
		<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</b> <b>CUSTOMS HOUSE, MP &amp; SEZ</b> <b>MUNDRA, KUTCH-GUJARAT -370421</b> <b>Email Id: Group2-mundra@gov.in</b>	 <b>सत्यमेव जयते</b>
<b>A</b>	<b>File No.</b>	<b>GEN/ADJ/ADC/371/2025-Adjn-O/o Pr Commr-Cus-Mundra</b>	
<b>B</b>	<b>OIO No.</b>	<b>MCH/ADC/ZDC/581/2025-26</b>	
<b>C</b>	<b>Passed by</b>	<b>Sh. Dipak Zala, Additional Commissioner of Customs (Import Assessment), Custom House, Mundra</b>	
<b>D</b>	<b>Date of order</b>	<b>.01.2026</b>	
<b>E</b>	<b>Date of Issue</b>	<b>.01.2026</b>	
<b>F</b>	<b>SCN F. No. &amp; Date</b>	<b>CUS/APR/BE/79/2025-Gr 2-O/o Pr Commr-Cus-Mundra dated 28.01.2025</b>	
<b>G</b>	<b>Noticee / Party/ Importer</b>	<b>M/s. N. V. OVERSEAS (IEC-AAHPB1682Q), KHASRA NO. 100/19 , NEAR SURYA DHARAMKANTA, VILLAGE ALIPUR , DELHI , NORTH WEST DELHI, DELHI, 110036</b>	
<b>H</b>	<b>DIN</b>	<b>20260171MO00008185E5</b>	

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- 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 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**सीमा शुल्क आयुक्त (अपील),**  
**चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,**  
**नवरंगपुरा, अहमदाबाद-380 009**  
**THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**  
**4<sup>th</sup> Floor, HUDCO Building, Ishwar Bhuvan Road,**  
**Navrangpura, Ahmedabad-380 009**

3. उक्त अपील यह आदेश भेजने की दिनांक से 3 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 पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
- Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –
- (i) उक्त अपील की एक प्रति और  
A copy of the appeal, and
- (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।  
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।  
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।  
An appeal against this order shall lie before the Commissioner (A) 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. N. V. OVERSEAS (IEC-AAHPB1682Q), KHASRA NO. 100/19 , NEAR SURYA DHARAMKANTA, VILLAGE ALIPUR , DELHI , NORTH WEST DELHI, DELHI, 110036** (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 has been noticed that the importer had mis-classified the goods under different CTH 39201099, 39202090, 39206919 & 39207119 and paid duty @ **30.980%** (BCD @ 10% + SWS @ 10% + IGST @ 18%) instead of the correct classification under CTH 39209999, which attracts a duty @ **37.470%** (BCD @ 15% + SWS @ 10% + IGST @ 18%).

**The Heading 3920 of Customs Tariff is reproduced below:**

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

392099	-	<i>Of other plastics:</i>			
<b>39209999</b>	--	<b>Other</b>	<b>15%</b>	<b>1.5</b>	<b>18%</b>

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

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

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

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

*(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall*

*be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.*

*(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical*

*order among those which equally merit consideration.*

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

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

6. Thus, the importer had wrongly classified the goods under CTH 39201099, 39202090, 39206919, and 39207119, resulting in the underpayment of Basic Customs Duty (BCD) at 10% instead of the applicable rate of 15%. This misclassification appears to have been made deliberately in an attempt to evade payment of the differential BCD of 5% and SWS & IGST thereon. Therefore, the importer is liable for payment of an additional duty of Rs. **94,819/-**, as detailed in Annexure-A of the SCN.

## **7. RELEVANT LEGAL PROVISIONS**

### ***Provisions of Customs Act, 1962***

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

*short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason of collusions or any wilful mis-statement or suppression of facts,-*

*(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-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:*

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

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

*(i) his own ascertainment of such duty; or*

*(ii) the duty ascertained by the proper officer,*

*the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid:*

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

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

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

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

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

*iv. In terms of section 28AA(1) of the Customs Act, 1962, notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

*v. In terms of section 46(4) of the Customs Act, 1962, the importer while presenting a bill of entry shall make and subscribe to a declaration*

*as to the truth of the contents of such bill of entry and shall, in*

*support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.*

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

*(a) the accuracy and completeness of the information given therein;*

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

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

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

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

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

*viii. In terms of section 112 of the Customs Act, 1962: - 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*
- b. who acquires possession of or is in any way concerned in carrying,*

*removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

*shall be liable to penalty...*

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

...

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

*where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful 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 3 [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:*

.....

