सीमा शुल्क के आयुक्त का कार्यालय
सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात
OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62,
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A. File No.	:	GEN/ADJ/COMM/20/2025-Adjn-O/o Pr Commr-Cus Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-51-25-26
C. Passed by	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	07.01.2026 07.01.2026
E. SCN No. & Date	:	F. No. GEN/ADJ/PCA/499/2024-Gr.2 dated 08.01.2025.
F. Noticee(s) / Party / Importer	:	M/s ABN Global Exim
G. DIN	:	20260171MO000000A5EC

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 सीए3-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 -/ 1000रूपये 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 ABN Global Exim, Plot No. 615, A-Block, Near Teleco Se Village Rangpuri, Mahipalpur, New Delhi-110037 (IEC -CYTPK5323B) (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 Entryfiled 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:

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 is observed that the importer failed to provide specificdescriptions 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 SubHeadings 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 isreproduced 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 bepreferred 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 excessivelygeneric 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. 53,16,555/-, as detailed in Annexure-A.

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, partpaid 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-pad 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 prenotice 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 dutyhas 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 importerwhile 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 importerwho 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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

viii. In terms of section 112 of the Customs Act, 1962: - Penalty forimproper 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 misstatement 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. therefore, **M/s ABN Global Exim,** Plot No. 615, A-Block, Near Teleco Se Village Rangpuri, Mahipalpur, New Delhi-110037 having IEC: CYTPK5323B, were called upon to show cause to **the Pr. Commissioner of Customs**, 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.53,16,555/** (Rupees Fifty Three Lakh Sixteen Thousand Five Hundred and Fifty 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;

10. PERSONAL HEARING

Following the principle of natural justices and the provisions laid down in the Customs Act,1962, Opportunities of personal hearing in the case were given to the noticee on 15.12.2025, 22.12.2025 and 01.01.2026.

10.1 1st PH on 15.12.2025:-

No one appeared in the personal hearing fixed on 15.12.2025.

10.2 2nd PH on 22.12.25.

No one appeared in the personal hearing fixed on 22.12.2025.

10.3 3rd PH on 01.01.26

Ms. Priyanka Goel, Advocate appeared through vedio conference before me on 01.01.2026 on behalf of Noticee i.e. M/s ABN Global Exim (IEC-CYTPK5323B She reiterated the submissions and contentions already placed in their written reply dated 29.12.25 .

WRITTEN SUBMISSION

11. M/s. ABN Global Exim vide their submission dated 29.12.2025, interalia, submitted that-

(i) That the goods imported by it were correctly classified at the time of import under the relevant specific tariff sub-headings and that the subsequent proposal of the Department to reclassify the goods under CTH 39209999 pursuant to a post-audit objection is erroneous. It is therefore submitted that the Noticee is not liable to pay any differential duty in respect of the said imports.

(ii) That the Department has failed to appreciate that CTH 39209999 is only a residuary entry covering "others" and is intended to apply exclusively to goods that are not classifiable under any of the specific sub-headings of CTH 3920. The impugned goods clearly fall within the ambit of specific sub-headings such as 39201099, 39202090, 39206919 and 39207119 and were accordingly and correctly classified by the Noticee, having regard to their nature, characteristics and intended use.

(iii) That the proposed reclassification has been resorted to without any technical examination, testing, market-parlance verification or expert opinion. It is settled law that commercial identity and understanding in market parlance are relevant considerations for deciding classification. However, no such exercise has been undertaken in the present case and the entire proposal rests merely on audit observations, rendering the reclassification legally unsustainable.

(iv) That CTH 3920 contains as many as twenty distinct sub-headings precisely carved out for specific categories of plastic materials. The classification adopted by the Noticee falls within these specific entries and the allegation that the goods were "generic in nature" is misconceived and factually untenable. Merely describing the goods as "stock lot/leftover stock lot of plastic packaging material in mixed size and GSM" does not alter their essential character or classification.

(v) That the goods were subjected to examination by the Customs officers, including in several cases 100% examination, before grant of Out-of-Charge. Assessment was completed after due verification of description, nature and usage. When goods have already been examined and cleared on the same set of facts, the subsequent proposal demanding differential duty on the basis of a change of opinion is ex facie untenable.

(vi) That Under Section 17 of the Customs Act, assessment or reassessment is required to be undertaken by the proper officer at the time of clearance after examination of the goods and verification of classification, description and value. In the present case, the proper officer had duly assessed and cleared the goods after due application of mind. Re-opening of such finalized assessments is not permissible merely on reinterpretation of classification without fresh evidence.

