सीमा शुल्क के प्रधान आयुक्त का कार्यालय
सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT
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A. File No.		GEN/ADJ/COMM/229/2025-Adjn-O/o Pr. Commr- Cus-Mundra
B. Order-in-Original No.		**MUN-CUSTM-000-COM-55-25-26**
C. Passed by		Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order Date of issue:		**03.02.2026** 03.02.2026
E. SCN No. & Date		GEN/ADT/PCA/500/2024-Gr.2 dated 27.02.2025
F. Noticee(s) / Party / Importer		**M/s Guru Kirpa International (IEC: AXGPK9474P)**
G. DIN		**20260271MO0000005E1A**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BRIEF FACTS OF THE CASE:

M/s Guru Kirpa International, F-7A/36, GF, Sec 16, Rohini, Delhi-110089 (IEC -AXGPK9474P) (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, noncellular and not reinforced, laminated,*			

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

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

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

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to

part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

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

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

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

5. Whereas, in the instant case, the description of goods 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. 50,98,031/-, as detailed in Annexure-A to the SCN.

7. 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.

8. **M/s Guru Kirpa International** was called upon to show cause 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. 50,98,031/-**(Rupees Fifty Lakh Ninety Eight Thousand Thirty One Only) by wrongly classifying the imported goods under CTH 39201099, 39202090, 39206919 & 39207119 instead of 39209999 and paid less BCD and SWS/IGST thereon should not be charged and recovered from them under Section 28(4) of the Customs Act, 1962;

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

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

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

RECORD OF PERSONAL HEARING

9. Following the principles of natural justice, opportunities of personal hearing were granted to the importer. Shri Lokesh Kumar Shrivastava, authorised representative, appeared for the personal hearing on 05.01.2026. He re-iterated their written submission dated 11.04.2025 and requested take the same on records while deciding the case.

DEFENCE SUBMISSION

10. M/s Guru Kirpa International, in their written submission dated 11.04.2025, inter alia, have submitted as follows:

(i) The notice is based on the interpretative issue of HS Code selection, which again relies on the imported material at the time of clearance for each shipment. They further submitted that the auditor in this case is selecting the "Others" heading merely because the duty chargeable is higher than what they had paid at the time of clearance of the goods. Furthermore, even though there is a dispute regarding classification, a notice under 28(4) must not have been issued as per well settled position of law regarding classification issues.

(ii) The Noticee has submitted that the impugned Show Cause Notice has been issued merely based on mere assumptions, presumptions, conjectures, surmises.

(iii) The Noticee by referring to the Trade Notice No. 37/2019-20 dated 22.10.2019 has submitted that from the plain reading of trade notice no. 37/2019-20 dated 22.10.2019, it is amply clear that it is clear directions of the policy makers that HS Code should be specific not to be chosen "others" residual category when you are aware about the specific HS Code of the product, whereas the notice in question suggest just opposite to as suggested in the Notification by DGFT, which is clearly against the law and violations of the above said trade notice.

The Noticee by referring to the DGFT Trade Notice No. 46/2019-20 has submitted that the Notice in question is not only against the instructions issued by the Import Export Policy making authority i.e. DGFT but also trying to instigate and promote the noticee to violate the

same insisting to classify the item so imported in the "Others" Category where the Noticee is aware about the specific HS Code for the item.

(iv) It is settled law that the classification is a question of law and cannot be treated as mis-declaration or misstatement. The Noticee has referred to the case of M/s Shree Ganesh International Vs CCE-2004(174) ELT 171 (Tri-Del).

(v) The Noticee has submitted that the onus lies on the department to determine the correct classification of imported goods and at the time of clearance of the shipment listed in the notice, the department has already accepted the declared HS Code and now to change the HS Code the department should opt go in appeal. The Noticee has further submitted that after clearance of goods, the department cannot pretend that it was misclassified by the importer.

(vi) The Noticee has further submitted that since this is a "Stock Lot" shipment where, Rule 1 or Rule 2 cannot be applied, classification of such goods should be governed by Rule 3 only. However, as per Para 2.6 of "The Customs Law Manual 2023" these rules must be applied sequentially. The Noticee has submitted that in the instant case, the learned officer has jumped over Rule 3(a) and 3(b) and directly reached to Rule 3(c) which is leading to wrong classification of their products.

