	38122090	10186	251292	69696	69696	77850	8154
4610523	23-08-2019	38122090	11430	275891	76518	76518	85471	8953
5560611	05-11-2019	38122090	19087	538370	149317	149317	166787	17470
6431560	10-01-2020	38122090	11600	302528	58948	83906	93723	9817
6431575	10-01-2020	38122090	22760	593581	115659	164630	183891	19262
6695218	30-01-2020	38122090	19741	551848	111666	153055	170962	17907
8372200	04-08-2020	38122090	19142	568306	114997	157620	176061	18441
2264559	07-01-2021	38122090	16384	475876	96294	131984	147426	15442
7420197	09-02-2022	38122090	19178	799206	161719	221660	247594	25934
2807972	10-10-2022	38122090	24345	1204631	334104	334104	373195	39090
			Total	6689978	1532277	1855465	2072555	217090

2.1 The audit query, raised vide LAR No.: 06/2023-24 dated 31.05.2023, was communicated to the appellant vide letter dt. 02.09.2023 and asked them to pay the differential Customs duty to the tune of Rs. 2,17,090/-, detailed calculation of the differential Customs duty worked out as per Table-A above. The appellant vide their letter dated 20.09.2023 submitted that the basic characteristics of compound vis-à-vis polymers is the key. It is not merely a polymer of VC but is a step ahead of compounding and no where it has been prescribed that compounds are also classifiable under 3904. It is restricted to only polymers/copolymers. The expression compounding is not included in the primary form and hence, chapter 3904 is not applicable to the compounds of Polymers of VC but whether plasticised or non-plasticised. Once, the chapter 3904 itself is not applicable to the compound plasticiser as clear from the above chapter note 6 and 3 above, the Tariff item proposed of 3904 2200 is not applicable at all as it caters to only plasticised PVC whereas the item imported by them is compound plasticiser of PVC.

2.2 It is observed from the impugned order that the dispute pertains to the correct classification of "Plastisol PVC Compound", wherein the appellant has contended classification under CTH 3812 20 90 on the ground that the impugned goods are in the nature of "compound plasticisers for plastics", being a formulated product where plasticiser plays a crucial role in imparting flexibility and usability, and that such compounded formulations are distinct from mere polymers of vinyl chloride and are not covered under Chapter 39, as "compounding" is not envisaged within the scope of "primary forms". It is further argued that Heading 3904 is restricted to polymers/copolymers and not to advanced compounded products like plastisol.

2.3 On the other hand, the department has contended classification under CTH 3904 22 00 by placing reliance on Chapter Note 6 to Chapter 39 and the HSN Explanatory Notes, which expressly include liquids, pastes and dispersions (emulsions/suspensions) within "primary forms", even when containing plasticisers, stabilisers and other additives. It is submitted that plastisol is essentially a dispersion of polyvinyl chloride (PVC) resin in plasticiser, wherein PVC imparts the essential character, and thus the product remains a polymer in primary form, merely plasticised and mixed with other substances. Further, Heading 3812 is limited to compound plasticisers as additives per se and specifically excludes polymers of Chapter 39; hence, the impugned goods, not being plasticisers but a PVC-based composition, are more appropriately classifiable under CTH 3904 22 00 as "other polyvinyl chloride, mixed with other substances – plasticised".

2.4 Based on the above audit query and contentions mentioned above, show cause notice dated 12.01.2024 was issued to the appellant as to why :

(a) classification of the imported goods i.e. "Plastisol PVC Compound" made under CTH 3812 2020 of the First Schedule of the Customs Tariff Act, 1975, should not be rejected,

(b) the imported goods i.e. "Plastisol PVC Compound" should not be classified under CTH 3904 2200 of the First Schedule of the Customs Act, 1975 attracting applicable Customs duty is 30.90% (BCD @ 10%, SWS@10% and IGST@18%)

(c) the total amount of differential Customs duty amounting to Rs. 2,17,090/- (Rupees Two Lakh Seventeen Thousand and Ninety only), should not be demanded and recovered under Section 28(4) of the Customs Act, 1962

(d) the interest at an appropriate rate as applicable, on the Customs duty evaded to the tune of Rs. 2,17,090/- (Rupees Two Lakh Seventeen Thousand and Ninety only) should not be recovered from you under Section 28AA of the Customs Act, 1962.