(vii) It is settled law that finalized assessment cannot be indirectly reopened on a mere change of opinion. Reliance is placed on Priya Blue Industries Ltd. v. Commissioner of Customs [2004 (172) ELT 145 (SC)] and ITC Ltd. v. CCE [2019 (368) ELT 216 (SC)], wherein it has been categorically held that an assessment

order attains finality unless set aside through the prescribed legal mechanism and cannot be questioned collaterally in subsequent proceedings.

(viii) That The Hon'ble CESTAT in Hindustan Lever Ltd. v. Commissioner of Customs [2005 (189) ELT 434 (Tri.-LB)] has consistently held that post-clearance demands solely on reinterpretation of classification, when all relevant material was before the Department at the time of assessment, are impermissible. Applying the same principle, the present Show Cause Notice is liable to be dropped.

(ix) That Rule 3(a) of the General Rules for Interpretation of the Tariff mandates that specific descriptions prevail over general descriptions. Rule 3(c) is only residuary, applicable where classification under Rule 3(a) or 3(b) is not possible. Here, the goods are clearly identifiable and classifiable under specific headings and, therefore, resort to the residuary heading CTH 39209999 is contrary to the interpretative rules and legally unsustainable.

(x) That the allegation that the Noticee intentionally misclassified the goods with intent to evade differential Basic Customs Duty is baseless, presumptive and unsupported by any evidence. During 2020-2023, the Noticee filed 143 Bills of Entry, all subjected to scrutiny and examination, both documentary and physical, and cleared only after verification by proper officers. In such circumstances, allegation of suppression or intent to evade duty is wholly untenable.

(xi) That the extended period under Section 28(4) has been wrongly invoked. It is settled law that extended limitation applies only in cases of collusion, wilful misstatement or suppression of facts with intent to evade duty, none of which exist here. A mere change in opinion on classification arising from post-clearance audit does not constitute suppression. Reliance is placed on the following judgments:

- M/s Uniworth Textiles Ltd. v. CCE, Raipur, 2013 (1) TMI 616 – Supreme Court
- Principal Commissioner of Customs (Import), ACC, Andheri v. Signet Chemicals Pvt. Ltd., 2022 (9) TMI 1014 – Bombay High Court

- Innovative Incentive and Events Pvt. Ltd. v. CCE & CGST, Chandigarh, 2024 (9) TMI 698 – CESTAT Chandigarh

(xii) Applying these judgments, the Show Cause Notice clearly fails to satisfy statutory conditions of Section 28(4) and invocation of the extended period is therefore illegal and liable to be set aside.

(xiii) Confiscation under Section 111(m) is also unsustainable as the goods are no longer physically available. Confiscation presupposes existence and availability of goods for seizure. Reliance is placed on:

- Crafts Studio v. CCE Jaipur [2004 (163) ELT 109]
- Mahalaxmi International Export v. CC [2004 (169) ELT 68 (Tri.-Del.)]
- Shiv Kripa Ispat Ltd. v. CCE & Cus., Nasik [2009 (235) ELT 623 (Tri.-LB)]

(xiv) The allegation that the Noticee acted deliberately or omitted any statutory obligation lacks factual foundation. The classification was assessed and accepted by the Department itself. Support is drawn from Lewak Altair Shipping Pvt. Ltd. v. Commissioner of Customs, Vijayawada [2019 (366) ELT 318 (Tri.-Hyd.)] and Northern Plastic Ltd. v. CCE [1998 (101) ELT 549 (SC)], holding that when classification has been accepted by Customs, penal intent cannot be inferred merely on interpretation dispute.

(xv) Penalties under Sections 112 and 114A are unwarranted as prerequisite elements such as wilful misstatement, suppression or act rendering goods liable to confiscation are absent. Reliance is placed on Pathange & Co. v. Commissioner of Customs [Customs Appeal No. 1346 of 2011] and GKB Ophthalmics Ltd. v. CCE & Cus., Goa [2018 (364) ELT 266 (Tri.-Mumbai)], wherein it has been held that penalty cannot be imposed when ingredients of Section 111 are not satisfied. Consequently, proposal for interest under Section 28AA also fails as there is no valid demand of duty.