The Noticee has further submitted that although this is "Stock Lot" shipment hence Rule 1 and Rule 2 (a) and 2(b) are not applied, but rule 3(a) of General Rules for the interpretation of the First Schedule must apply to this item since it states that "the heading which provides the most specific description shall be preferred to headings providing a more general description." As at the time of filing of the Bills of Entry, the Noticee had full information about the product, they had chosen specific HS Codes i.e. 39201099, 39202090, 39206919 & 39207119 instead of more General Entry of classification under CTH 39209999. That too has been corroborated by the Exam Reports available in the ICES and readily available to the department, why they did not check before issuance of the

Notice, the reasons best known to the department. The Noticee has placed reliance on the below case law:

Speedway Rubbers Vs CCE 2002 AIR SCW 2181=50 RLT 255=143 ELT 8 SC and CCE Vs Maharshi Ayurveda Corp Ltd 2006 (193) ELT 10 (SC).

Dunlop India Ltd Vs UOI AIR 1977 SC

HPL Chemicals Vs CCE 241 2006

Mauri Yeast India Vs State of UP 2008 SC

CCCE Vs Chamdany Industries 2009 SC

CCE Vs. Jocil Ltd (2011) SC

(vii) That Annexure 1 of the Notice in question provide details of the shipment so cleared in which alleged mis-classification is done. However on the analysis of total 116 shipments, total approximately 80% of 116 shipment have been cleared by the different officers of customs under Examination. The Noticee has further submitted that random query which is not tenable legally, since at the time of exam all the parameters including HS Code has to be checked by the officers before writing a favourable exam report based on that a shipment is cleared. The Noticee has further submitted that apart from above mentioned shipments, 87 shipments under exam, some of the shipments has been assessed by the proper officer. Henceforth, there did not remain any scope of mis-classification/mis-declaration of any sort.

(viii) The Noticee has submitted that in the present case, the demand has been proposed under Section 28(4) of the Customs Act, 1962 invoking extended limitation. The department has failed to establish the presence of any of the three factors mentioned in Section 28(4) of the Customs Act, 1962. Collusion, willful mis-statement, or suppression of facts. Misclassification of goods is not a ground enumerated under Section 28(4), hence no demand can be raised on the noticee under this section. Therefore the Notice is not sustainable and deserves to be vacated on this ground also.

(ix) The Noticees have further submitted that they did not mis-declare anything to the Customs department regarding import of the goods in question, they are not liable to any penal action under Section 112 or 114A of Customs Act, 1962. The Noticee has submitted that the department has failed to prove the presence of "Collusion, Willful-mis statement or suppression of facts", the three facts i.e. Collusion, Willful-misstatement or suppression of facts, and hence, penalty cannot be levied under this section. They have referred to the decision of Hon'ble Apex Court in the matter of Nanya Imports & Exports Enterprises

(x) The Noticee has submitted that in the presence case neither any bond was executed nor was any security furnished by the noticee because it was not a case of provisional release but final clearance was given by the department. Therefore, neither the goods can be confiscated nor any fine in lieu of these can be demanded/recovered from the noticee.

(xi) No variation was found in regard to description, value and quantity of the goods in this case. Hence, neither goods are confiscable under Section 111(m) nor nay penalty leviable under Section 112 of the Customs Act. The Noticee has referred to the following case law:

> Northern India Steel Rolling Mills Ltd Vs Commissioner of Customs Amritsar (2003 (162) ELT 507-511 (Tri. Delhi).
>
> Supreme Court decision in case of Commissioner Vs Calcutta Springs Ltd (2008(229) ELT 161(SC).

(xii) That even where a product is capable of falling simultaneously under two entries, benefit should go to assessee as was held by Hon'ble Supreme Court in the case of Commissioner Vs Calcutta Springs Ltd. (2008(229) ELT 161 (SC).