(e) the goods imported vide Bills of Entry as per Table A of Para 2 should not be held liable to confiscation under Section 111(m) 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 evasion of Customs Duty.

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

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

2.5 The adjudicating authority, after following principles of natural justice, through the impugned order has passed the order as detailed below:-

(i) he held description of the goods imported under the Bill of Entries mentioned in Table-A of the above order as "Plastisol PVC Compound ", correctly classifiable under tariff item 3904 2200 of the first schedule to the Customs Tariff Act, 1975. Accordingly, he rejected the classification of the imported goods declared under tariff item 3812 2020 under self-assessed bills of entry and order to re-classify the said goods under tariff item 3904 2200

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@30.90% (BCD @ 10%, SWS@10% and IGST@18%).

(ii). he confirmed the demand of total amount of differential Customs duty amounting to Rs. 2,17,090/- (Rupees Two Lakh Seventeen Thousand and Ninety only) from the appellant to be recovered under Section 28(4) of the Customs Act, 1962.

(iii). He ordered to recover Interest at an appropriate rate as applicable from the appellant under Section 28AA of the Customs Act, 1962.

(iv). He imposed penalty of Rs. 2,17,090/- on the appellant under Section 112(a)(ii) of the Customs Act, 1962.

(v). He imposed penalty of Rs. 2,17,090/- on the appellant under Section 114AA of the Customs Act, 1962.

3. Being aggrieved and dissatisfied with the impugned order, the appellant has preferred the present appeal on 12.03.2025, raising the following grounds in support of their defence which are produced as under:-

1. The impugned order is bad in law, perverse and is against he settled principles of law. The order lacks in substance as well as legal provisions and hence, it is required to be set aside. The entire controversy is regarding classification of product viz. "Plastisol PVC Compound" and there is no dispute to the fact that the said product is "Plastisol PVC Compound". Appellant had all along in the Bills of entry for the import the said product had declared the said product as "Plastisol PVC Compound". Department has not raised any dispute as the description of the product. Hence, any allegation as to mis-statement or suppression of facts in this regard is without any legal basis and is not tenable.

2. Product in dispute was classified by the appellant under CETH 38122090 of first Schedule to Custom Tariff Act, 1075, which is correct as is indicated herein below. Whereas, Department has alleged that the said product is correctly classifiable under CETH 39042200, under heading 3904 – Polymers of Vinyl Chloride or other Halogenated Olefins, in primary form. Product 'Plastisol PVC Compound', is a plasticiser with liquid dispersion consisting of very small particles of resin in a plasticizer. In fact, impugned Show Cause Notice, at para 4.3 of the Notice has observed that

"4.3 Kindly refer to the definition of Plastisol as available on Collins dictionary @ <u>https://www.collinsdictionary.com/dictionary/english/ plastisol</u> which defines Plastisol as:

A liquid dispersion consisting of very small particles of resin in a plasticizer; when heated, the mass first gels and then fuses to becomes a thermoplastic used a coating for molding, etc.

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3.1 From the above, it is clear that the plastisol PVC compound would be converted as thermoplastic when heated. Hence, the form of the substance would change on heating. Thus, Show Cause Notice had wrongly interpreted the above definition to suit the case of the department, without considering the form and substance as it is. Compounding the matters for worst, in the entire impugned order, Ld. Adjudicating authority has failed to even discuss these aspects of physical and chemical aspect of the product. In fact, there is no discussion at all regarding the goods, its characteristics, its form. Ld. Adjudicating authority has mechanically confirmed the proposals in the Show Cause Notice without even discussion as to what the goods in question are, what is the use and how the same should merit classification under CETH 39042200.

