OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT -370421
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सत्यमेव जयते

A	**File No.**	**GEN/ADJ/ADC/268/2025-Adjn-O/o Pr Commr-Cus-Mundra**
B	**OIO No.**	**MCH/ADC/ZDC/468/2025-26**
C	**Passed by**	**Sh. Dipak Zala, Additional Commissioner of Customs (Import Assessment), Custom House, Mundra**
D	**Date of order**	**30.12.2025**
E	**Date of Issue**	**30.12.2025**
F	**SCN F. No. & Date**	**GEN/ADT/PCA/502/2024-Gr 2-O/o Pr Commr-Cus-Mundra dated 31.12.2024**
G	**Noticee / Party/ Importer**	**M/s ROYAL SILK SPLENDOUR PVT LTD (IEC - 588048372), L-1/2-B South Extension Part-II, New Delhi - 110049**
H	**DIN**	**20251271MO000000CAEF**

1. यह अपील आदेश 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 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
4th 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 ड्यूटि/ 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 Case

M/s ROYAL SILK SPLENDOUR PVT LTD (IEC - 588048372), L-1/2-B South Extension Part-II, New Delhi - 110049 (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:

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*		*1*	
39202090	-	*Others*	*10%*		*18%*
392069	-	*Of other polyesters*		*1*	
39206919	-	*Others*	*10%*		*18%*
392071	-	*Of regenerated cellulose*		*1*	
39207119	-	*Others*	*10%*		*18%*
392099	-	*Of other plastics:*			
39209999	**--**	***Other***	***15%***	***1.5***	***18%***

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. 14,86,628/-/, 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-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 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 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 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 ROYAL SILK SPLENDOUR PVT LTD (IEC -588048372), L-1/2-B South Extension Part-II, New Delhi - 110049**, were called upon to show cause to **the Additional Commissioner of Customs (Import Assessment), Custom House, Mundra**, 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. 14,86,628/-/-** (Rupees Fourteen Lakh Eighty Six Thousand Six Hundred and Twenty Eight 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 22.07.2025, 02.09.2025 and 17.09.2025. However, the importer did not appear, but filed their written submission dated 29.09.2025 which is reproduced as below:

"**Defense of the Noticee**

A. Invocation of section 28(4), extended period not warranted.

A.1 The impugned SCN has been issued by invoking the extended period of limitation under Section 28(4) of the Customs Act, 1962. However, in the facts and circumstances of the case, such invocation is legally untenable. It is a settled position of law that the extended period under Section 28(4) can be invoked only where the demand arises on account of collusion, wilful misstatement, or suppression of facts.

A.2 In the present SCN, there is no clarity with regards to the exact allegation against the Noticee. The SCN does not indicate whether the allegation pertains to collusion, wilful misstatement, or suppression of facts. Further, it does not provide any material evidence to substantiate such allegation. In the absence of such specificity and corroboration, invocation of the extended period in the instant matter is without jurisdiction and unsustainable in law.

A.3 It is further submitted that the Department was fully aware of the alleged misclassification since December 2023. This is evident from the Consultative Letter cum Demand Notice dated 21.12.2023 issued by the Department alleging short payment of duty due to misclassification of goods under tariff headings other than CTH 39209999. In the said letter, it was alleged that the Noticee, during the period June 2019 to December 2021, had imported “Stock lot of printed unprinted plastic packaging material rolls mix size mix micron” and “Stock lot of plastic packaging material in mix size and GSM” under various CTHs instead of classifying them under CTH 39209999, where BCD @ 15 % was allegedly payable.

Copy of the Consultative Letter dated 21.12.2023 is annexed and marked as Annexure-1,

A.4 In response, the Noticee submitted its detailed written reply dated 12.01.2024, wherein it was specifically contended that the proposed Demand was barred by limitation, as the time limit prescribed for issuance of a Show Cause Notice under Section 28(1) of the Customs Act, 1962, had expired. It was further submitted that the essential conditions for invocation of the extended period under Section 28(4) of the Act were
wholly absent in the present case, since all facts relating to the Noticee's
importations had always remained within the knowledge of the Department. Copy of Noticee's reply dated 12.01.2024, is enclosed and marked as Annexure-2.

A.5 The impugned SCN alleges that the Noticee deliberately misclassified
the imported goods with an intention to evade payment of differential BCD of 5% along with applicable SWS and IGST. In this regard, it is submitted that the Bills of Entry and the corresponding classification under the CTH were filed by the Noticee strictly on the basis of the documents provided by the exporter. In such circumstances, the allegation of deliberate misclassification is wholly unsustainable, as the classification was adopted under a bona-fide belief and without any intent to evade duty.