(xiii) That It is now a well-settled principle that if a party bonafide believes in a legal position and if there is a scope for such belief and doubt, penal provisions will not apply. In the instant case also, the Noticee had a reasonable bona fide belief that the item so imported "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", are bona fidely classified in the respective headings of HS codes Hence, in such a situation wherein the Noticee was under a bonafide reasonable belief that his imported item should be classified under the used HS codes, it is unjust and unfair to invoke penal provisions and impose penalty on the Noticee or to take any action based on this bona fide deed. In this context, the Noticee relies upon the various judgments: (i) Padmini Products Vs CCE 1989 (43) ELT 195, (ii) Hindustan Steel Ltd Vs State of Orissa 1978 (2) ELT J 159, (iii) ETA Engineering Ltd Vs. Commissioner of Central Excise, Chennai 2004(174) ELT 19 (Tri-LB), (iv) Commissioner of Central Excise, Bhubaneshwar-II Vs Tyazhpromexport, 2003 (157) ELT 576 (Tri. Kolkata), (v) Akbar Badruddin Jiswani Vs. Collector of Customs reported in 1990 (47) ELT 161, (vi) Flyingman Air Courier Pvt Ltd Vs Commissioner of Central Excise, Jaipur, 2004 (170) ELT 417 (Tri-Del.) & (vii) Commissioner of C.Ex. Bangalore Vs Impress Addids & Displays 2004 (173) ELT 137 (Tri-Bang.)

(xiv) That there is no connivance or men's rea is made out on the part of the Noticee, in respect of the present case no connivance for any reason or benefit has been established and the Noticee M/s Guru Kripa International had acted in bonafide manner without having any ill intent. It shall also not be out of place to mention here that on the basis of the above submissions, under no circumstances, any connivance or deliberate mis-declaration can be attributable upon the Noticee as alleged.

DISCUSSION AND FINDINGS

11. I have carefully gone through the facts of the case, Show Cause Notice and the noticee's submissions filed both, in written and in person advanced during the course of personal hearing. The principles of natural justice, particularly *audi alteram partem*, have been duly complied with by granting adequate opportunity to the noticees to present their defence. Accordingly, I proceed to examine the issues involved in the present case in the light of the available records, statutory provisions, and judicial

precedents. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

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

ii. Whether short-levied duty of Rs. 50,98,031/- is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA or otherwise.

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

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

11.1. The importer, M/s Guru Kirpa International (IEC: AXGPK9474P), has filed various Bills of Entry declaring the goods as "Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron", "Stock lot of plastic packaging material in mix size and gsm", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm", etc., and classified them under Customs Tariff Headings (CTH) 39201099, 39202090, 39206919 & 39207119. They discharged duty @ 30.980% (BCD 10% + SWS 10% + IGST 18%). However, findings of post clearance audit suggested that the imported goods merit classification under CTH 39209999 as "Others". Therefore, I proceed to determine the correct classification of goods.

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

HS Code		Item Description	BCD	SWS (10% of	IGST

				BCD)	
3920		Other plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials			
392010	-	Of polymers of ethylene			
39201099	----	Other	10%	1	18%
392020	-	Of polymers of propylene			
39202090	---	Others	10%	1	18%
392069	--	Of other polyesters			
39206919	----	Others	10%	1	18%
392071	--	Of regenerated cellulose			
39207119	----	Others	10%	1	18%
392099	---	Of other plastics:			
39209999	----	Other	15%	1.5	18%

11.3 The importer had declared the goods as "Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron", "Stock lot of plastic packaging material in mix size and GSM", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and GSM", etc., and classified the same under Customs Tariff Headings (CTH) 39201099, 39202090, 39206919 and 39207119. On examination of the relevant tariff entries, it is observed that goods classifiable under CTH 39201099 specifically relate to polymers of ethylene, those under CTH 39202090 relate to polymers of propylene, goods under CTH 39206919 pertain to polyesters, and goods under CTH 39207119 pertain to regenerated cellulose. However, the importer has failed to declare essential particulars required for classification under Heading 3920, such as whether the goods were film, sheet, foil, plate or strip, which are mandatory classification parameters. Further, the importer has not specified the exact polymer composition of the imported goods, i.e., whether they were made of ethylene, propylene, polyester or regenerated

cellulose, which is crucial to classify the goods under the respective entries. In this regard, it is pertinent to note that the submission dated 23.01.2025 of the importer is also silent on the same. As a result of such vague and incomplete declarations, the goods could not be specifically classified under any of the sub-headings 392010, 392020, 392069 or 392071 of Heading 3920, each of which requires clear identification of the constituent polymer. Thus, the classification declared by the importer in respect of the imported goods described as stock lot of plastic packaging material is found to be incorrect and liable to be rejected.

