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
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj-mundra@gov.in

A. File No.	:	GEN/ADJ/COMM/751/2023-Adjn-O/o Pr. Commr- Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-034-24-25
C. Passed by	:	**K. Engineer,** **Principal Commissioner of Customs,** **Customs House, AP & SEZ, Mundra.**
D. Date of order and Date of issue:	:	02. 01.2025. 02.01.2025
E. SCN No. & Date	:	SCN F. No. GEN/ADJ/COMM/751/2023-Adjn-O/o Pr. Commr- Cus-Mundra, dated 03.01.2024.
F. Noticee(s) / Party / Importer	:	i) M/s. H.M. Trading Co. B-216,2nd Floor, Gopal Palace, Nr. Shiromani Complex Nehrunagar, Ahmedabad, 380015 ii) Shri Manish Ashwinbhai Parikh Partner, M/s. H.M. Trading Co. (IEC-AAHFH2742R) B-216, Gopal Palace, Near Shiromani Complex Nehrunagar, Ahmedabad-380015
G. DIN	:	**20250171MO0000218543**

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

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

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

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

4. उक्त अपील के साथ -/ 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.

FACT OF THE CASE IN BRIEF

M/s. H. M. Trading Co., B-216, Gopal Palace, Near Shiromani Complex, Nehrunagar, Ahmedabad-380015 having IEC No. AAHFH2742R (hereinafter referred to as **'M/s HMT**) has filed Bills of Entries (BEs) for import of Artificial Grass/PVC Grass classifying the goods under CTH-39189090/ 57039090 & 57033090 through their Customs Broker M/s. N K Impex & Logistic Pvt. Ltd (CHA-AAECN4072ECH001P) at Mundra port.

2. Intelligence was gathered to the effect that M/s HMT was importing various type of floor covering *viz.* Artificial Grass/PVC Grass etc. by way of mis classification of the goods under CTH- 39189090. It was noticed that floor covering of Plastics are covered under heading 3918 whereas the floor coverings of textile material are covered under CTH-57033090 For illustration, relevant Headings and description of the Customs Tariff is being reproduced herein under:

The Note 1 of Chapter 57 is reproduced below:

"1. For the purposes of this Chapter, the term "carpets and other textile floor coverings" means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes..."

Therefore, as per Chapter Note 1 of Chapter 57, floor coverings in which textile materials serve as the exposed surface to be classified under chapter 57. The rate of duty levied as per the declared CTH-39189090 is @ 15% (BCD)+10%(SWS)+18%(IGST), whereas, the rate of duty under CTH-57033090 is @ BCD @20% or Rs.55 per Sq. Meter (whichever is higher) +0% (SWS)+12% (IGST).

INVESTIGATION OF THE LIVE BILLS OF ENTRY:

3.1 On the basis of above intelligence, the goods covered under following live BEs filed by M/s HMT through their Customs Broker M/s N K Impex were put on hold for examination by the officers of the SIIB, Custom House, Mundra:

Sr. No.	BE No. & date	Item as described in the BE
1	7427798 dated 09.02.2022	Artificial Grass under CTH-39189090
2	7459324 dated 11.02.2022	Artificial Grass under CTH-39189090

3.2 The goods covered in the above BEs were examined under punchnama dated 16.02.2022 and 17.02.2022 respectively **(RUD-1)** and representative samples were drawn and sent to the CRCL, Kandla for testing purpose. The test reports received from the CRCL, Kandla **(RUD-2)** testified that *the samples were made of woven base fabric of Polypropylene strips yarns tufted with green mixed yarns made of polyethylene (cut piles). On the other side it is covered with Polyester filament yarns, further covered with black colored material based on butadiene styrene.* As per the test report, it was crystal clear that the artificial grass was mainly covering made of two layers of woven fabric of polypropylene and polyethylene strips, these pile type strips are tufted in the middle layer and coated with the butadiene styrene from the back. The exposed surface is made

from strips through tufting process and hence the merit classification of the goods was found under CTH-5703. Further, on pursuance of Rule 6 read with Rule 3(a) of General Rules of the Interpretation of First Schedule of Import tariff, the merit classification of the goods declared as artificial grass are under CTH 57033090 and the applicable rate of duty to the CTH 57033090 are @ 20% or Rs. 55 Per Sqm, whichever is higher (BCD) + 0% (SWS) + 12% (IGST). Here, it is pertinent to mention that w.e.f. 01.02.2022, the CTH 57033090 has been replaced with CTH-57033990 and hence, w.e.f. 01.02.2022 the merit classification of the goods declared as artificial grass are under CTH 57033990.

3.3 In view of the Test Reports, prima facie it appeared that M/s HMT has imported 'Artificial Grass' by way of misclassifying the product with intend to evade the Customs Duty, the investigation was extended towards the previous import of 'Artificial Grass' by M/s HMT and Summons dated 08.03.2022 & 19.03.2022 **(RUD-3)** were issued to the import in-charge of M/s HMT for submission of all the documents related to import of 'Artificial Grass' from Mundra Port and payment particular thereon. A statement of Shri Manish Ashwinbhai Parikh, Partner of M/s H M Trading Co., Ahmedabad (IEC No. AAHFH2742R) was recorded under Section 108 of the Customs Act, 1962 on 23.03.2022 **(RUD- 4)**, wherein, he inter-alia stated that

- *He was Partner of M/s H M Trading Co. and other partners are his son and wife;*
- *M/s HMT was doing trading business and importing artificial grass and selling in domestic market through whole sellers and he looks after important work, sales and other activities of the firm;*
- *He verifies the check list before filing of Bills of Entry by their C.B. M/s N. K. Impex & Logistic Pvt. Ltd., who are filing their B/E since Jan.2020;*
- *He had finalized the Classification of Artificial Grass under CTH 39189090 in the check list of bills of entry on the basis of import documents;*
- *He was asked to go through the Custom Tariff CTH 3918 – Floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles; Wall or ceiling coverings of plastics, as defined in Note 9 to this Chapter, Tariff sub heading 391890- Of other plastics and 39189090- Other and the Chapter Note 9 of chapter 39 " For the purpose of heading 3918, the expression "Wall or ceiling coverings of plastics" applies to the products in rolls, of a width not less than 45 cm, suitable for wall or ceiling decoration, consisting of plastics fixed permanently on a backing of any material other than paper, the plastic layer (on the face side) being grained, embossed, coloured, design printed or otherwise decorated".*

  and on being asked to explain, how the goods imported by them were classified in CTH 39189090, he stated that as per above details, the goods imported are not classifiable in 39189090, however the same are in rolls and also usable for wall coverings and it is also decorated item, therefore they had classified the same under CTH 39189090. He didn't know other technical things about the goods;
- *On being informed that the Bills of Entry 7427798 dated 09.02.22 and 7459324 dated 11.02.22 were hold by the SIIB and examination of the goods carried out under Panchnama proceedings dated 16.02.2022 and 17.02.2022 respectively in the presence of their CBR and also samples of the items drawn by the department and on being asked to go through the*

said panchnamas and to explain as to whether he is satisfied with said proceedings, he stated that during the examination of both cargo, their CBR was present and he has already received copies of said panchnamas and he is satisfied with the process of examination and sampling of the items;