3.2 Further, as can be seen from the above description, plastisol is mixture of PVC compound and plasticizer. Whereas, CETH 39042200 covers PVC compound, which is ***Plasticized.*** *To qualify for classification under CETH 3904, it would be necessary that PVC should be plasticized and not capable of being plasticized.*

3.3 It most respectfully submitted that plastisol is a chemical, which is having mixture of PVC resins, suspended in plasticizer. Basically, Plastisol is a liquid with wide variety of application as a coating. On one hand Plasticized PVC is a type of PVC that has been made flexible with plasticizer. On the other hand, plastisol is a coating material, containing PVC as well as plasticizer.

3.4 The difference is palpable and clearly the material is a mixture of two chemicals. Further, the mixture is not separate chemically defined element or compound and hence would merit classification under chapter 38 Miscellaneous chemical products and more precisely under Chapter Sub heading 38122090. In this regard, Noticee wishes to rely on the judgment of Hon'ble Tribunal in case of ***COLLECTOR OF C. EX., NEW DELHI Vs POLYMER PAPERS LTD. [1999 (106) E.L.T. 184 (Tribunal)]****. In the said case law, Hon'ble Tribunal has not admitted the opinion Chemical Examiner of Department, as the same was obtained after passing of Adjudication order. However, the said opinion is very much relevant for the case on hand.*

3.4 Appellant would also like to refer to judgment of Hon'ble Tribunal ***BHOR INDUSTRIES LTD. Vs COLLECTOR OF CUSTOMS, BOMBAY [1984 (18) E.L.T. 521(Tribunal)]****, wherein important aspect of difference in product of chapter 38 and 39 was discussed.*

4. The Ld. Adjudicating authority has miserably failed to even discussion the above submission and case laws, which are over whelming and in favour of the case of the appellant. Only ground Ld. Adjudicating authority has taken in support of the classification of disputed goods under CETH 30942200 is that the subject goods were imported by some other importer under CETH 39042200. That being the case, the entire case of the department is presuming that the classification by the other importer is correct without giving any reasons as to how the said classification is correct. We say this because, in case the other importer has made mistake of wrong classification, the same would not be enforceable.

4.1 Hence, to arrive at correct classification, the correct way would be to analyze the product in question in light of chapter notes, explanatory notes, judicial pronouncement in this regard. Ld. Adjudicating authority has miserably failed to take note of these aspect and has confirmed the demand without any discussion on the above aspect, which was contested during Adjudication proceedings.

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5. *Without prejudice to our submission that the product was correctly classified under CETH 38122090, we also contest the proposal of mis-classification and demand of differential customs duty by invoking extended period. Section 28(4) of the Customs Act, 1962 provides certain pre-conditions for invoking the said provision.*

5.1 *It can be seen from the above provision that to invoke provision of Section 28(4) ibid, department is required to demonstrate that importer had indulged in either collusion, willful misstatement, suppression of facts. Only allegation forthcoming from the Show Cause Notice is that we have made wrongful declaration while presenting the Bill of Entries at the time of import. Show Cause Notice also states that after introduction of self-assessment from 2011, it was duty of importer to show correct particulars in the Bill of Entries. In this regard, it would be noted that Show Cause Notice has not given any specifics as to how we have made wrong declaration in the Bill of Entries.*

5.2 *We say this because, there is no dispute as the description of goods imported i.e. "Plastisol PVC Compound". Further, appellant have been importing the said product since 2008 with same classification and description of goods. Department have cleared all the imports with the said classification and description of goods without any objection. Hence, the theory of department regarding not disclosing all the facts does hold good. Further, it has to be mentioned that Departmental officer had drawn samples of the said product in case of import by one of our sister concern M/s. Royal Cushion Vinyl Products Ltd. The said sample was subjected to test by Central Revenue Laboratory vide test memo No. IMP/285/2008 dated 07.03.2008. The classification of the product was upheld under CETH 38122090 in the said case. Some of the cases, where Departmental officer had drawn samples and got the sample tested from the Departmental laboratory are attached herewith. There is no material which department could allege to have been suppressed in as much as all the information viz. Bill of Entries filed, the details of samples drawn, test results, etc. were very much on record of the department.*