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

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

cellulose. For classification under Rule 1, it is essential that the importer clearly have declared both the form of the goods (film, sheet, foil, plate or strip) and the exact polymer composition. Since the importer failed to declare these essential particulars, classification under Rule 1 could not be conclusively determined.

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

12.3 Rule 3 of the General Rules for the Interpretation of the Import Tariff becomes applicable when goods are prima facie classifiable under two or more headings or sub-headings. In the present case, the imported goods, being plastic films in stock lots of mixed rolls, are prima facie classifiable under more than one sub-heading of Heading 3920, depending upon the polymer composition, such as polyethylene, polypropylene or other plastics. Rule 3(a) mandates that the heading which provides the most specific description shall be preferred. However, in the present case, due to the absence of declaration regarding the exact polymer composition and form of the goods, no single heading or sub-heading can be regarded as providing a more specific description. Accordingly, Rule 3(a) cannot be applied. Rule 3(b) provides that mixtures or composite goods shall be classified as if they consisted of the material or component which gives them their essential character. In the

present case, since the importer has not disclosed the nature, proportion or predominance of any particular polymer, the essential character of the goods cannot be ascertained. Consequently, Rule 3(b) is also inapplicable. In such a situation, Rule 3(c) mandates that classification shall be effected under the heading which occurs last in numerical order among those which equally merit consideration. Since the goods do not satisfy the description of any specific sub-heading under Heading 3920 due to lack of essential particulars, they necessarily fall under the residual category, i.e. CTH 39209999, covering "Other" plastics. Accordingly, the impugned goods are correctly classifiable under the residual tariff item CTH 39209999. The classification claimed by the importer is therefore rejected as legally untenable.

13. The importer, by adopting incorrect classification, had discharged duty at the effective rate of 30.980% instead of the correct 37.470%. This deliberate mis-statement has resulted in short levy of Customs Duty amounting to Rs. **50,98,031/**- 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.

14. DISCUSSION ON SUBMISSION OF THE IMPORTER

14.1 The contention of the noticee that the filing of Bills of Entry cures the misclassification is untenable. Mere filing of Bills of Entry under Section 46 of the Customs Act, 1962 and clearance of goods after assessment does not confer any immunity upon the importer nor does it eradicate the consequences of misdeclaration or misclassification. The assessment at the time of import is necessarily based on the declarations made by the importer. If, upon subsequent scrutiny or investigation, it is revealed that the goods were misclassified or duty was short-paid, the Department is legally empowered to initiate reassessment and demand proceedings under Section 28 of the Act.

14.2 The contention of the noticee that physical examination of the goods and verification of documents by the officers cures an incorrect legal classification is also not sustainable. Physical examination by itself is not conclusive for tariff classification. Classification is to be determined strictly in accordance with the description of goods, technical specifications, and the applicable Tariff and Chapter Notes. Incorrect or incomplete description, non-disclosure of full technical particulars, ambiguity in trade parlance, or absence of test reports may result in an erroneous assessment at the time of clearance. Once such error comes to light on subsequent scrutiny or investigation, the Department is empowered recover the differential duty under the provisions of the Customs Act, 1962. Accordingly, the allegation of misclassification cannot be said to be baseless or unfounded merely because the goods were earlier examined or assessed at the time of import.

14.3 I find no force in the contention of the noticee that clearance of goods under Section 47 of the Customs Act, 1962 bars the reopening of assessment. Clearance under Section 47 merely signifies that duty was discharged on the basis of the assessment then made; it does not confer finality where duty has been short-levied or not levied due to misclassification or misdeclaration. Section 28 of the Customs Act, 1962, empowers the Department to initiate proceedings for demand/recovery of duties so short-levied or not levied. Accordingly, clearance of goods cannot be construed as a bar to issuance of a show cause notice, where subsequent scrutiny reveals short payment of duty.