A.6 At this juncture, it may not be out of context to mention that it is a
settled legal position that provisions invoking extended period are not applicable where facts are known to the Department beforehand. In the
instant case, all the documents including bills of entry, commercial

invoices issued by the exporter, packing list etc. were submitted to the Department before clearance. Moreover, the descriptions of goods mentioned in the bills of entry were also in the knowledge of the Department. As such, the Noticee cannot be accused of either wilful mis-declaration or suppression of facts.

• The Hon'ble Supreme Court in Pushpam Pharmaceuticals Company Vs. Collector of C, Ex., Bombay, 1995 (78) E.L.T. 401 (S.C.) inter alia held as follows:

"*4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.*

Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

• The Hon'ble CESTAT, Delhi, in Daxen Agritech India Pvt. Ltd. Vs. Principal Commissioner of Customs (Import), New Delhi, (2024) 20

Centax 467 (Tri.-Del) inter-alia held as follows:

"12. The law on invocation of extended period of limitation is well settled.

Mere omission or merely classifying the goods/services under incorrect head does not amount to fraud or collusion or wilful statement or suppression of facts and therefore the extended period of limitation is not invocable. Reliance is placed on the decision of the Tribunal in Incredible Unique Buildcon Private Ltd, 2022 (65) G.S.T.L 377,

> "17. We are unable to find any proof of show cause notice or from the impugned order. Intent to evade either from the Mere omission or merely classifying its services under an Incorrect head does not amount to fraud or collusion or wilful misstatement or suppression of facts. The intention has to be proved to invoke extended period of limitation. Supreme Court has delivered the judgment in the case of Larsen & Toubro dated 20 August, 207, prior to which there was no clear ruling that services which involved supply or deemed supply of goods could only be classified under WCS, The appellant had been classifying its services (which also involved supply/use of goods) under the CICS and Revenue never objected to it and, therefore, the appellant could have reasonably believed it to be the correct head and continued to file returns accordingly and paying duty. Once the returns are filed, if Revenue was of the opinion that the self-assessment of service tax and the classification was not correct, it could have scrutinized the returns
>
> and issued notices within time. The show cause notice was issued on 30 September, 2015 for the period covered October, 2010 to June, 2012, which is clearly beyond the normal period of limitation. Therefore, although Revenue is correct an merits, the demand is time barred and, therefore, cannot sustain. For the same reason, the penalties imposed upon the appellant

under sections 77 and 78 also cannot be upheld."

A.7 The Hon'ble CESTAT, Madras in Ajinomoto India Pvt. Ltd. Vs. Commissioner of Customs, Chennal II (2024) 21 Centax 465 (Tri.-Mad)/2024(390) E.L.T. 325 (Tri-Mad) has inter-alia held that the term "suppression of facts" must be read strictly since it appears alongside strong expressions like "collusion" and "wilful mis-statement." Even though the words "with intent to evade duty" are not explicitly used, it must still be proved that the importer/exporter acted with a positive, conscious, and deliberate intent, not merely by omission or mistake.

A.8 In light of the above, it is submitted that the allegation of misclassification cannot be equated with wilful misstatement or suppression of facts. The invocation of the extended period in the instant matter is therefore patently bad in law and liable to be set aside

B. Burden of proof not discharged by the Department.

B.1 The Noticee submits that the allegation of misclassification is wholly
unsubstantiated. It is a settled principle of law, that the burden of proving the correctness of classification rests upon the Department, and such burden cannot be discharged by mere assertions or observations in a Post Clearance Audit. In the present case, the Department has simply alleged that the description in the Bills of Entry was "generic" and that
Classification was not in consonance with Rule 3 of the General Rules for
the Interpretation of Import Tariff. However, no technical evidence, test report, expert opinion, HSN Explanatory Notes, or analysis of Chapter/Section Notes has been produced to substantiate the alleged reclassification.

B.2 The Noticee has filed the Bills of Entry along with invoices and supporting records on the basis of which the classification was declared.

Once such declaration is made, the onus lies upon the Department to adduce cogent evidence and demonstrate the precise tariff heading under

which the goods are alleged to fall. In the absence of any such substantive evidence, the allegation of misclassification is a mere assertion and is unsustainable in law.

e The Hon'ble Supreme Court in Gastrade International Vs. Commissioner of Customs, Kandla (2025) 29 Centax 8 (S.C.}/2025 (392)

E.L.T. 529 (S.C.) inter-alia held as follows:

> "39. There cannot be any dispute to the sroposition of law as noted by the High Court that the burden of proof as regards the classification of any goods of importation is upon the Revenue/Customs authority and the standard of proof in proceedings under the Tariff Act is not "beyond reasonable doubt"..