- *His attention was invited to copy of BL No.YMLUS236128925 dated 14.01.2022 issued by the shipping Line – Huan Ming (Shanghai) International Shipping Agency Co.Ltd. and B/L No.VASSHA2201090 dated 11.01.2022 issued by Vasco Maritime Pte.Ltd. and on being pointed out that the items are mentioned as "Tufted PE Yarn Artificial Grass" and HS Code mentioned as 391890 and on being asked as to why the correct and complete name of items are not mentioned in the Bills of Entry filed by them, he stated that he was not aware in the matter but it may be due to general practice;*
- *On being asked to go through the Customs Tariff CTH 5703 wherein it is mentioned -Carpets and other textile floor coverings, tufted, whether or not made up- and to explain that it appears to be the reason for hiding the correct name of the imported goods "Tufted PE Yarn Artificial Grass" so that the system or Customs Department will not find out the correct classification of the imported goods, he stated that he had not mentioned the incomplete name of imported goods with intention to hide the facts;*
- *On being asked to inform the end use of the imported item artificial grass, he stated that as per his knowledge, the items end use are- Floor coverings, Wall coverings, for decoration in malls, terrace covering, balcony covering, small gardens in societies, sanitary ware shops, door mats etc.;*
- *On being handed over copies of test memo No.189, 190, 191, 192, 193 and 194 all dated 17.02.2022 having test reports on the backside of said test memos and on being asked to go through the test reports of CRCL, Kandla given on back side of said test memo's wherein it is mentioned that the item is made of two layer of woven fabric of Polypropylene and polyethylene strip yarn, tufted with green mixed fine strip of cut pile of Polypropylene and polyethylene on one side & covered based on (mainly) Acrylonitrile Butadiene Styrene (ABS) and to offer comments and whether he agrees with the test report, he stated that he has gone through the test reports and one copy of each has been received by him and he agrees with the said test reports.*
- *His attention was invited to following issues under investigation by the department:*

-In view of the test reports, the said Artificial Grass are made of two layer (one white and another is black) of woven fabric of Polypropylene strip yarn, tufted with green colour mixed yarn (cut pile) and composition of (mainly) Polypropylene and Polyethylene on one side & coated with black (pink) colored layer based on butadiene styrene material on other side.

- *Note 1 of Chapter 57, which is reproduced below:*

> *"1. For the purposes of this Chapter, the term "carpets and other textile floor coverings" means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes..."*

- *AS per the CTH 5703- Carpets and other textile floor coverings, tufted, whether or not made up, CTH 570330- Of other man made textile material As per Chapter Note 1 of Chapter 57, floor coverings in which textile materials serve as the exposed surface to be classified under chapter 57.*
- *As the exposed surface is made from strips through tufting process and textile material used for preparation of artificial grass, the merit classification of the goods is under heading 5703.*
- *The merit classification the goods as Artificial Grass (in this case) are under CTH 57033990. The rate of applicable duty to the CTH 57033090 at effective rate of duty BCD- 20% or Rs.55 per Sq. Meter, whichever is higher+10%(SWS)+12%(IGST).*

- *on being asked as to whether he agrees with classification of goods under CTH 57033090 and payment of applicable duty, he stated in affirmative that he is agree for the classification of imported goods under CTH 57033090 and is ready for payment of applicable duty as per said CTH for the above said two BE's.*
- *On being asked to go through the details of panchnama dated 16.02.2022 in respect of examination of goods of B/E No.7427798 dated 09.02.2022 and to inform as to whether he agrees with the calculation of 310 rolls into 10332.75 Sq. Mtrs and to go through the details of panchnama dated 17.02.2022 in respect of examination of goods of B/E No.77459324 dated 11.02.2022 and to inform as to whether he agrees with the calculation of 320 rolls into 10635.69 Sq.Mtrs, he stated that he agrees with the above said calculation of rolls into square meters.*
- *On being informed that he has confirmed the total sq. mtrs. Of all items and on being asked as to whether he agrees for valuation of goods be taken as per NIDB data for the calculation and payment of applicable duty on the above said items,* ***he stated in affirmative that he is agreed for payment of duty as per NIDB data for the identical items available at the nearest point of his above B.E. He requested to take minimum value of the goods as per NIDB data.***

- *He was shown NIDB data sheet, as per that valuation of items Artificial Grass given and rates per Sq.Mtr is mentioned as under :-*
  - *Rs.147.77 per Sq.Mtr. for 25 MM,*
  - *Rs.193.78 per Sq.Mtr. for 35 MM,*
  - *Rs.212.37 per Sq.Mtr. for 40 MM,*

  and on being asked as to whether he agrees with the calculation of valuation as per said NIDB data sheet, he stated that he has gone through the said sheet and stated that it is difficult for him for marketing the goods at such valuation and requested to take lower valuation, if possible/available.

- *On being asked about his previous imports as to why these were made under CTH 391890902 and not under correct CTH 57033090, he stated that since the supplier has mentioned the said CTH 391890902, therefore, they have mentioned the said CTH in their imports being made since Jan.2020. He further stated that in their imports of Artificial Grass made vide Bills of Entry No.2291846 dated 09.01.2021 and No.2665035 dated 08.02.2021,*

they have classified the goods under CTH 57033090 and paid the applicable duty.

- *On being pointed out that when they have already classified the similar goods under CTH 57033090 and paid applicable duty thereon -per sq.mtr. and on being asked to explain as to why he has not followed the same procedure for present Bills of Entry, he stated that the supplier has mentioned the CTH as 39189090 and therefore, he also classified the goods under said CTH. He further stated that he agrees with the re-classification of goods under CTH 57033090 and ready to pay the applicable duty.*

3.4 From the above, it appeared that the M/s HMT has mis declared the imported goods and attempted to import the goods by resorting to undervaluation and mis classification, therefore, the cargo covered under BE No. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022 were found liable to confiscation under Section 111 of the Customs Act, 1962 and therefore, were seized under Section 110 of the Customs Act, 1962 vide seizure memo both dated 29.03.2022 **(RUD-5).**

3.5 Thereafter, M/s HMT requested for provisional release of the goods and requested to re-assessment of the goods on reclassification of the same under CTH-57033090 and agreed to pay the differential duty thereon. The competent authority approved the request of M/s HMT for provisional release of the goods with re-assessment of the subject BEs on re-determined value as per NIDB data to cover differential duty and applicable Bond and Bank Guarantee for fine/penalty or any other conditions as per the provisions of Section 110A of the Customs Act, 1962 as decided by the adjudicating authority. Accordingly, the BE No. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022, were re-classified and re-assessed. The goods have been released provisionally on applicable Bond and bank Guarantee.

3.6 Thereafter, a Show Cause Notice No. GEN/ADJ/ADC/1504/2023-Adjn-O/o Pr.Commr-Cus-Mundra dated 28.07.2023 has been issued by the Additional Commissioner, Custom House Mundra to M/s HMT under Section 124 of the Customs Act in respect to the BE No. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022 proposing therein reclassification of "Artificial Grass" under CTH-57033090, confiscation of the goods valuing Rs. 36,06,379/- under Section 111 (m) and Penalty under Section 112 (a) (ii) of the Customs Act, 1962. The above said SCN dated 28.07.2023 is still pending for adjudication.

INVESTIGATION OF THE PREVIOUS/SUBSEQUENT BILLS OF ENTRY:

4.1 Meanwhile, it was noticed that in past also, M/s HMT had imported the similar item, i.e. Artificial Grass by classifying the same under CTH-39189090. Therefore, to cover the previous import of Artificial Grass at Mundra Port, M/s HMT was asked to submit detail of such import vide Summons dated 08.03.2022, 19.03.2022, 29.03.2022, 13.06.2022, 20.07.2022, 09.01.2023, 14.02.2023 & 01.08.2023 and letter dated 18.04.2023 **(all RUD-6).** M/s HMT, however has neither submitted any detail/information called for vide above summons and letters nor appeared himself or through his authorized persons to give statement in the matter.