14.4 I find no merit in the contention of the noticee that the doctrine of *res judicata* applies to customs assessment proceedings. Customs assessment is not a decree of a civil court; it is an administrative/quasi-judicial determination based on the declarations and material placed at the time of import. Such assessment can lawfully be reopened where duty has not been levied, has been short-levied, or where an erroneous classification has occurred. Therefore, the plea that the assessment attains

irrevocable finality and cannot be revisited is misconceived and contrary to law.

14.5 Further contention of the noticee that the only available remedy is by way of appeal or review is also misplaced. Section 28 of the Customs Act, 1962 empower to issue a show cause notice for demand/recovery of duties not levied, short-levied, or short-paid on account of misclassification or misdeclaration. Initiation of proceedings under Section 28 is thus a valid and independent statutory mechanism and is not subordinate to appellate provisions. Accordingly, the show cause notice issued in the present case is legal, proper, and sustainable.

14.6 I find no merit in the contention of the noticee regarding the burden of classification. While it is correct that the Department determines the appropriate tariff classification, the primary obligation to correctly describe the goods and declare the proper classification lies squarely on the importer. Where the declaration is incorrect or incomplete and material particulars are not fully disclosed, the onus shifts to the importer. In such circumstances, if the acts or omissions of the importer result in non-levy or short-levy of duty, invocation of the extended period of limitation and demand are legally justified. Accordingly, the plea that extended limitation is not invokable is devoid of merit.

14.7 I find no merit in the contention of the noticee that subsequent change in the tariff rate wipes out past liability. The concessional rate of 10% prevailing prior to 02.02.2021 does not legalize an incorrect classification or wrongful availment of a concessional rate. Tariff classification has to be determined with reference to the nature and characteristics of the goods as on the date of import. If it is established that the goods were misclassified or an exemption/concession was wrongly availed, the differential duty remains recoverable in law, irrespective of any subsequent change in rate. Correct classification operates from the date of import and not from the date of detection, audit, or investigation.

14.8 I further find that the clarification issued by the Tax Research Unit (TRU) supports the classification adopted by the Department and reflects the legislative intent that the subject goods falling under Tariff Item 3920 99 99 attract Basic Customs Duty at the rate of 15%. This clarification reinforces the position that the earlier availment of 10% BCD was contrary to the statutory tariff structure. Accordingly, the demand of differential duty is valid.

14.9 The plea that misdeclaration exists only when quantity or value is incorrectly stated is untenable. Misdeclaration under the Customs Act includes wrong classification made with the intent to discharge duty at a lower rate. Even if quantity and value are otherwise correctly declared, an incorrect classification leading to payment of lesser duty amounts to misdeclaration, rendering the goods liable to confiscation under Section 111(m). Consequently, penalties under Sections 112 and 114A are legally sustainable.

14.10 I further find that the Department has satisfactorily discharged the burden of proof. The proposed classification and allegation of intent to evade duty has been discussed under the foregoing paras. Notice have failed to produce any documentary evidence (i.e. test report etc.) at the time of import to ascertain the classification and nature of the polymer from which the imported material was made. Thus, the burden shifts to the importer to rebut the same with cogent evidence, which has not been done in the present case. The case laws cited by the noticee are factually distinguishable and do not advance their cause. While judicial precedents are binding, reliance on earlier or isolated decisions cannot assist the importer where subsequent judgments, differing facts exist. Selective citation of precedents cannot be used to justify an otherwise incorrect classification.

15. I find that the non-declaration of the specific polymer material is not a technical lapse, but a material omission which impacts classification and applicable rate of duty. By deliberately declaring the goods in a generic