. The Hon'ble Supreme Court in H.P.L. Chemicals Ltd. Vs. Commissioner of C- Ex, Chandigarh 2006 (197) E.L.T. 324 (S.C.) inter-alia held as follows:

"29. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee,

the Department has to adduce proper evidence and discharge the burden of proof."

C. No confiscation of goods can take place.

C.1 The impugned SCN Inter-alia proposes to confiscate goods under section 111(m) of the Customs Act, 1962, for short levy of duty by reason of willful mis-statement and suppression of facts. As stated in preceding
paras, there is nothing on record to justify invocation of extended period

against the Noticee.

C.2 Secondly, the goods were imported by the Noticee from the period January 2020 to September 2021 which are not physically available at present. Further, it is a settled legal position that no confiscation can be

ordered if the goods are not available.

. The Hon'ble CESTAT in Brambhani Industries Ltd. Vs C.C. (Airport & Air Cargo), Chennai - 2018 (363) £.L.7. 277 (Tri. - Chennai), inter-alia held as follows:

"10.4 In respect of Appeal C/271/2070, we note, however, that the offending goods had already been cleared cut of Customs charge and were not available for confiscation and their confiscation is not justified. As per the law laid down by higher appellate Courts, when the goods are not available, there can be no confiscation, unless and of course, they have been cleared under bond etc..."

. The Hon'ble CESTAT in Tulip IT Services Ltd. Vs. Commr. of Cus. (ACC

& Import), Mumbai - 2017 (357) E.L.T. 1186 (Tri. - Mumbai), inter-alia held as follows:

"3. As regards the appeal filed by the Revenue, the Revenue is aggrieved by the order only for non-confiscation of the goods which were cleared by the appellant importer previously. On perusal of the order, we find that the adjudicating authority was correct in coming to such conclusion as it is specifically recorded that the goods which were cleared earlier were cleared on final assessment of the bills of entry and the goods are not available for confiscation. In the absence of any goods, the adjudicating authority was correct in not confiscating the said goods. We do not find any merits in the appeal filed by the Revenue."

. The Hon'ble CESTAT in P.B. Enterprises Vs Commissioner of Customs,

New Delhi - 2017 (355) E.L.T. 430 (Tri. - Del.), inter-alia held as follows:

"8.... However, in respect of the earlier consignment covered by Bill of Entry No. 41760211, dated 27-9-2011, the goods involved have already been cleared and were not available for confiscation at the time of passing the impugned order, Consequently, we are of the view that only the differential customs duty can be demanded in respect of the earlier consignment. In the absence of the goods, no order of confiscation under Section 111(m) can be made on these goods, Consequently, the redemption fine imposed on the same is set aside."

D. Penalties under section 112 and section 114A are not imposable,

D.1 The impugned SCN proposes to impose penalties under Section

112

or Section 114A of the Customs Act, 19662. The said section inter alia imposes mandatory penalty equal to the duty or interest short paid or not paid due to collusion, wilful mis-statemment or suppression of facts, or contravention of any of the provisions of the Act or rules with intent to

evade payment of duty. It has already been stated in the preceding paras,

there is.no material on record to justify invocation of the extended period

against the Noticee; consequently, the question of imposition of penalty under section 114A of the Act does not arise. D.2 [tis also pertinent to mention that the impugned SCN orily proposes a penalty under section 112 of the Customs Act, 1962, but fails to specify whether the penalty is being proposed under clause (a) or clause (b) of the said section. The two clauses operate in distinct and mutually exclusive spheres, covering different categories of persons and different types of acts or omissions. Clause (a) applies to importers/owners or persons concerned with goods liable for confiscation under Section 111, whereas clause (b) applies to persons who knowingly acquire, possess, transport, keep, conceal or deal with such goods after import which he knows or has reason to believe are liable to confiscation under section 111.

D.3 Non-specification of the relevant clause renders the SCN vague, ambiguous, and unsustainable in law. It deprives the Noticee of an effective and meaningful opportunity to defend, as the nature of the charge under Section 112(a) of the Act and Section 112(b) of the Act differs materially in scope and ingredients. It is a well-settled principle that penalty proceedings, being quasi-criminal in nature, must be specific, clear and unambiguous.