5.3 *It is not the case of the department that consequent to Audit any new fact or new document was discovered, which was not disclosed by the importer. Merely narrating that the importer had failed to disclose all the facts would not substantiate the allegation of suppression. In the Bills of entry, the importer is required to mention the description of goods and CETH of the goods. All along, even before 2011 (when self-assessment was introduced), appellant have been declaring the goods as "Plastisol PVC Compound" with CETH declared as 38122090. That being the case, department cannot allege any mis-statement or suppression of facts, much less with intent to evade customs duty. Without prejudice to our claim of correct classification, it is submitted that the case is merely of interpretation of two different chapter sub heading. In absence of any specific allegation of suppression of facts, department has erred in invoking provisions of Section 28(4) of the Customs Act, 1962. In this regard, Appellant wishes to rely upon following case laws:*

(i) PRASHANT FREIGHT FORWARDERS P. LTD. V/s. C.C. (IMPORT), NHAVA SHEVA [2014 (299) E.L.T. 365 (Tri. - Mumbai)

(ii) COMMISSIONER OF CUSTOMS Vs MAGUS METALS P. LTD. [2017 (355) E.L.T. 323 (S.C.)]
(iii) NESTLE INDIA LTD. Vs COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH [2009 (235) E.L.T. 577 (S.C.)]

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5.2 Ld. Adjudicating authority has not discussed any of the above aspect, even though, appellant has very elaborately contested the demand on the ground that there was reason to invoke extended period. In the impugned order, Ld. Adjudicating authority has discussed any of the above submission and case laws.

5.3 From the above, it is clear that Ld. Adjudicating authority had has not gone into the characteristics of goods, its composition, form and factor to determine the classification. Reliance is placed only on the observation of CERA audit and that some other imported goods by classifying the goods under CH 390422.

*5.4 From the provision of Section 17(1) ibid, it is seen that importer is required to **self-assess** the duties of customs on goods admitted for import. As can be seen from the facts narrated above, the Appellant, in its wisdom, has corrected assessed the tax. As is submitted above, the appellant had been importing the said goods since 2008. Department had cleared goods, even before 2011 (when self-assessment was introduced) with the classification under CETH 38122020. Further, Section 17(2) of the Customs Act, 1962 gives power to the proper officer to verify and also has power to examine and to test any imported goods. Sub-section (3) of the said Section further provides that proper officer for such verification may require importer or any other person to produce document or information, whereby duty leviable on the imported goods can be ascertained. Sub-section (4) of the said Section gives power to the proper officer to carry out re-assessment, if the self-assessment is found not correct. Further sub-section (5) of Section 17 ibid also provides for passing a speaking order in case of re-assessment in terms of Sub-section (4) is contrary to self-assessment carried out by importer. In the present case, admittedly, there is no such procedure carried out by the department.*
Further, it is not the case of the department that the description of goods provided by the appellant was not correct. The only dispute that arises is that for the given product viz. "Plastisol PVC compound", whether the correct classification is 38122020 or 39042200. In such a situation, there cannot be any mis-statement or suppression of facts. Especially when the product in question has been subject to test by chemical examiner of department and classification under CETH 38122020 was held to be proper. Hence, even if it is presumed, without accepting that appellant has not made correct declaration of CETH of the product in dispute, there is failure on part of proper officer to carry out verification of the goods. Only after such verification, if any contrary result are found, the proper officer could carry out re-assessment, that too by passing a speaking order. In present case, department, at no stage has carried out any verification for the imports. Further, verification which were carried out in earlier cases, the result are in favour of classification under CETH 38122020. Hence, there is no failure on part of the importer, as far as complying with Section 17 of the Customs Act, 1962.

In case, department had any dispute regarding settled position of classification of product viz. "Plastisol PVC Compound", the correct method would be to carry out verification, testing and re-assessment in terms of Section 17(2), 17(3), 17(4) and 17(5) of the Customs Act, 1962. In the present case, admittedly, department has not followed any of the steps in the said provisions. In any case, no suppression of facts or mis-statement can be alleged for classification dispute of the product, which is correctly declared in Bills of Entry.