(xvi) In view of the above facts, legal submissions and settled judicial precedents, it is respectfully submitted that the impugned Show Cause Notice proposing reclassification, differential duty demand, confiscation, interest and

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penalties is misconceived, barred by limitation, devoid of evidentiary support and unsustainable in law, and therefore deserves to be dropped in toto.

DISCUSSION AND FINDINGS-

12. I have carefully gone through the Show Cause Notice dated 08.01.2025, written submission dated 29.12.2025 and all the evidences placed on record.

13. The issues which require adjudication in the present matter are as under:

(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.53,16,555/- 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 112 or 114A of the Customs Act, 1962.

14. The importer, M/s ABN Global Exim, has filed various Bills of Entry (as detailed in Annexure-A) 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.

14.1 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%

14.2 The importer 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 28.02.2025 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.

15. 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.

15.1 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.

15.2 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.

15.3 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.

16. 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.53,16,555/- 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 to be correct.

DISCUSSION ON SUBMISSION OF THE IMPORTER-

17.1 The Noticee contended that the subject goods were correctly classified under various specific sub-headings of CTH 3920 at the time of import and that the Department's proposal to reclassify them under CTH 39209999 as a residuary entry is erroneous. I find no force in the Noticee's contention. It is observed that the goods were described as "stock lot/leftover stock lot of plastic packaging material in mixed size and GSM." Such a description indicates a lack of uniformity and specific characteristics required to qualify under the precise sub-headings claimed by the Noticee. When goods are imported as a miscellaneous "stock lot" of varying specifications, they lose the individual identity required for specific classification. Therefore, the Department has rightly invoked CTH 39209999, which is specifically designed to capture plastic articles that do not strictly conform to the criteria of the preceding specific entries.

17.2 The Noticee further argued that the reclassification is legally unsustainable as it was proposed without technical examination or expert opinion, relying solely on audit observations. I am unable to accept this plea. Classification under the Customs Tariff is primarily governed by the General Rules for Interpretation (GRI) and the Section/Chapter Notes. The description provided by the Noticee in the Bills of Entry—specifically the admission of the

goods being "mixed size and leftover stock"—is a self-declared fact that obviates the need for further technical testing. The audit objection is not a mere "change of opinion" but a correction of a patent misclassification based on the Noticee's own declarations.

17.3 The noticee has contended that since the goods were physically examined by the Customs officers at the port, and were also subject to X-Ray scanning, therefore, the allegations of mis-classification made in the Show Cause Notice are unsustainable. I find that this contention is not acceptable. It is an admitted position that the goods were examined and the Bills of Entry were assessed by the proper officer at the time of import. However, such examination and assessment were necessarily undertaken on the basis of the particulars declared by the importer in the Bills of Entry and accompanying documents. Physical examination and X-ray scanning at the time of clearance are primarily intended to verify the identity, quantity and general nature of the goods and cannot, by themselves, reveal the exact polymer composition or technical characteristics of plastic materials, especially where the consignments comprise stock lots consisting of mixed rolls. In the absence of a clear declaration regarding the specific polymer composition, the assessing officer could not have ascertained the precise nature of the plastic material through visual examination alone. Examination at the port is conducted within practical and time-bound constraints and does not involve detailed technical scrutiny or verification of manufacturing specifications. On the other hand, post-clearance audit is a specialized mechanism involving in-depth scrutiny of import documents, technical literature, product descriptions, past import data and statutory records, which enables the detection of discrepancies not apparent at the time of assessment. It is in the course of such detailed post-clearance verification that the mis-classification came to light. Therefore, the mere fact that the goods were examined and assessed at the time of import does not absolve the noticee of the consequences arising from incorrect declaration, mis-classification or suppression of material particulars, nor does it render the findings of post-clearance audit unsustainable.

17.4 The Noticee placed heavy reliance on the fact that the goods were subjected to 100% examination and "Out-of-Charge" (OOC) was granted by the proper officers, arguing that the assessment has attained finality. I find this argument to be misconceived. The grant of OOC or the completion of assessment under Section 17 does not preclude the Department from issuing a demand under Section 28 if it is subsequently found that duty has been short-levied. The "self-assessment" regime casts a primary burden on the importer to declare the correct classification. Any clearance granted based on a misdeclaration of the "essential character" of the goods does not bestow immunity against subsequent recovery of differential duty.