D.4. It is a settled law that vague allegations in a show cause notice

which do not specify the precise charges cannot be sustained, as such vagueness prejudices the defense of the assesse. The correct clause under Section 112 of the Act must be invoked and specified, failing which the penalty proceedings stand vitiated. Accordingly, in absence of specification of the relevant clause: the SCN is vague and bad in law. On this ground alone, the penalty proposed under Section 112 of the Act deserves to be set aside. The Hon'ble CESTAT in Aadil Majeed Banday Vs. Commissioner of Customs, Amritsar 2021 (378) E.L.T. 540 (Tri. - Chan.) Inter-alia held as follows:

"15, Further, on perusal! of record, the show cause notice is vague as no
particular provisions of Section 111 of the Customs Act for confiscation of the gold and no provisions of Section 112 of the Customs Act for imposing penalty has been brought on notice. Therefore, the show cause notice is also vague as held by the Hon'ble Apex Court in the case of Amrit Foods (supra). Further, in the case of Max G.B., Ltd (supra), the Hon'ble Jurisdictional High Court had also held that the show cause notice is vague on specific violation is not sustainable."

The Hon'ble CESTAT in Shree Precoated Steel Vs. Commissioner of Central Excise, PunE2006 (203) E.L.T. 506 (Tri. - Mumbai) inter-alia held as follows:

"Penalty can only be imposed when the exact legal provision and specific
nature of contravention are clearly stated. An incorrect citation of law cannot be excused in penal proceedings."

Prayer

In the light of the afore mentioned submissions, it is prayed that

i) The proceedings initiated against the Noticee vide Show Cause Notice having DIN: 20241271Ml00000211302 dated 31.21.2024, may be dropped.

ii) The Noticee may be allowed to submit further pleadings and additional submissions in the matter.

iii) Opportunity for personal hearing may be granted before adjudicating the matter"

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 appear for Personal Hearing, 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. 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. Thus, I proceed to decide the case based on the facts and evidence available on record and written submission of party dated 29.09.2025.

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11.2. 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 ₹14,86,628/-/- 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.

11.3. I find from available records that the importer, **M/s ROYAL SILK SPLENDOUR PVT LTD (IEC -588048372)**, 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.

11.4. 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.

11.5. 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 **₹14,86,628/-/-** 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.

11.6. The submissions of the Noticee regarding non-invocation of the extended period are not acceptable. The impugned SCN clearly records specific allegations of deliberate misclassification adopted consistently over a prolonged period, whereby the imported goods were declared under tariff headings attracting lower rate of duty instead of the appropriate CTH 39209999, resulting in systematic short-payment of duty. The repeated and continuous adoption of an incorrect classification for identical goods cannot be treated as a mere clerical error or interpretational issue. Such conduct, when viewed in totality, establishes a conscious pattern of mis-declaration intended to evade payment of legitimate customs duties. The plea that classification was based solely on exporter's documents is untenable, as the legal responsibility for correct declaration of description, classification and duty liability squarely rests on the importer under

Section 46 and Section 17 of the Customs Act, 1962. Hence, the extended period under Section 28(4) has been rightly invoked.

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. Further, the contention that the Department was "aware" of the alleged misclassification since December 2023 is misplaced. Issuance of a consultative letter or preliminary communication cannot bar invocation of the extended period. Consultative letter was issued to notice so that they can comply with their liability without going into further proceedings causing any hardships to the importer. I find that the department was aware of misclassification at the time of issuance of consultative letter & it was only a facilitation measure provided to notice to comply for their suppression and wilful mis-statement which culminated into issuance of the impugned SCN. Mere filing of Bills of Entry does not amount to true and full disclosure when the primary declaration itself is incorrect and results in revenue loss. Therefore, the Noticee's reliance on judicial precedents is misconceived, as the facts of the present case clearly demonstrate deliberate mis-declaration and suppression with intent to evade duty, warranting invocation of the extended period under Section 28(4) of the Customs Act, 1962.

11.9. 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.

11.10. I find that noticee has placed reliance upon the facts that burden of proof is upon the department to prove the correctness of classification whereas 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."

11.11. 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.

11.12. In view of the foregoing, I hold that the importer is liable to pay the differential duty of **₹14,86,628/-** 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:

11.13. 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.

11.14. 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.

11.15. In view of the above, **I hold that the goods imported valued at Rs.2,29,06,440/- (Two Crore Twenty Nine Lakhs Six Thousand Four Hundred and Forty only)** (as per SCN Annexure A) are liable for confiscation under Section 111(m) of the Customs Act, 1962.

IMPOSITION OF REDEMPTION FINE:

11.16. 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."

11.17. 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.**

11.18. 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. The goods shall be assessed at the correct rate of duty under this heading without the benefit of the wrongly claimed classification.