5.5 In the defence reply, appellant has quoted various case laws in support of the defence submission, which appears to be aptly applicable to the present dispute. However, Ld. Adjudicating authority has not discussed any of the case laws and its

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implications on the present dispute and brushed aside all the case laws in sweeping general statement as under:

"I also find that the Importer has quoted various judgments in their defence reply which are not squarely applicable in this case."

As would be seen from above observation, Ld. Adjudicating authority has failed to given reasons to discard the various case laws discussed. Ld. Adjudicating authority has not given any reasons as to how various case laws are not applicable in the present case. All in all, order of Ld. Adjudicating dealing with classification of goods, case laws cited and invoking of extended period has been non-speaking and is lackadaisical. Hence, the order of Ld. Adjudicating authority is bad in law and is required to be set aside. In this regard, appellant wishes to rely on following case laws:

(i) GUNNEBO INDIA PVT. LTD. Vs COMMR. OF SERVICE TAX, NAVI MUMBAI-VII [2019 (31) G.S.T.L. 34 (Bom.)]

(ii) COMMISSIONER OF CENTRAL EXCISE, BANGALORE Vs SRIKUMAR AGENCIES [2008 (232) E.L.T. 577 (S.C.)]

*6.1 From the above observation, it is seen that Ld. Adjudicating authority has not expressed clear findings and used phrases like "appears to be case of" and "appears to be liable for confiscation". Hence, these observation clearly lack any definite findings by Ld. Adjudicating authority and hence confiscation is required to be set aside. In fact in the operative portion of the order under heading **ORDER**, Ld. Adjudicating authority has not given order for confiscation in terms of Section 111(m) of the Customs Act, 1962. Hence, penalty under Section 112(a)(ii) of the Customs Act, 1962 would not sustain in law.*

*6.2 Further, without prejudice to above submission, appellant says and submits that in the present case, there is no allegation that the goods in question did not match with the description given in the Bill of Entry for import. We say this because, the entire case of department is that the classification of product 'Plastisol PVC Compound' should be under CETH 39042200 instead of CETH 38122090 of First Schedule of Custom Tariff Act, 1975. Hence, there is no dispute as to the product was 'Plastisol PVC Compound' as declared in the BoE. Hence, no allegation of goods not matching the description of the goods. There is a difference between mis-declaration and mis-classification. Without prejudice to our claim of goods having been correctly classified, we humbly submit that the present case at best can be that of mis-classification and not mis-declaration as there is no dispute as to the description of goods in question. Hence, invoking of provision of Section 111(m) of the Customs Act, 1962 is out of place and not legally tenable. In this regard, we intend to rely on the judgment of Hon'ble Tribunal in case of **SIRTHAI SUPERWARE INDIA LTD. Vs COMMR. OF CUSTOMS, NHAVA SHEVA-III [2020 (371) E.L.T. 324 (Tri. - Mumbai)]**.*

6.3 Further, Noticee also wishes to contest proposal of confiscation of goods as it is trite law that no confiscation of goods can be ordered, no redemption file can be imposed on the goods, which have not been seized. In the present case, admittedly, there has not been any seizure of goods at the time of import. In this regard, Noticee wishes to rely on following case laws:

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*(i) **SHIV KRIPA ISPAT PVT. LTD. Vs COMMISSIONER OF C. EX. & CUS., NASIK [2009 (235) E.L.T. 623 (Tri. – LB]***

*(ii) **CHINKU EXPORTS Vs COMMISSIONER OF CUSTOMS, CALCUTTA [1999 (112) E.L.T. 400 (Tribunal)]***

6.4 In light of above case law proposals for confiscation under Section 111(m) and consequential penalty under Section 112(a)(ii) of the customs Act, 1962 is not sustainable in law.

7. Further, regarding imposition of penalty under Section 114AA, Ld. Adjudicating authority has not given any concrete or definite reasons.

7.1 Appellant further humbly submits that Proposal for penalty under Section 114AA of the Customs Act, 1962 also is not sustainable in law.