4.2 Thereafter, the past imports of M/s HMT from Mundra Port regarding

Artificial Grass have been checked from the EDI system and it appears that M/s HMT has imported Artificial Grass by classifying the same under various CTH-39189090, 57039090 & 57033090. Here, it is pertinent to mention that the investigation of the live consignment covered under BE No. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022 has resulted that the Artificial Grass imported by M/s HMT merit classification under CTH- 57033090 and attract BCD @ 20% or Rs. 55 per sqm whichever is higher. Therefore, prima facie it appeared that the 'Artificial Grass' imported by M/s HMT by classifying the same under the CTH other than 57033090 were mis classified and hence investigation in respect to these previous BEs above has been initiated separately on the basis of the information/detail available on record.

4.3 Whereas, from scrutiny of the Bill of Ladings (BL)/commercial invoices/Country of Origin Certificate (COO) in respect to the BEs filed for import of Artificial Grass, it appears that in some cases, the HSN code of the imported item is mentioned as 57033090, whereas, in the BE, M/s HMT has declared HSN of the same item as 57039090. For illustration, scan image of Bill of Ladings/COO and corresponding BE filed by M/s HMT are reproduced herein under for illustration:

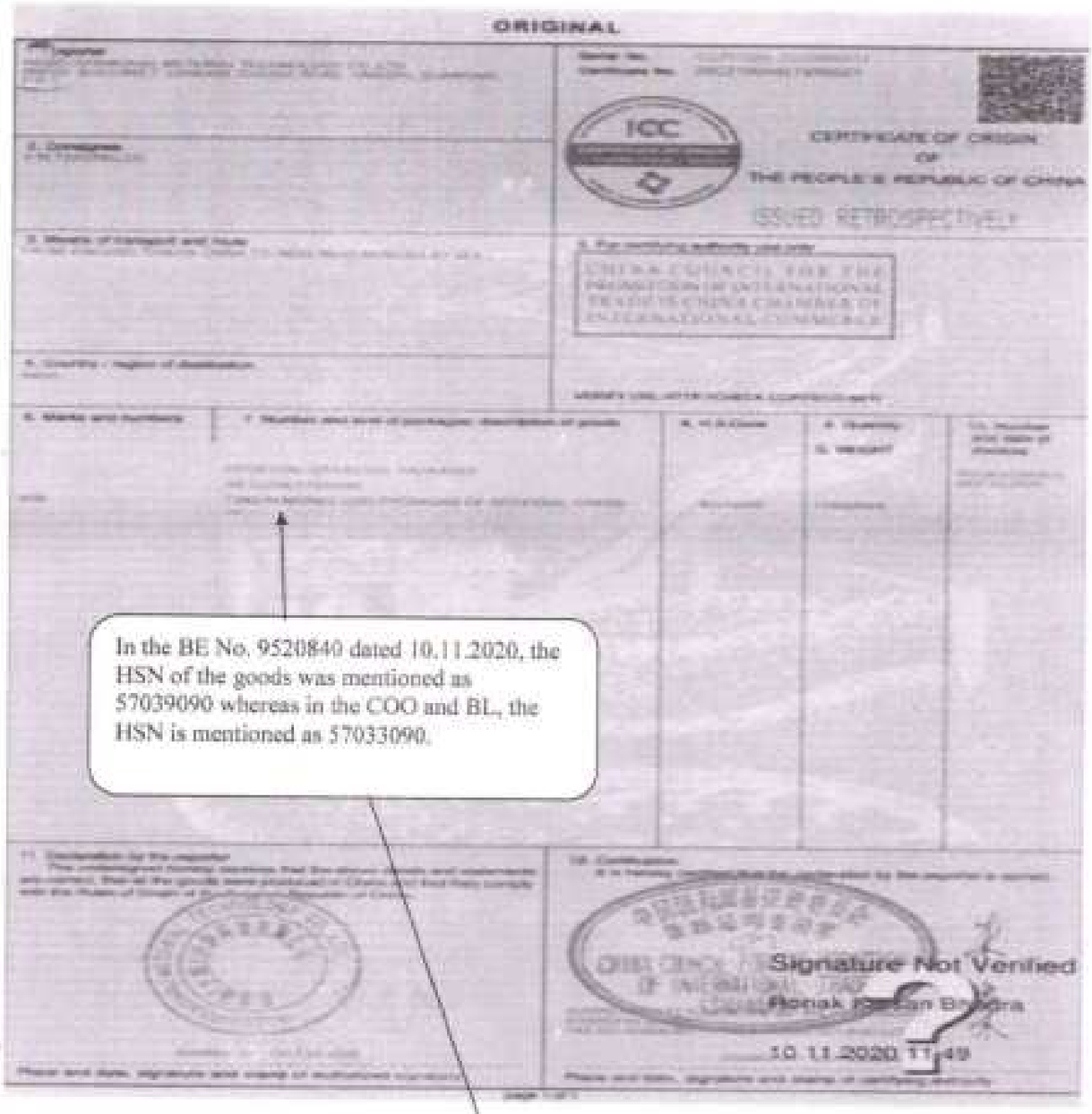
SCAN IMAGE-1

BE No. 9520840 dated 10.11.2020 and its corresponding BL/COO:

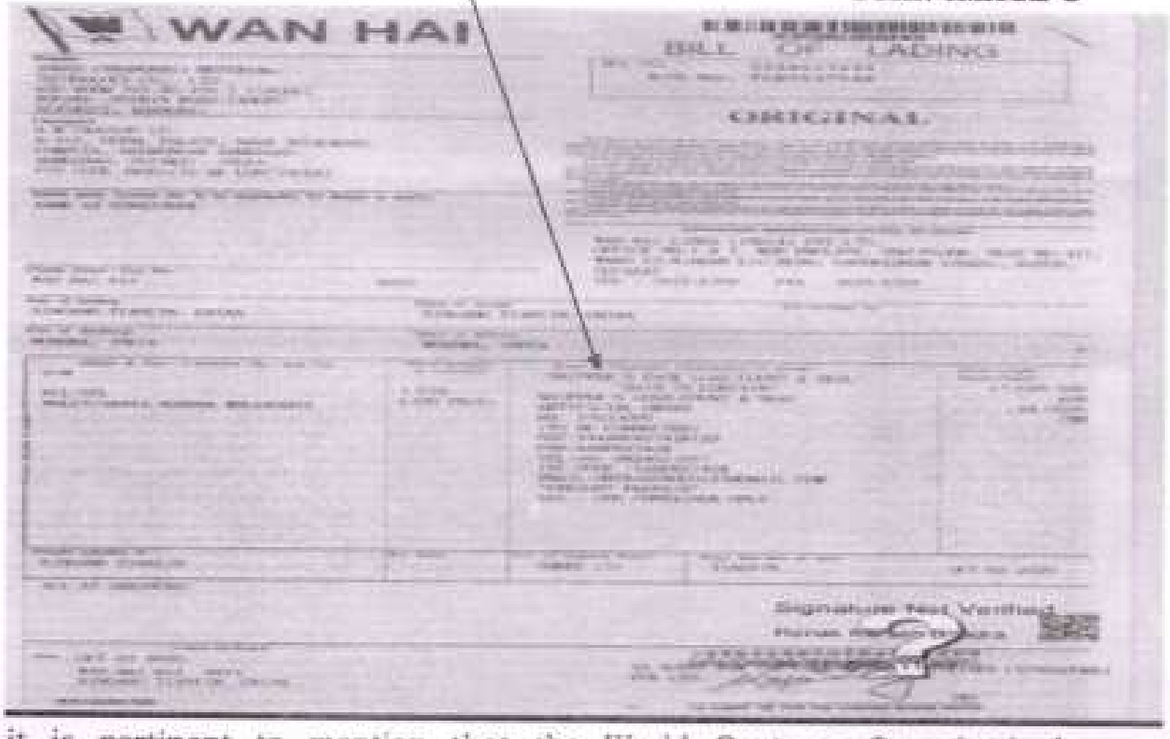

INDIAN CUSTOMS

PART - II - INVOICE & VALUATION DETAILS (Invoice S/1)

SCAN IMAGE-2



SCAN IMAGE-3



Here it is pertinent to mention that the World Customs Organization's Harmonized System (HS) uses code numbers to define products. A code with a

low number of digits defines broad categories of products; additional digits indicate sub-divisions into more detailed definitions. Six-digit codes are the most detailed definitions that are used as standard. Countries can add more digits for their own coding to subdivide the definitions further according to their own needs. Products defined at the most detailed level are "tariff lines".