(ii). I order to confiscate the goods having assessable value of ₹ **2,29,06,440/- (Two Crore Twenty Nine Lakhs Six Thousand Four Hundred and Forty 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 **₹14,86,628/- (Rupees Fourteen Lakh Eighty Six Thousand Six Hundred and Twenty Eight 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 **₹14,86,628/-** under Section 28AA of the Customs Act, 1962.

(v). I order to impose penalty of **₹14,86,628/- (Rupees Fourteen Lakh Eighty Six Thousand Six Hundred and Twenty Eight 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 GEN/ADT/PCA/502/2024-Gr 2-O/o Pr Commr-Cus-Mundra dated 31.12.2024 stands disposed off in above terms.

Digitally signed by Dipakbhai Zala
Date: 30-12-2025 18:30:38

Encl: Annexure-'A'

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

To,

M/s ROYAL SILK SPLENDOUR PVT LTD (IEC -588048372),

L-1/2-B South Extension Part-II, New Delhi - 110049

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
6553910	20-01-2020	7,49,100.75	2,80,688.05	2,32,071.41	48,616.64
6829701	10-02-2020	7,49,891.03	2,80,984.17	2,32,316.24	48,667.93
6911893	17-02-2020	7,15,024.54	2,67,919.70	2,21,514.60	46,405.09
7158835	07-03-2020	7,43,985.00	2,78,771.18	2,30,486.55	48,284.63
7316486	20-03-2020	3,40,875.00	1,27,725.86	1,05,603.08	22,122.79
7411019	08-04-2020	7,63,500.00	2,86,083.45	2,36,532.30	49,551.15
7434529	13-04-2020	7,22,271.00	2,70,634.94	2,23,759.56	46,875.39
7750485	26-05-2020	7,66,000.00	2,87,020.20	2,37,306.80	49,713.40
7750486	26-05-2020	7,77,604.90	2,91,368.56	2,40,902.00	50,466.56
8159569	13-07-2020	11,19,715.34	4,19,557.34	3,46,887.81	72,669.53
9303380	24-10-2020	14,91,979.50	5,59,044.72	4,62,215.25	96,829.47
9490887	07-11-2020	6,01,597.33	2,25,418.52	1,86,374.85	39,043.67
952596	10-11-	6,46,590.60	2,42,277.50	2,00,313.77	41,963.73

0	2020				
9552767	12-11-2020	5,95,188.00	2,23,016.94	1,84,389.24	38,627.70
9716578	26-11-2020	12,71,254.12	4,76,338.92	3,93,834.53	82,504.39
9895246	10-12-2020	6,45,408.00	2,41,834.38	1,99,947.40	41,886.98
9895247	10-12-2020	5,80,867.20	2,17,650.94	1,79,952.66	37,698.28
6368418	06-01-2020	7,30,158.00	2,73,590.20	2,26,202.95	47,387.25
2327418	12-01-2021	79,920.00	29,946.02	24,759.22	5,186.81
2408385	18-01-2021	3,90,775.50	1,46,423.58	1,21,062.25	25,361.33
2408490	18-01-2021	6,21,600.00	2,32,913.52	1,92,571.68	40,341.84
2408775	18-01-2021	5,98,808.00	2,24,373.36	1,85,510.72	38,862.64
2517223	27-01-2021	6,61,991.40	2,48,048.18	2,05,084.94	42,963.24
2852288	20-02-2021	5,13,173.10	1,92,285.96	1,58,981.03	33,304.93
4285861	11-06-2021	6,14,968.20	2,30,428.58	1,90,517.15	39,911.44
4516538	30-06-2021	6,19,957.80	2,32,298.19	1,92,062.93	40,235.26
4918256	03-08-2021	6,38,481.17	2,39,238.89	1,97,801.47	41,437.43
4943734	05-08-2021	5,67,008.00	2,12,457.90	1,75,659.08	36,798.82
5219419	27-08-2021	6,41,216.86	2,40,263.96	1,98,648.98	41,614.97
5333452	06-09-2021	6,29,610.30	2,35,914.98	1,95,053.27	40,861.71
5334775	06-09-2021	6,25,617.00	2,34,418.69	1,93,816.15	40,602.54
5587827	25-09-2021	6,01,568.64	2,25,407.77	1,86,365.96	39,041.80
5643151	30-09-2021	6,53,529.60	2,44,877.54	2,02,463.47	42,414.07
5643462	30-09-2021	4,37,204.16	1,63,820.40	1,35,445.85	28,374.55
		2,29,06,440.04	**85,83,043.09**	**70,96,415.15**	**14,86,627.96**