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

9. Accordingly, **M/s. N. V. OVERSEAS (IEC-AAHPB1682Q), KHASRA**

**NO. 100/19 , NEAR SURYA DHARAMKANTA, VILLAGE ALIPUR , DELHI , NORTH WEST DELHI, DELHI, 110036**, were called upon to show cause to **the Additional Commissioner of Customs (Import Assessment), Custom House, Mundra**, having office at 5B, First Floor, PUB Building, Adani Port, Mundra, as to why:

- i. The assessment in respect of Bills of Entry as mentioned in Annexure-A should not be rejected and the same should not be re-assessed under CTH 39209999;
- ii. The short payment of Basic Customs Duty amounting to **Rs. 94,819/-** (Rupees Ninety Four Thousand Eight Hundred and Nineteen 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;

#### **10. DEFENCE SUBMISSION & PERSONAL HEARING:**

The importer was granted sufficient opportunities of personal hearing on 04.08.2025, 02.09.2025 and 17.09.2025. However, the importer neither appeared nor filed any written submissions. Accordingly, the case is being adjudicated **ex parte** on the basis of available records.

## 11. DISCUSSION AND FINDINGS:

**11.1.** I have gone through the Show Cause Notice, audit observations, and case records. Despite being given sufficient opportunities of hearing, the noticee has not availed the same. Therefore, I find that in the instant case, adequate opportunities have been provided to the importer to respond to the impugned demand notice. However, the importer has failed to file any defence, despite a considerable amount of time having been passed. I find that the importer failed to avail themselves of the opportunities for personal hearings provided to defend their case. Neither the noticee nor the authorized representative appeared for the personal hearing on any of the three dates given to present their case, nor have they submitted any reply to the allegations mentioned in the impugned Show Cause Notice (SCN). Thus, I find that sufficient time and opportunity have been given to the noticee, and therefore, the principles of natural justice have been complied with. I am of the considered opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

**11.2.** Before proceeding further, I bring it to attention that the Hon'ble Supreme Court, Hon'ble High Courts, and Tribunals, in several judgments/decisions, have held that an ex-parte decision does not amount to a violation of the principles of natural justice when sufficient opportunities for personal hearing have been provided to defend the case.

In support of the same, I rely upon the following judgments/orders as under:

- a) The Hon'ble Supreme Court in the matter of **Jethmal Versus Union Of India Reported In 1999 (110) E.L.T. 379 (S.C.)**, the Hon'ble Court has observed as under;

“ Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram

partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

- b) Hon’ble High Court of Kerala in the case of **United Oil Mills Vs. Collector Of Customs & C. Ex., Cochin Reported In 2000 (124) E.L.T. 53 (Ker.)**, the Hon’ble Court has observed that: “Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated”
- c) Hon’ble High Court of Calcutta in the case of **Kumar Jagdish Ch. Sinha Vs. Collector Of Central Excise, Calcutta Reported In 2000 (124) E.L.T. 118 (Cal.) In Civil Rule No. 128 (W) Of 1961**, decided on 13-9-1963, the Hon’ble Court has observed that: “ Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend,

inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]"

- d) Hon'ble High Court of Delhi in the case of **Saketh India Limited Vs. Union Of India Reported In 2002 (143) E.L.T. 274 (Del.)**. The Hon'ble Court has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992. "

- e) **The Hon'ble CESTAT, Mumbai in the case of Gopinath Chem Tech. Ltd Vs. Commissioner Of Central Excise, Ahmedabad-II Reported In 2004 (171) E.L.T. 412 (Tri. - Mumbai), the Hon'ble CESTAT** has observed that; "Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]"

- f) The Hon'ble High Court of Jharkhand in **W.P.(T) No. 1617 of 2023 in case of Rajeev Kumar Vs. The Principal Commissioner of Central Goods and Service Tax & The Additional Commissioner of Central GST & CX**, 5A Central Revenue Building, Main Road, Ranchi pronounced on 12.09.2023 wherein Hon'ble Court has held that-

“Accordingly, we are of the considered opinion that no error has been committed by the adjudicating authority in passing the impugned Order-in-Original, inasmuch as, enough opportunities were provided to the petitioner by issuing SCN and also fixing date of personal hearing for four times; but the petitioner did not respond to either of them. 8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to appreciate the contention of the petitioner that principle of natural justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in the Act itself, we hold that the instant writ application is not maintainable. 9. As a result, the instant application stands dismissed. Pending I.A., if any, is also closed.”

**11.2.1.** Hence, I proceed with the ex-parte finalization of the adjudication proceedings, based on the facts and evidence available on record.

**11.3.** In the instant case, I find that the main issues that are to be decided are:

- 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 ₹**94,819/-** is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.
- iii. Whether the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.
- iv. Whether penalty is imposable upon the importer under Section 114A of the Customs Act, 1962.