*7.2 As has been submitted herein above, there was no false or incorrect declaration made in the Bill of entries for import. Entire dispute is only regarding classification of goods in question. Further, In the entire Show Cause Notice, there is nothing to suggest that declaration or document or statement was made intentionally or deliberately. To prove charge or intentional or deliberate act, department must have carried out investigation, which is beyond the documents submitted, which in present case department has failed to substantiate. In this regard, Noticee wishes to rely on judgment of Hon'ble Tribunal in case of **LEWEK ALTAIR SHIPPING PVT. LTD. Vs COMMISSIONER OF CUS., VIJAYAWADA [2019 (366) E.L.T. 318 (Tri. - Hyd.)]**.*

PERSONAL HEARING:

4. In pursuance of principles of Natural Justice, Personal hearing in the above appeal was held on 11.12.2025, in virtual mode. The appellant appeared and attended for the hearing and re-iterated the submission made at the time of filing the appeal. During the PH he requested to file additional submissions in the matter. The appellant has also filed additional submissions in the form of a synopsis, which are largely repetition of the submissions already made in the appeal memorandum.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the impugned order passed by the adjudicating authority and the defence reply/appeal filed by the appellant in the appeal memorandum and additional submission. Upon perusal of the aforesaid records and documents, the primary issue that arises for consideration is whether the adjudicating authority was justified in rejecting the classification claimed by the appellant for the

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imported goods under CTH 3812 2090 and instead classifying & confirming under CTH 3904 2200, and whether such determination and finding is fair, reasonable, and legally sustainable in the facts and circumstances of the case.

5.1 Before going into the merits of the case, it is observed from the Form C.A.-1 that the impugned order dated 10.01.2025 is shown to have been received on 16.01.2025 and that the present appeal has been filed on 12.03.2025. Accordingly, the present appeal has been filed within the normal period of 60 days prescribed for filing an appeal under Section 128(1) of the Customs Act, 1962.

5.2 With respect to the requirement of mandatory pre-deposit for filing the appeal, it is observed that the appellant has paid the mandatory pre-deposit of Rs. 16282/- vide Challan No. 3723646791 dated 07.03.2025 as required under Section 129E of the Customs Act, 1962. Further, one set of the appeal was forwarded to the adjudicating authority, i.e., AC, ICD-Dashrath, Customs, Dashrath, Vadodara, vide letter dated 03.04.2025 for seeking comments and verification of the submissions made by the appellant. However, no response has yet been received from the Adjudicating Authority. In the absence of a rebuttal or verification report, the arguments presented by the appellant remain unrebutted on the record; accordingly, they are taken into account and the matter is decided on the merits.

6. I find that the appellant filed 13 Bills of Entry (details given in Table-A) for import of "Plastisol PVC Compound" by classifying the goods under CTH 3812 20 90, attracting BCD @ 7.5%, SWS @ 10% and IGST @ 18%. During audit by the Indian Audit and Accounts Department (IA&AD), Ahmedabad, vide LAR No. 06/2023-24 dated 31.05.2023, it was observed that the said goods are more appropriately classifiable under CTH 3904 22 00, attracting higher BCD @ 10%. Accordingly, a differential duty of Rs. 2,17,090/- was intimated to the appellant. The appellant, vide letter dated 20.09.2023, contended that the impugned goods are "compound plasticisers" and not mere polymers of vinyl chloride, and therefore are not classifiable under Chapter 39. It was argued that Heading 3904 applies only to polymers in primary form and does not cover compounded products like plastisol. However, the department held that plastisol is a dispersion of PVC resin in plasticiser, falling within the scope of "primary forms" as defined under Chapter Note 6 to Chapter 39, which includes liquids, pastes and dispersions even when mixed with additives. It was further observed that Heading 3812 covers only plasticisers as such

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and excludes polymers of Chapter 39. Accordingly, the goods were held classifiable under CTH 3904 22 00 as plasticised PVC mixed with other substances. The SCN dated 12.01.2024 was issued which was adjudicated by the adjudicating authority vide impugned order confirming classification of the imported goods under CTH 3904 2200 and demand of differential Customs duty alongwith interest and penalty on the appellant.