In view of the above, it appears that in the BL & COO, items are mentioned as "Artificial Grass" and HS Code mentioned as 57033090 which attracts BCD @ 20% or Rs. 55 per sqm whichever is higher whereas at time of filling BE, M/s HMT changed the HSN of the goods as 57039090 which attract BCD@20%. Therefore, it appears that M/s HMT was hiding the correct classification of the goods with intend to evade the Customs duty on imported goods.

4.4 Similarly, in the BE No. 4805062 dated 24.07.2021. it is noticed that the description of the goods is declared as "Artificial Grass" with CTH-39189090, whereas, in the BL, the description of the goods is mentioned as "Tufted PE Yarn Artificial Grass".

BE No. 4805062 dated 24.07.2021and its corresponding BL:

SCAN IMAGE-4


INDIAN CUSTOMS

PART - II - INVOICE & VALUATION DETAILS

SCAN IMAGE-5

In view of the above, it appears that in the BL, items are mentioned as "Tufted PE Yarn Artificial Grass" and HS Code mentioned as 391890, whereas in the BE, the item is mentioned as Artificial grass with HS Code- 391890. Here, it pertinent to mention that as per the Customs Tariff, Carpets and other textile floor coverings, tufted, whether or not made up are covered under CTH 5703. Therefore, it appears that M/s HMT mis declared correct name of the imported goods "Tufted PE Yarn Artificial Grass" to avoid payment of higher customs duty.

4.5 Whereas, the description and CTH declared by M/s HMT in the Bill of Entry and description and HSN mentioned on the BL/COO have been compared as under:

TABLE-1

Sr. No.	BE No.	Date	Item description as per BE	CTH declared in the BE	Item description as per BL	HSN declared as per BL
1	6681756	29-01-2020	TUFTED PE YARN ARTIFICIAL GRASS- HEIGHT	39189090	TUFTED PE YARN ARTIFICIAL GRASS-	39189090
2	8796858	14-09-2020	TUFTED PE YARN ARTIFICIAL GRASS- HEIGHT:	39189090	TUFTED PE YARN ARTIFICIAL GRASS-	39189090
3	9520840	10-11-2020	ARTIFICIAL GRASS	57039090	Artificial Grass	57033090
4	9668500	23-11-2020	ARTIFICIAL GRASS	57039090	Artificial Grass	57033090
5	2134425	28-12-2020	ARTIFICIAL GRASS	57039090	Artificial Grass	57033090
6*	2291846	09-01-2021	ARTIFICIAL GRASS	57033090	Artificial Grass	57033090
7	2414402	19-01-2021	ARTIFICIAL GRASS	57039090	Artificial Grass	57033090
8*	2665035	08-02-2021	ARTIFICIAL GRASS	57033090	Artificial Grass	57033090
9	3909791	11-05-2021	ARTIFICIAL GRASS	39189090	Artificial Grass	39189090
10	4033005	21-05-2021	ARTIFICIAL GRASS	39189090	Artificial Grass	39189090
11	4805062	24-07-2021	ARTIFICIAL GRASS	39189090	Tufted PE Yarn Artificial Grass	39189090
12	4847735	28-07-2021	ARTIFICIAL GRASS	39189090	Tufted PE Yarn Artificial Grass	39189090
13	5383843	09-09-2021	ARTIFICIAL GRASS	39189090	Tufted PE Yarn Artificial Grass	39189090
14	5895920	19-10-2021	ARTIFICIAL GRASS	39189090	Tufted PE Yarn Artificial Grass	39189090
15	7314781	31-01-2022	ARTIFICIAL GRASS	39189090	Tufted PE Yarn Artificial Grass	
16	9269957	24-06-2022	ARTIFICIAL GRASS	57039090	Artificial Grass	39189090
17	9391165	03-07-2022	ARTIFICIAL GRASS	57039090	Tufted PE Yarn Artificial Grass	570390

* These BEs (Sr. No.6 & 8) were classified under correct CTH-57033090 and duty was paid @ Rs. 55 per sqm.

4.6 Furthermore, from scrutiny of past BEs and Commercial Invoices uploaded on E-Sanchit by M/s HMT, it is noticed that the supplier in all these cases was same, *viz* M/s Inred (Shanghai) Material Technology Co. Ltd. Room No, 502, No. 458-2 Xinghuia Quare, Guoxia Road, Yangpu, District Shanghai-200001. However, in case of BE No. 2291846 dated 09.01.2021 and 2665035 dated 08.02.2021 (Sr. No. 6 & 8 above) they had classified the imported goods in correct CTH- 57033090 and paid the duty @ Rs. 55 per sqm but in remaining 15 cases, it appears that M/s HMT has imported same item, i.e. 'Artificial Grass' from same supplier under various consignments but mis classified with intend to evade customs duty.

4.7 Whereas, Shri Manish Ashwinbhai Parikh, Partner of M/s HMT in his statement recorded on 23.03.2022 has categorically stated that since the supplier has mentioned the said CTH 391890902, therefore, they have mentioned the said CTH in their imports being made since Jan.2020. He further stated that in their imports of Artificial Grass made vide Bills of Entry No.2291846 dated 09.01.2021 and No.2665035 dated 08.02.2021, they have classified the goods under CTH 57033090 and paid the applicable duty. On being pointed out that when they have already classified the similar goods under CTH

57033090 and paid applicable duty thereon -per sq. mtr. why he has not followed the same procedure for other Bills of Entry, he stated that the supplier has mentioned the CTH as 39189090 and therefore, he also classified the goods under said CTH. The above submission of Shri Manish Ashwin bhai Parikh appears as not correct in as much as can be perceived from the above table that in many instances, in the BEs, they have declared the CTH and description of the goods imported different from the description and HSN mentioned on the BLs.

4.8 Whereas, on analysis of NIDB data of import of similar items in recent past, it was noticed that price of the Artificial Grass varies with the size range. Therefore, undervaluation of the imported items was also suspected in the present matter. It appears that the assessable value declared by the importer in the previous BEs is also liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007 for short) and need to be re-determined under the CVR, 2007. Since, the transaction value of the impugned goods could not be determined under the provisions of sub-rule (1) of Rule 3 of the Rules ibid, the same is required to be determined under subsequent rules of the CVR, 2007. In the present case, NIDB data of import of identical item at Mundra Port from China as well as other ports during the period range of the time of filling Bill of Entries has been checked and the price of different size of 'Artificial Grass' are found and required to considered for re-determination of the value of the imported goods in terms of Rule 4 & 5 of the CVR, 2007. The re-determined value of these BEs is detailed in the Annexure-A attached to this noticed and a summary of the same is reproduced hereinunder:

TABLE-2

Sr. No.	BE No.	Date	Value declared in BEs (in Rs.)	Value as per NIDB data (In Rs.)	Difference (in Rs.)
1	6681758	29-01-2020	930909	2064065	1133156
2	8796858	14-09-2020	912133	1692868	780735
3	9520840	10-11-2020	1007883	1877100	869217
4	9668500	23-11-2020	1029768	1727152	697384
5	2134425	28-12-2020	2074586	3489923	1415337
6	2414402	19-01-2021	1164407	2515088	1350681
7	3909791	11-05-2021	973381	2459016	1485635
8	4033005	21-05-2021	605763	1496631	890867
9	4805062	24-07-2021	1260051	5018094	3758043
10	4847735	28-07-2021	1323137	3247002	1923865
11	5383843	09-09-2021	1299010	3234168	1935158
12	5895920	19-10-2021	1278551	5236272	3957721
13	7314781	31-01-2022	1277228	3875868	2598640
14	9269957	24-06-2022	1083879	2210584	1126705
15	9391165	03-07-2022	1220971	2673048	1452077
			1,74,41,658/-	**4,28,16,878/-**	**2,53,75,220/-**