**11.4.** I find from available records that the importer, **M/s. N. V.**

**OVERSEAS (IEC-AAHPB1682Q)**, filed various Bills of Entry declaring the goods as “*Stock lot of printed/unprinted plastic packaging material/rolls in mix size and 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**. For assessment, they discharged duty @ **30.980%** (BCD 10% + SWS 10% + IGST 18%). However, on careful scrutiny, I find that these headings are specific to polymers of ethylene, propylene, polyesters, and cellulose respectively, whereas the importer failed to provide any evidence or description matching those specifications. Instead, they merely declared generic descriptions. As per Rule 3 of the General Rules for Interpretation of Import Tariff, where goods cannot be specifically classified, they are to be classified under the last applicable heading. Hence, the goods are correctly classifiable under **CTH 39209999 – Other plastics**. Their declaration was factually incorrect and legally impermissible. By mis-declaring the classification, they misled the Department into assessment at a lower duty rate.

**11.5.** I observe that classification under the Customs Tariff Act must be done strictly based on description and composition of the goods. In this case, the importer neither furnished laboratory reports nor documentary evidence to substantiate the claimed classification under 392010, 392020, 392069, or 392071. Therefore, the reliance on these headings was incorrect. As per the settled law, where specific description is absent, goods fall under the residual entry. Accordingly, the correct classification is under **CTH 39209999**, attracting **BCD @ 15%**, **SWS @ 10%** of BCD, and **IGST @ 18%**, i.e., total effective duty of **37.470%**, instead of 30.980% wrongly applied.

**11.6.** I find that the importer, by adopting incorrect classification, discharged duty at the effective rate of **30.980%** instead of the correct **37.470%**. This deliberate misstatement has resulted in short levy of Customs Duty amounting to **₹94,819/-** on an assessable value of the

imported goods as detailed in Annexure A to the SCN. The computation of differential duty, as brought out in the SCN, has been verified and found correct.

**11.7.** I observe that Section 17 of the Customs Act, 1962, governs self-assessment and casts a statutory obligation on the importer to correctly assess and discharge customs duty. This responsibility is not contingent upon departmental intervention. In addition, Section 46(4) of the Act specifically mandates that an importer, while presenting a Bill of Entry, shall make and subscribe to a declaration as to the truth of the contents. Therefore, any misrepresentation or suppression in the declaration, especially with regard to classification, directly attracts penal consequences under the Act. In the present case, the importer, by misclassifying the goods under incorrect headings, failed in their legal responsibility.

**11.8.** I observe that '*Ignorantia Juris Non Excusat*' is an important principle in law, which dictates that the legal system assumes that laws are publicly accessible, and individuals have a duty to exercise due diligence in understanding and complying with the law. Thus, it is a responsibility of individuals to know and follow the law, regardless of whether they were aware of the law or not. In other words, a person cannot avoid liability by claiming that they did not know the law.

**11.9.** In this connection, I observe that the burden to prove the correctness of classification is on the importer; and that classification and exemption provisions are subject to strict interpretation. I place reliance upon the following relevant legal pronouncements:

- **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai** [2009 (234) ELT 389 (SC)] – burden was on the appellant to prove that the appellant satisfied the terms and conditions of the claimed classification/exemption.
- **Krishi Upaj Mandi Samiti v. CCE** [2022 (58) GSTL 129 (SC)] – interpretation of taxing statute must follow plain language and strict

interpretation.

- **Uttam Industries Vs. CCE** [2011 (265) ELT 14 (SC)] – exemption notifications and tariff headings must be strictly construed, literally applied.
- **Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Co.** [2018 (3327 SC)] – Constitutional Bench held that benefit of ambiguity in exemption/interpretation cannot go to the assessee; it must be interpreted in favour of Revenue.

Relevant para of Dilip Kumar judgment reads:

*“41. ... every taxing statute including charging, computation and exemption clauses should be interpreted strictly. Further, in case of ambiguity in a charging provision, the benefit must necessarily go in favour of the subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.”*

**11.10.** Hence, from the above discussions, I find that the claim of classification made by the importer cannot be brushed aside as an inadvertent error. The goods in question are undisputedly generic “stock lot packaging plastic materials,” which do not conform to the specific headings under 3920. The wording of the tariff was unambiguous and such generic materials were clearly covered under the residual heading 39209999. Therefore, it is evident that the importer was fully aware of the ineligibility but still went ahead and claimed undue benefit by declaring them under more concessional headings. Such conduct clearly amounts to willful misstatement and suppression of facts, squarely attracting the extended period of limitation under Section 28(4) of the Customs Act, 1962.

**11.11.** In view of the foregoing, I hold that the importer is liable to pay the differential duty of **₹94,819/-** under Section 28(4) of the Customs Act, 1962. In terms of Section 28AA, the importer is further liable to pay interest on the said amount from the date it became due till the date of

actual payment. The statutory liability of interest is automatic and compensatory in nature, and no separate mens rea is required for such demand.