17.5 Regarding the invocation of the extended period under Section 28(4), the Noticee contended that there was no intent to evade duty and that all facts were known to the Department. I find no merit in this submission. By declaring the goods under specific sub-headings while simultaneously describing them as "mixed stock lots," the Noticee willfully suppressed the fact that the goods did not meet the stringent technical requirements of those specific entries. This constitutes a "statement which is untrue in material particulars," justifying the invocation of the extended period. The complexity of the "stock lot" nature was suppressed to avail themselves of a lower rate of duty applicable to specific categories, which is a clear act of wilful misstatement.

17.6 The Noticee argued against confiscation under Section 111(m) on the grounds that the goods are no longer available and that there was no penal intent. I do not agree with this contention. Section 111(m) is attracted the moment there is a discrepancy in the declared value or description. The fact that the goods were cleared and are not physically available for seizure does not absolve the Noticee from penal action nor does it extinguish the contravention. However, whether Redemption fine is imposable or not is discussed in Para 20 below. Consequently, as the demand of duty is sustained, the liability for interest under Section 28AA and mandatory penalty under Section 114A (or Section 112, as applicable) is automatically attracted to safeguard the revenue's interest.

17.7 In view of the foregoing discussion, I hold that the goods are correctly classifiable under CTH 39209999; the demand of differential duty is sustainable; extended period under Section 28(4) is rightly invoked; confiscation of goods under Section 111(m) is attracted; and interest and penalties are imposable in accordance with law. Accordingly, I find no force in the submissions of the noticee, and the contentions raised by the importer are rejected.

DEMAND OF DUTY UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962-

18. 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.53,16,555/ - under the provisions of Section 28(4) of the Customs Act, 1962 along with interest under section 28AA of the Customs Act, 1962.

19. 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. 2,36,81,650/- as determined under Section 28(8) of the Customs Act, 1962, the importer is liable for penalty equal to the duty amount of Rs.53,16,555/ - under 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.

CONFISCATION AND REDEMPTION FINE:

20. 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. However, the goods are not physically available for confiscation. Thus option of redemption fine in lieu of confiscation cannot be given to the owner of goods as provided under Section 125(1) of the Customs Act, 1962. Therefore, redemption fine is not imposable in the instant case. In this regard, I rely upon the decision of Hon'ble High Court of Bombay in the matter of Commissioner of Customs (Import), Mumbai vs Finesse Creation (Inc.) 2009 (248) E.L.T 122 (Bom.) wherein Para 5 and 6, the Hon'ble Court held that-

> "5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case

import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently appeal stands dismissed."

The above decision of the Hon'ble High Court of Bombay has been affirmed by the Hon'ble Supreme Court of India 2010 (255) E.L.T. A120 (S.C.) [12-05-2010].

21. In view of the above discussion and findings, I hereby pass the following order:-

-:ORDER:-

i. I order to reject the assessment in respect of Bills of Entry as mentioned in Annexure-A and order to re-assess the same under CTH-39209999;

ii. I determine and confirm the short payment of Basic Customs Duty amounting to Rs.53,16,555/ - (Rupees Fifty Three Lakhs Sixteen Thousand Five Hundred Fifty Five only) under Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s ABN Global Exim (IEC: CYTPK5323B), under Section 28(4) of the Customs Act, 1962;

iii. I order to recover interest at the applicable rate, on the amount of Rs. 53,16,555/- confirmed above, from them under Section 28AA of the Customs Act, 1962;

iv. I hold that the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962. Since the goods have been cleared in the past and not available for confiscation, I refrain from imposing Redemption fine under Section 125 of the Customs Act, 1962.

v. I impose a penalty of Rs.53,16,555/- (Rupees Fifty Three Lakhs Sixteen Thousand Five Hundred Fifty Five only) upon M/s ABN Global Exim under Section 114A of the Customs Act, 1962. However, in terms of fifth proviso to Section 114A, I don't impose penalty under Section 112 of the Customs Act, 1962.

25. This order is issued without prejudice to any action that can be taken against them under the provisions of this Act or any other law for the time being in force.

7/1/26

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

F.No. GEN/ADJ/COMM/20/2025-Adjn

DIN- 20260171MO000000A5EC

To,
M/s ABN Global Exim (IEC: CYTPK5323B),
Plot No. 615, A-Block, Near Teleco Se
Village Rangpuri, Mahipalpur,
New Delhi – 110 037

Copy to:-

1. The Chief Commissioner, Custom Zone, Ahmedabad
2. The Deputy/Asst. Commissioner (PCA), Custom House, Mundra.
3. The Deputy/Asst. Commissioner (EDI/TRC/Legal/Prosecution/Group-2), Custom House, Mundra.