In view of the above, it appears that in case of Import of 'Artificial Grass' by M/s HMT vide above tabulated BEs (all 15 BEs and their supporting documents are **RUD-7),** there was gross undervaluation of the imported items to the tune of **Rs. 2,53,75,220/-.**

4.9 Whereas, it appears that the CTH-57033090 attracts BCD @ 20% or Rs. 55 per sqm whichever is higher + 0% SWC+12% IGST. In the BEs, M/s HMT has declared the unit of quantity in kg, therefore to ascertain the duty payable on the imported items, the quantity in sqm has been taken from the BL/commercial invoice/packing list of the respective BEs as mentioned in the **Annexure-A**, attached to this notice it is noticed that in all cases BCD @ Rs. 55 per sqm is higher. Thus, duty liability on the above said BEs has been calculated as detailed in the Annexure-A, attached to this notice and summarized as under:

TABLE-3

Sr. No.	BE No.	Date	Qty in sqm	Value declared in BEs	Total Duty Declared in the BE (BCD@ 15%/20% +SWS+ IGST@18%)	Value as per NIDB data	Total duty payable (BCD @ Rs. 55 Per Sqm +SWS @ 0%+IGST @12%)	Difference in value	Difference in Duty
1	6681758	29-01-2020	9500	930909	352236	2064065	834145	1133156	481909
2	8796858	14-09-2020	10806	912133	357695	1692868	870025	760735	512331
3	9520840	10-11-2020	10000	1007883	373443	1877100	842613	869217	469170
4	9668500	23-11-2020	9879	1029768	381552	1727152	817195	697384	435643
5	2134425	28-12-2020	20441	2074586	768680	3489923	1680757	1415337	912077
6	2414402	19-01-2021	10100	1164407	431438	2515088	925542	1350681	494104
7	3909791	11-05-2021	9800	973381	368829	2459016	900076	1485635	531247
8	4033005	21-05-2021	6178	605763	229533	1496631	560978	890867	331445
9	4805062	24-07-2021	19550	1260051	477453	5018094	1807652	3758043	1330200
10	4847735	28-07-2021	12650	1323137	501357	3247002	1170686	1923865	669310
11	5383843	09-09-2021	12600	1299010	492215	3234168	1166014	1935158	673799
12	5885920	19-10-2021	20400	1278551	484463	5236272	1886719	3957721	1402256
13	7314781	31-01-2022	15100	1277228	483961	3875868	1396988	2598640	913027
14	9269957	24-06-2022	12625	1063879	401601	2210584	1044433	1126705	642832
15	9391165	03-07-2022	12587	1220971	452397	2673048	1097758	1452077	645361
			192216	**17441658**	**6556852**	**42816878**	**17001562**	**25375220**	**10444710**

In view of the above, it appears than by way of mis classification of the imported item, Artificial Grass, the HMT has short paid total customs duty amounting to **Rs. 1,04,44,710/- (BCD+SWS+IGST)** in respect to the above BEs. above tabulated BEs.

5. LEGAL PROVISION:

The Legal provisions of the Customs Act, 1962 (**Act** for the short) and Rule made thereunder relevant to the present matter are discussed herein under:

5.1 SECTION 17 of the Act, prescribes that an importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

5.2 SECTION 46 of the Act prescribes that the importer while presenting a bill of entry stall 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.

5.3. SECTION 28 of the Act, ibid prescribes that *recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. As per Sub Section (4) Of the said Section,*

(4) 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, by reason of,-

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

(d)

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.

Explanation- *For the purposes of this section, "relevant date" means,-*

(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in n case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c)in a case where duty or interest has been erroneously refunded, the date of refund

(d) in any other case, the date of payment of duty or interest.

5.4. Further, Section 28 AA of the Act, provides the recovery of interest on delayed payment of duty. According to which

(1) 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 paid 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.

(2) Interest at such rate not below ten per cent. and not exceeding thirty -six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

5.5. Further, **Section 111 of the Act**, prescribes the Confiscation of improperly imported goods, etc. as under

- The following goods brought from a place outside India shall be liable for confiscation:

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

5.6 Further, Section 112 of the Act provides the penal provisions for improper importation of goods, etc. which read as under:

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, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [1] [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

Provided *that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]*

[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [4] [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [5] [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [6] [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

5.7. SECTION 114A of the Act enjoins the penal provision in case of short-levy or non-levy of duty in certain cases as under –

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 willful 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 sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso sha11 be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, nod twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation. - For the removal of doubts, it is hereby declared that-

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

5.8 SECTION 124 prescribes the mandatory issuance of show cause notice before confiscation of goods, which read as under:

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in [1][writing with the prior approval of the officer of Customs not below the rank of [2][an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

***Provided** that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*

*[3][**Provided** further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]*

5.9 SECTION 125 provides the Option to pay fine in lieu of confiscation as under:

(1) Whenever confiscation of any goods is authorised 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 [1] [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:

*[2] [**Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [3] [no such fine shall be imposed]:*

***Provided** further that] , without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

[4] [(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

[5] [(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

***Explanation**.-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no*

appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

OUTCOME OF INVESTIGATION:

6.1 On the basis of the investigation conducted as discussed in paras supra, it appears that M/s HMT has imported 'Artificial Grass' etc. by mis-classifying them under CTH- 39189090 & 57039090 and paying duty at the rate 15%/20% (BCD)+10%(SWS)+18%(IGST).

6.2 During the investigation of the live BE No. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022, the test reports of samples of imported goods, Artificial Grass received from the CRCL, Kandla testifies that the samples are made of woven base fabric of Polypropylene strip yarns tufted with green mixed yarns made of polyethylene and polypropylene (cut piles). On the other side it is covered with polyester filaments yarns, further covered with black colored material based on butadiene styrene. As per said test reports, it is very apparent that the artificial grass imported by M/s HMT is mainly a covering made of two layers of woven fabric of Polypropylene and polyethylene strips, these pile type strips are tufted in the middle layer and coated with butadiene styrene from the back. The exposed surface is made from strips through tufting process, the merit classification of the goods is under heading 5703. Here, it is pertinent to mention that w.e.f. 01.02.2022, the CTH 57033090 has been replaced with CTH-57033990 and hence, w.e.f. 01.02.2022 the merit classification of the goods declared as artificial grass are under CTH 57033990.

6.3 In pursuance of Rule 6 read with Rule 3(a) of General Rules for the Interpretation of First Schedule of Import Tariff, the merit classification of the goods declared as artificial Grass are under CTH 57033990. The rate of duty applicable to the CTH 57033990 at the rate (20% or Rs.55 per Sq. Meter, whichever is higher) (BCD)+0%(SWS)+12%(IGST). Therefore, the goods imported vide BE No. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022 were found liable to confiscation under Section 111 of the Customs Act, 1962 and on request of M/s HMT the BEs were re-classified and re-assessed on the redetermined value as per NIDB data and the goods have been released provisionally on submission applicable Bond and Bank Guarantee. Thereafter, a Show Cause Notice No. GEN/ADJ/ADC/1504/2023-Adjn-O/o Pr.Commr-Cus-Mundra dated 28.07.2023 has been issued by the Additional Commissioner, Custom House Mundra to M/s HMT in under Section 124 of the Customs Act in respect to these BEs proposing therein reclassification of "Artificial Grass" under CTH-57033090, confiscation of the goods valuing Rs. 36,06,379/- under Section 111 (m) and Penalty under Section 112 (a) (ii) of the Customs Act, 1962.