6.1 I have carefully gone through the impugned order passed by the adjudicating authority and find that the same suffers from serious infirmities, both on facts and in law. It is observed that no cogent or substantive evidence has been brought on record to justify the reclassification of the impugned goods under CTH 3904 22 00. The impugned order does not disclose any detailed examination of the nature, composition or technical characteristics of the goods so as to conclusively establish that the product merits classification under Chapter 39. Further, the reasoning adopted by the adjudicating authority appears to be merely assertive and lacks analytical discussion with reference to the relevant Chapter Notes, HSN Explanatory Notes and settled principles of classification.

6.2 I also find that the submissions, explanations and justifications put forth by the appellant in response to the Show Cause Notice, as well as during the course of personal hearing, have not been duly considered or dealt with in the impugned order. The appellant had specifically raised contentions regarding the distinction between compound plasticisers and polymers, the scope of Heading 3812 vis-à-vis Heading 3904, and had also relied upon judicial pronouncements in support of their claim; however, there is no discussion, rebuttal or finding on these aspects in the order. The adjudicating authority has failed to record reasons as to why the classification claimed by the appellant under CTH 3812 20 90 was not acceptable.

6.3 It is further observed that the impugned order does not clearly bring out the basis or rationale for arriving at the classification under CTH 3904 22 00. There is an absence of reasoned findings demonstrating how the goods satisfy the conditions of "primary forms" under Chapter Note 6 to Chapter 39, or how the essential character of the goods has been determined. The order, therefore, lacks a proper appreciation of facts and applicable legal provisions.

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6.4 I find that the appellant also in his appeal has put forth the fact that the adjudicating authority has miserably failed to even discussion the submission and case laws in favour of them in the impugned order. Further, the appellant contested that their submission on invocation of extended period on the grounds of suppression of facts have also not been discussed in the impugned order.

6.5 In view of the above, it is evident that the impugned order has been passed without due consideration of the material available on record and without assigning proper and reasoned findings on the issues involved. Such an order is not sustainable in law, being violative of the principles of natural justice, as it fails to consider the submissions of the appellant and does not disclose the reasoning for arriving at the conclusion. Accordingly, the matter warrants reconsideration by the adjudicating authority after affording proper opportunity to the appellant and passing a speaking order dealing with all submissions and evidences on record. Thus, the appeal is allowed and the matter is remanded to the adjudicating authority to examine the appellant's submission and case laws and to pass a fresh speaking order in accordance with law, after granting reasonable opportunity of hearing to the appellant.

6.7 In this regard, I rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs – 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962. Accordingly, the present remand of the matter to the Adjudicating Authority is in consonance with the above judicial pronouncements.

7. In view of the foregoing discussions and findings, it is observed that the impugned order has been passed without proper appreciation of facts, evidences and legal provisions, and without duly considering the submissions and case laws relied upon by the appellant, thereby rendering the order non-speaking and unsustainable in law. Accordingly, the appeal is allowed by way of remand.

The matter is remanded to the adjudicating authority for fresh adjudication, with a direction to examine the issue afresh in the light of the submissions, evidences and judicial pronouncements placed on record by the appellant, and in accordance with the relevant provisions of law. The adjudicating authority shall pass a reasoned and speaking order, after granting adequate opportunity of personal hearing to the appellant and following the principles of natural justice.

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD

F. No. S/49-318/CUS/AHD/2024-25 Dated: 30.03.2026

By email (as per Section 153(1)(c) of the Customs Act, 1962)

M/s Natroyal Industries Pvt Ltd.,
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District-Panchmahal, Gujarat-389 350

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Copy to:

1.The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)
2.The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in).
3. The Assistant Commissioner of Customs, ICD – Dashrath, Village-Dashrath, Vadodara. (Email: icdcustoms-dashrath@gov.in cusdashrath@rediffmail.com)
4 Shri Dhruvank Parikh, CA on behalf of M/s Natroyal Industries Pvt Ltd., Panchmahal. (dhruvank.parikh@nareshandco.com)
5.Guard File.