manner as “stock lot of plastic rolls” without specifying the polymer composition, the noticee effectively withheld material information which was required to be disclosed under the Customs law. This act of the importer squarely falls within the ambit of suppression of facts under Section 28(4) of the Customs Act, 1962. Notwithstanding the fact that the Bills of Entry were assessed earlier. Assessment based on mis-declared or suppressed facts does not bar subsequent demand under the extended period, once such suppression comes to light. The importer, despite being fully aware of the true nature and composition of the goods, deliberately chose concessional subheadings such as 39201099, 39202090, 39206919 and 39207119, accompanied by vague and incomplete descriptions like “stock lot of plastic packaging material in mix size and gsm,” to claim undue benefit of lower duty. Such deliberate concealment of the true nature and composition of goods, coupled with mis-declaration in classification, establishes a clear element of mens rea and amounts to willful misstatement and suppression of material facts within the meaning of Section 28(4) of the Customs Act, 1962. The argument of the importer that Section 28(4) has been invoked as an afterthought is not sustainable. The importer consistently declared vague and generic descriptions over a prolonged period, despite the tariff structure clearly requiring polymer-specific classification. Such repeated non-disclosure of material particulars constitutes wilful mis-statement and suppression of facts, justifying invocation of Section 28(4) of the Customs Act, 1962. In view of the above, I hold that the importer is liable to pay differential duty of Rs. 50,98,031/- under the provisions of Section 28(4) of the Customs Act, 1962 along with interest under section 28AA of the Customs Act, 1962.

CONFISCATION AND REDEMPTION FINE:

16. As discussed earlier, it is clear that the importer had declared a vague and generic description of the imported goods as “stock lot of plastic packaging material in mix size and gsm,” without disclosing their actual nature, composition, or polymer type, thereby concealing the true character of the goods. This deliberate omission directly resulted in the

misclassification of the goods under inapplicable headings 39201099, 39202090, 39206919, and 39207119, attracting a lower rate of Basic Customs Duty (10%) instead of the applicable rate (15%) under CTH 39209999. Hence, the mis-declaration in respect of the description and classification of goods squarely attracts the provisions of Section 111(m) of the Customs Act, 1962, rendering the goods liable to confiscation.

16.1 As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of *M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad* [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]***. Para 23 of the said Judgment is as follows:

> *"The penalty directed against the importer under* Section 112 *and the fine payable under* Section 125 *operate in two different fields. The fine under* Section 125 *is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of* Section 125*, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of* Section 125*, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for*

imposing the redemption fine. The opening words of Section 125*, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under* Section 111 *of the Act. When once power of authorisation for confiscation of goods gets traced to the said* Section 111 *of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from* Section 111 *only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under* Section 125 *of the Act."*

16.2 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements. I find that goods are liable for confiscation and redemption fine can be imposed. I note that the case involves mis-classification due to non-disclosure of material particulars at the time of import, but does not involve prohibited goods or smuggled goods. I find it appropriate to maintain proportionality between the gravity of offence and the extent of revenue implication. Considering the nature of the violation and the principle that redemption fine should not be excessive, the ends of justice would be met if the redemption fine is restricted to 50% of the differential duty.

17. Since the duty has been short levied by reason of suppression and wilful mis-statement and the importer is liable to pay differential duty of Rs 50,98,031/- as determined under Section 28(8) of the Customs Act, 1962, the importer is liable for penalty equal to the duty amount of Rs. 50,98,031/- 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.

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

ORDER

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

(ii) I hold that the goods having assessable value of Rs. 7,85,52094/- are liable for confiscation under Section 111(m) of the Customs Act, 1962. I impose redemption fine of **Rs. 26,00,000/- (Rupees Twenty Six Lakhs only)** under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

(iii) I confirm the demand of differential duty amounting to **Rs. 50,98,031/-(Rupees Fifty Lakhs Ninety Eight Thousand Thirty One Only)** under Section 28(4) of the Customs Act, 1962 and order to recover the same from the importer.

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

(v) I impose penalty of **Rs. 50,98,031/- (Rupees Fifty Lakh Ninety Eight Thousand Thirty One Only)** under Section 114A of the Customs Act, 1962. However, in case the said importer pays the duty along with interest within 30 days of the communication of the order, the amount of penalty payable shall be reduced to 25% of the

penalty amount, as per provisions of Section 114A of the Customs Act, 1962.

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

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

Digitally signed by
Nitin Saini
Date: 03-02-2026
16:25:00

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

DIN: 20260271MO0000005E1A

To,

M/s Guru Kirpa International,

F-7A/36, GF, Sec 16, Rohini, Delhi-110089.

Copy to:-

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

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

iii. The Deputy/Asst. Commissioner (PCA), Custom House, Mundra.