6.4 Meanwhile, investigation was extended towards import of similar item, i.e. Artificial Grass by HMT and it appears that M/s HMT has imported Artificial Grass by classifying the same under CTH-39189090 & 57039090 and paying duty at the rate 15%/20% (BCD)+10%(SWS)+18%(IGST).

6.5 M/s HMT was asked to submit detail of such import vide Summons dated 08.03.2022, 19.03.2022, 29.03.2022, 13.06.2022, 20.07.2022, 09.01.2023, 14.02.2023 & 01.08.2023 and letter dated 18.04.2023. M/s HMT, however they

have neither submitted any detail/information called for vide above summons and letters nor appeared himself or through his authorized persons to give statement in the matter.

6.6 From scrutiny of the past and subsequent BEs and Commercial Invoices in respect to Import of 'Artificial Grass' uploaded on E-Sanchit by M/s HMT, it appears that the supplier in all these cases was M/s Inred (Shanghai) Material Technology Co. Ltd. Room No, 502, No. 458-2 Xinghuia Quare, Guoxia Road, Yangpu, District Shanghai-200001.

6.7 Further, from scrutiny of the BLs and COO certificates in respect to previous BEs, it appears that in some cases, in the BL & COO, items are mentioned as "Artificial Grass" and HS Code mentioned as 5703090 which attracts BCD @ 20% or Rs. 55 per sqm whichever is higher whereas at the time of filling BE, M/s HMT changed the HSN of the goods as 57039090 which attract BCD@20. Furthermore, in some cases, in the BLs items are mentioned as "Tufted PE Yarn Artificial Grass" and HS Code mentioned as 391890, whereas in the BE, the item is mentioned as Artificial grass with HS Code- 391890. Here, it pertinent to mention that as per the Customs Tariff, Carpets and other textile floor coverings, tufted, whether or not made up are covered under CTH 5703. Here, it is pertinent to mention that w.e.f. 01.02.2022, the CTH 57033090 has been replaced with CTH-57033990 and hence, w.e.f. 01.02.2022 the merit classification of the goods declared as artificial grass are under CTH 57033990.

6.8 Moreover, it is evident that M/s HMT has imported the same item, namely 'Artificial Grass,' from the same supplier but has declared the item in the customs documents, such as the Bill of Entry (BE), based on their own preferences and not in accordance with the accurate classification. This pattern suggests that M/s HMT may have concealed the correct classification and name of the imported goods intentionally, possibly with the intention of evading Customs duty. This practice raises concerns that the accurate classification might be intentionally obscured to avoid detection by the Customs Department.

6.9 Furthermore, on analysis of NIDB data of import of similar items in recent past, it was noticed that price of the Artificial Grass varies with the size range. Therefore, it appears that the assessable value declared by the importer in the previous BEs is also liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007 for short) and need to be re-determined under the CVR, 2007. In the present case, NIDB data of import of identical item at Mundra Port from China as well as other ports in recent during the period range of the time of filling Bill of Entries has been checked and the price of different size of 'Artificial Grass' are found and required to considered for re-determination of the value of the imported goods in terms of Rule 4 & 5 of the CVR, 2007.

6.10 Whereas, it appears that the 'Artificial Grass' imported by M/s HMT vide 15 BEs as tabulated above by classifying the same under CTH-39189090 & 57039090 merits classification under CTH- 57033090, which is also mentioned in the BLs of some BEs as discussed above and attracts BCD @ 20% or Rs. 55 per sqm whichever is higher + 0% SWC+12% IGST. In the BEs, M/s HMT has declared the unit of quantity in kg, therefore to ascertain the duty payable on the imported items, the quantity in sqm has been taken from the BL/commercial

invoice/packing list of the respective BEs as mentioned in the Annexure-A, attached to this notice. It is noticed that in all cases BCD @ Rs. 55 per sqm is higher. Thus, duty liability on the above said BEs has been calculated as detailed in the Annexure-A, attached to this notice and summarized as under:

TABLE-4

BE No.	Total Qty in sqm	Value declared in BEs	Total Duty Declared in the BE (BCD@ 15%/20% +SWS+ IGST@18%)	Value as per NIDB data	Total duty payable (BCD @ Rs. 55 Per Sqm +SWS @ 0%+IGST @12%)	Difference in value	Difference in Duty
Total 15 BEs	192216	17441658	6556852	42816878	17001562	25375220	10444710

6.11 In view of the above, it appears that in total, during the period **29.01.2020 to 03.07.2022,** M/s HMT has imported Artificial Grass vide 15 BEs as discussed in para supras (Table-3 above) by way of mis classification and undervaluation. By doing so, they have been short levied and paid Customs duty amounting to **Rs. 1,04,44,710/- (BCD+SWC+IGST)** having **total assessable value of Rs. 4,28,16,878/- (as summarized in Annexure-A, attached to this notice)** which is required to be recovered from them under Section 28 (4) of the Customs Act, ibid along with interest under Section 28AA of the Act, as applicable.

6.12 Furthermore, it appears that Shri Manish Ashwinbhai Parikh, Partner of M/s HMT in his statement recorded on 23.03.2022 has categorically stated that he was looking after important work, sales and other activities of the firm and he himself had finalized the Classification of Artificial Grass under CTH 39189090 in the check list of bills of entry on the basis of import documents. Therefore, it appears that Shri Manish Ashwinbhai Parikh was responsible for classifying the Artificial Grass under wrong CTH-39189090 which resulted into short levy and payment of customs duty amounting to Rs. 1,04,44,710/- to the government exchequer. Furthermore, M/s HMT was summoned on various occasions to submit the detail of import of Artificial Grass made by them at Mundra Port but they failed to submit the required detail to the department.

CONTRAVENTIONS:

7. Whereas, based on investigations conducted in the matter, as discussed above it is noticed that M/s HMT has mis declared the imported item in terms of description, classification as well as value of the goods in as much they have imported Artificial Grass classifiable under CTH- 57033090 (w.e.f. 01.02.2022 under CTH-57033990) but classified the same under HSN- CTH-39189090 & 57039090. By doing this, M/s HMT has contravened the provisions of Section 14 and Section 46 of the Act, ibid read with Rule 11 of the CVR, 2007 in as much as the failed to declare correct value of the goods in the Customs document filed by them.

INVOKING OF EXTENDED PERIOD:

8.1 After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. In the instant matter, in many cases Assessment and Examination were not prescribed for their Bills of entry and therefore, entire onus is on the said importer to make truthful declarations and assess and pay their Govt. correctly.

8.2 In light of the discussions in the preceding paragraphs, it becomes evident that in numerous cases, the Bills of Lading (BLs) correctly specify the Harmonized System Nomenclature (HSN) code of the imported item as 57033090. However, a deliberate discrepancy arises during the filing of Bill of Entries (BEs) by M/s HMT, wherein the Customs Tariff Heading (CTH) is intentionally altered to CTH-39189090. This intentional alteration seems to be an attempt to evade Customs Duty, constituting willful misstatement and suppression of facts on the part of M/s HMT, leading to the evasion of duty. It is noteworthy that M/s HMT was fully cognizant of the technical specifications of their product, which warranted classification under CTH-57033090. Despite this awareness, they persistently misclassified their product under an incorrect CTH, presumably with the motive of reducing duty payments. This intentional misclassification would likely have gone unnoticed if not brought to light through a customs department inquiry.

Given the gravity of the situation, the provision of an extended period of five years, as stipulated under Section 28(4) of the Customs Act, 1962, appears applicable in the present case.