### **CONFISCATION AND REDEMPTION FINE:**

**11.12.** I find that the Show Cause Notice proposes confiscation of goods under the provisions of Section 111 (m) of the Customs Act, 1962. I find that the said section provides that, “any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, or in respect of which any material particular has been mis-declared in the Bill of Entry or other document, shall be liable to confiscation”. Thus, any incorrect or false declaration of material particulars such as description, classification, or value, attracts confiscation of the goods imported under such declaration.

**11.13.** I find from the case records that the importer while filing the impugned Bill of Entry declared the imported goods with generic description ““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. I find that this false declaration of description and classification is not a bonafide mistake but an intentional mis-declaration of a material particular within the meaning of Section 111(m) of the Customs Act, 1962 which was done to avail benefit of concessional rates of customs duty by defrauding the government exchequer. These acts and omissions at the end of the importer has rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962.

**11.14.** In view of the above, **I hold that the goods imported** valued at **₹14,61,005/- (as per SCN Annexure A) are liable for confiscation under Section 111(m) of the Customs Act, 1962.**

### **IMPOSITION OF REDEMPTION FINE:**

**11.15.** I find that goods are liable for confiscation under Section 111(m) 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 impugned goods as alleged vide subject SCN. The Section 125 (1) ibid reads as under:-

**“Section 125. Option to pay fine in lieu of confiscation.—(1)** *Whenever confiscation of any goods is authorized 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.”*

**11.16.** I note that the goods in question which are proposed to be confiscated were already cleared and the same are not available physically for confiscation. Thus, **I refrain from imposing redemption fine in respect of goods imported under the impugned bill of entry.**

**11.17.** In view of the foregoing discussion, I find that the importer had misclassified the said imported goods resulting in short levy of duty. For such acts/omissions, the importer has rendered themselves liable for penal action under Section 114A of the Customs Act, 1962.

**12.** In view of above discussions and findings supra, I pass the following order.

### **ORDER**

(i). I reject the classification declared by the importer under CTH

39201099, 39202090, 39206919 & 39207119, and hold that the goods are correctly classifiable under **CTH 39209999** of the Customs Tariff Act, 1975.

(ii). I order to confiscate the goods having assessable value of ₹ **14,61,005/- (Rupees Fourteen Lakhs Sixty One Thousand and Five only) (as per Annexure A of SCN)** under Section 111(m) of the Customs Act, 1962. I also note that the goods have already been cleared and are not available physically for confiscation; however, as noted above, since the goods are not physically available for confiscation, I do not impose any redemption fine in lieu of such confiscation.

(iii). I order to demand and recover the short-levied duty amounting to ₹ **94,819/- (Rupees Ninety Four Thousand Eight Hundred and Nineteen only)** from the importer under Section 28(4) of the Customs Act, 1962.

(iv). I order to demand and recover interest at the appropriate rate on the short-paid duty of ₹ **94,819/-** under Section 28AA of the Customs Act, 1962.

(v). I order to impose penalty of ₹ **94,819/- (Rupees Ninety Four Thousand Eight Hundred and Nineteen 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.

**13.** 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.

**14.** The Show Cause Notice issued vide CUS/APR/BE/79/2025-Gr 2-O/o

Pr Commr-Cus-Mundra dated 28.01.2025 stands disposed of in above terms.

Encl: Annexure-‘A’

**Dipak Zala,**  
**Additional Commissioner of**  
**Customs (Import Assessment), Custom**  
**House, Mundra**

To,

**M/s. N. V. OVERSEAS (IEC-AAHPB1682Q),**  
**KHASRA NO. 100/19 , NEAR SURYA DHARAMKANTA, VILLAGE**  
**ALIPUR , DELHI , NORTH WEST DELHI, DELHI, 110036**

Copy to:-

1. The Addl. Commissioner (PCA), Custom House, Mundra.
2. The Assistant Commissioner (RRA/TRC/EDI), Custom House, Mundra.
3. Guard File

**Annexure-A**

BE No	BE Date	Assessable Value	Revised total Duty (BCD:15%, SWS:10% & IGST:18%)(in Rs.)	Total Duty as declared (BCD:10%, SWS:10% & IGST:18%)(in Rs.)	Duty Recoverable
7091516	03-03-2020	7,04,618.78	2,64,020.66	2,18,290.90	45,729.76
7091563	03-03-2020	7,56,386.69	2,83,418.09	2,34,328.60	49,089.50
		<b>14,61,005.47</b>	<b>5,47,438.75</b>	<b>4,52,619.50</b>	<b>94,819.26</b>