8.3 Whereas, it appears that that M/s HMT had resorted to willful mis-declaration of correct classification of goods in the Bills of Entry of the imported goods by suppressing the said material facts, which shows the ulterior motive of the importer to evade payment of applicable Customs Duty in respect of said imported goods cleared for home consumption. It further appears that by their act of omission and commission in as much as mis-declaration of CTH and undervaluation of the goods with an intent to evade payment of Customs Duty amounting to Rs. **1,04,44,710/- (BCD+SWC+IGST),** the subject goods valuing **Rs. 4,28,16,878/-** are liable to be confiscation under Section 111(m) of Customs Act, 1962. It further appears that the importer has rendered themselves liable for imposition of penalty under Section 112 (a)(ii) of the Customs Act, 1962 for the goods being liable for confiscation. It further appears that M/s HMT is also liable for penalty under Section 114A of the Customs Act, 1962 for their act of omission and commission to evade duty on account of any willful mis-statement and/or suppression of facts.

8.4 Furthermore, it appears that Shri Manish Ashwinbhai Parikh, Partner of M/s HMT was responsible for classifying the Artificial Grass under wrong CTH-39189090 which resulted into short levy and payment of customs duty amounting to Rs. 1,04,44,710/- to the government exchequer. By these acts of omission and commission, it appears that Shri Manish Ashwinbhai Parikh, partner of M/s HMT has rendered the imported goods liable for confiscation under Section 111 of the Customs Act and hence, rendered himself liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

9. Now, therefore in view of foregoing paras, M/s. H.M.Trading Co., B-216,

Gopal Palace, Near Shiromani Complex, Nehrunagar, Ahmedabad-380015 (IEC No.AAHFH2742R) were called upon to show cause within thirty days from the date of receipt of this notice to the Commissioner of Customs, Customs House Mundra, First Floor, Port User Building, Custom House Mundra, Kutch, Gujarat-370421, as to why:-

i) In the 15 BEs tabulated in Table-3 above, the classification of item "Artificial Grass" under CTH 39189090/ 57039090, as the case may be should not be rejected and the said goods should not be classified under CTH- 57033090 till 01.02.2022 and thereafter under CTH-57033990 under the Customs Tariff Act, 1975.

ii) The assessable value of the said goods as declared by M/s HMT in these BEs should not be rejected under Rule 12 of the CVR, 2007, as amended and to be re-determined in terms of Rule 4 & 5 of the CVR, 2007.

iii) the goods imported vide above 15 BEs, having re-determined assessable Value of **Rs. 4,28,16,878/-** (as detailed in 'Table-3' above) should not be confiscated under Section 111(m) of the Customs Act, 1962;

iv) Differential duty of **Rs. 1,04,44,710/- (BCD+SWC+IGST) (Rupees One Crore Four Lakhs Forty Four Thousand Seven Hundred Ten only)** for the period from **29.01.2020 to 03.07.2022** should not be demanded, confirmed and recovered from them under Section 28 (4) of the Customs Act, 1962;

v) Interest at appropriate rates should not be levied and recovered from them under Section 28AA of the Customs Act, 1962.

vi) Penalty should not be imposed upon them under the provisions of Section 112 (a)(ii) of the Customs Act, 1962.

vii) Penalty should not be imposed upon them under the provisions of Section 114A of the Customs Act, 1962.

10. Further, Shri Manish Ashwinbhai Parikh, partner of M/s. H.M.Trading Co., B-216, Gopal Palace, Near Shiromani Complex, Nehrunagar, Ahmedabad-380015 (IEC No.AAHFH2742R) were called upon to show cause within thirty days from the date of receipt of this notice to the to the Commissioner of Customs, Customs House Mundra, First Floor, Port User Building, Custom House Mundra, Kutch, Gujarat-370421, as to why penalty should not be imposed upon him under the provisions of Section 112 (a)(ii) of the Customs Act, 1962 for the reasons discussed herein above

11. Defense Submission and Personal Hearing

11.1 M/s H. M. Trading Co. submitted their written submission vide their letter dated 15.04.2024 wherein they inter-alia stated that:

It may kindly appreciate that the impugned notice alleging inter alia mis-classification is directed against goods covered by 15BEs by relying upon test reports issued by Chemical Examiner of Custom House laboratory, Kandla in respect of goods covered by Bills of Entry Nos. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022

filed by us in respect of artificial grass that was imported by us on earlier occasions.

Inasmuch as the entire demand covering 15 bills of entry is based on test reports of goods pertaining to some other bills of entry, it is pertinent to cross-examine the chemical examiner who had given test reports in respect of those bills of entry.

Hence, it was requested to allow cross-examination of the Chemical Examiner who tested the goods covered by aforesaid 02 Bills of Entry, particularly, over the aspect of "tufting" that is crucial for determining the classification of goods under consideration.

11.2 In view of the above request, the Noticee was allowed to cross examine the Chemical Examiner on 26.11.2024. The proceedings of the Cross examination is reproduced below:

Q. What is tufting?
Ans. The yam carried out mainly inserted through hollow needle to a woven or non-woven backing material to form a tuft usually a latex coating to the back of the carpet to hold the pile firmly in places. Pile may be cut or uncut high or low quality depend on fibre used, tuft density and size and twist of the pile yams.

Q. What exactly is tuft or tufting? What did you notice to come to conclusion that it is tufted? Is it a chemical process? What exactly is done in tufting?
Ans. Tufting is a mechanical process.

Q. Can I say that tufting is not a chemical process?
Ans. Yes.

Q. As per my understanding, tufting is a textile manufacturing process which is used to create a variety of products. The question is if you are chemical examiner, do you have exposure to test anything that is made out of mechanical process?
Ans. Yes

Q. On what basis you can say the above statement? Is it on the basis of experience or qualification?
Ans. As per literature, some reference, some books are available to test the tufted sample.

Q. Can you share those literatures?
Ans. The Fairchild Books Dictionary of Textiles. I will share them.

Q. What exactly was your observation on sample by which you opined that the product was tufted? Can you please provide me a copy of observation sheet where you have recorded that the sample is tufted?
Ans. It will be provided, if available with department.

Q. Do you have any exposure of Textile Manufacturing?
Ans. Yes. I have tested sample for last 25 years.

Q. Can tufting carried out by manually or by machine made?
Ans. Both by manual or by machine made.

Q. Was anything noted in the observation sheet regarding man made or machine made?
Ans. Not confirmed

Q. Do you need any instrument to give an opinion to test whether it is tufted or not?

Ans. It was a visual observation.

Q. Please provide the copy of observation sheet as stated earlier.
Ans. Ok

Q. I didn't understand exactly what tufting is from the answer of Mr. Chauhan. I would like to give another opportunity Mr Chauhan to make me understand what exactly the tufting is.
Ans. By means of systems, needles or hooks insert textile yarn into a pre-existing backing usually a woven or non-woven fabric.

11.3 Further during cross examination, consultant of M/s H.M. Trading Co. requested for personal hearing once they get the reply and submissions of Chemical Examiner.

11.4 Chemical Examiner vide letter dated 03.12.2024, supplied the literature and stated that:

"It is to inform that the samples of Artificial Grass, pertaining to B.E. No. 7427798 dated 09.02.2022 (Test Memo No. 189/17.02.22, 190/17.02.2022 & 191/17.02.2022) & B.E No. 7459324/11.02.2022 (Test Memo No. 192/17.02.2022, 193/17.02.2022 & 194/17.02.2022) imported by M/s H.M. Trading Co had been reported vide this laboratory Test Reports No. SIIB-156-160) all dated 08.03.2022 and SIIB-161 dated 25.02.2022 respectively.

The above test reports are self-explanatory and are in order based on the available literature, copy of the literature is enclosed herewith (Annexure-1 Page No. 1-4)"

11.5 Accordingly, the same was forwarded to M/s H.M. Trading vide letter dated 06.12.2024 and personal hearing was fixed on 24.12.2024. Consultant of M/s H.M. Trading sought for adjournment and requested to fix PH on 26.12.2024. The Personal hearing was granted on 26.12.2024 and the consulant appeared before me and gave his arguments which has been discussed in details in discussion part of the order. Hence, I find that principle of Natural justice has been followed in the current case.

11.6 Further vide letter dated 26.12.2024, Consultant of M/s H.M. Trading has forwarded the written submission which is reproduced as below:

i) On 26.11.2024, he was allowed cross-examination of Shri Ram Kumar Chauhan, Chemical Examiner, CRCL, Kandla in connection with test reports issued under his signatures in respect of samples drawn from consignments covered by Bills of Entry Nos. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022 filed by M/s. HMTC, which have been relied in the impugned notice also. These reports deals with past bills of entry covered by earlier Show Cause Notice No. GEN/ADJ/ADC/1504/2023-Adjn-O/o Pr. Commr-Cus-Mundra dated 28.07.2023 issued to M/s. HMTC. Ld. Additional Commissioner has adjudicated this notice vide Order-in-Original No. MCH/ADC/AK/255/2023-24 dated 09.02.2024. M/s. HMTC have already filed appeal against this order before Hon'ble Commissioner of Customs (Appeals) at Ahmedabad and the same is pending decision. The goods covered by impugned notice are covered by past bills of entry and the same have been cleared in accordance with law. The same are

not physically available.

ii) As per Sl. No. 9 (ii) of the notice, M/s. HMTC have been asked to show cause as to why:

(ii) "The assessable value of the said goods as declared in these BEs should not he rejected under Rule 12 of the CVR, 2007, as amended and to be re-determined in terms of Rule 4 & 5 of the CVR,2007."

iii) It is respectfully submitted that without prejudice to invocation of Rule 12 of Customs Valuation Rules, 2007 ("CVR"), there is no provision in law to invoke Rule 4 & 5 of CVR simultaneously for one and same goods. Hence, the proposal pe se is without authority of law.

iv) In addition, reliance is placed on undisclosed NIDB data to reject the transaction value and determine the same under Rule 4 & 5.

v) Para 6.9 of the notice is reproduced below for the case of ready reference:

"6.9 Furthermore, on analysis of NIDB data of import of similar items in recent past, it was noticed that price of the Artificial Grass varies with the size range...in the present case, NIDB data of import of identical item at Mundra from China as well as other ports in recent during the period range of the time of filing Bill of Entries has been checked and the price of different size of "Artificial Grass' are found and required to considered for re-determination of the value of the imported goods in terms of Rule 4&5 of the CVR, 2007."

vi) It may kindly be appreciated the following:

(i) The notice does not disclose and provide NIDB data.
(ii) The notice does not disclose "recent past".
(iii) The notice admits that size of artificial grass varies. Not only size, Rule 4 and Rule 5 both rules require the following parameters to be considered:
(a) Whether reference goods were sold for export to India and imported at or about the same time as the goods being valued.
(b) Whether reference goods were sold at the same commercial level and in substantially the same quantity as the goods being valued.(c) Whether if more than one transaction value of reference goods is found, the lowest such value is used to determine the value of imported goods.
(d) Whether the reference goods are identical (Rule 4) or similar (Rule 5) to goods under consideration.

(vii) The notice, without following any of the above criteria laid down in valuation rules, directly puts a value "as per NIDB" in Table-2, Table-3 and Table-4, which is completely arbitrary and without support of a single provision of Customs Valuation Rules, 2007.
5.5 Moreover, there is no evidence of any payment over and above the invoice price.
5.6 Hence, it is submitted that the value determined by simply referring to NIDB data (without disclosing and providing any) and by invoking both Rule 4 & 5 (without applying any criteria laid down therein) is completely untenable in the eyes of law in whichever way it is considered.

viii) In view of above, it is submitted that proposals at Sl. No. 9 (ii), (iv), (v) and (vii) regarding rejection of transaction value and determination of value totalling to Rs. 4,28,16,878/- for demanding differential duty amounting to Rs. 1,04,44,710/- under Section 28 (4) along with interest under Section 28AA and mandatory penalty under Section 114A of Customs Act, 1962, are not tenable in the eyes of law.

ix) Moreover, except for bills of entry at Sl. Nos. 15, 16 and 17, the entire notice is time barred inasmuch as it is issued after expiry of 02 years from the date when bill of entry at Sl. No. 14 was filed. The notice was issued on 03.01.2024 whereas the bill of entry at Sl. No. 14 was filed on 19.10.2021. As per para 4.2 and 4.6 of the impugned notice, all the documents like bill of entry, invoice, etc. were uploaded on E-Sanchit by M/s. HMTC. It is evident that the notice was issued based on department's own record. Therefore, invocation of extended period under Section 28 (4) is not justified.

x). Kind attention is invited to Table-1 of the notice. It may be appreciated that out of 15 bills of entry (after excluding 2 bills of entry at Sl. Nos. 6 & 8 as per foot note to the table), there is no mismatch in description of goods in bills of entry at Sl. Nos. 1, 2, 3, 4, 5, 7, 9, 10 and 16. Hence, charge of mis-declaration of description and the consequent proposal for confiscation under Section 111 (m) of Customs Act, 1962 is ill-conceived. Moreover, for bills of entry at Sl. Nos. 3, 4, 5, 7, 9, 10 and 16, there is no evidence to show that goods were "tufted" and hence, demand to recover duty by treating them as "tufted" is not tenable. The test reports relied in the notice pertain to samples drawn from other consignments and hence, the same cannot be applied to earlier bills of entry, as duly held by Hon'ble Tribunal in the case of Hindustan Fibres Ltd. v/s Commissioner of C. Ex., Jaipur, 2009 (245) ELT 337 (Tri. - Del.).

xi) As for goods covered by bills of entry at Sl. Nos. 11, 12, 13, 14, 15 and 17 also, goods have not been found to be "tufted".

xii) Moreover, the Chemical Examiner, who was cross-examined, has deposed that "tufting" is a mechanical process and not chemical process. He has claimed that he is qualified to test items resulting from mechanical process based on literature and reference books (and not on account of his qualification). When asked to produce observation sheets, he has not produced any. Also, he could not confirm that he had noted the observations in observation sheet. The reports issued by him were based on visual observation and not by virtue of any testing. Thus, the tests reports concluding the "tufted" nature of goods are neither applicable (since they pertain to past) nor backed by any tests or even observations by the Chemical Examiner noted in the log books maintained by the laboratory.

xiii) *In the backdrop of facts and circumstances where a specific request is made during cross- examination to produce observation sheets containing the relevant observations to support the conclusion, the Chemical Examiner is bound to produce the same, as duly held by Hon'ble Tribunal in Final Order No. A/11138-11142/2020 dated 25.08.2020 in the case of M/s. Neptune Trade Link Pvt. Ltd. & others. In this case, Hon'ble Tribunal has held that:*

"From the above it is apparent that Commissioner after examining all the

facts of the case and the cross examination of Assistant Chemical Examiner Chemical Assistant Grade-I could only reach to a conclusion that the appellant have failed to establish of ASTM D 86 method was not followed. Thus, we find the impugned order cannot be sustained in the present form. It is seen that during cross examination of the Chemical Assistant Grade-1 has clearly stated that log books and the registers are maintained in their laboratory, however, appellants chose not to ask for the same and Revenue chose not to produce the same. It was upto the Commissioner to get the necessary log books and lab records to bring out the real facts. It was also upto appellants to demand the same to prove their point. The matter was earlier remanded by allowing cross-examination in order to bring correct facts on record. The entire purpose of remanding the case is defeated if the facts are not brought out completely. In view of above we set aside the order and remand the matter for fresh adjudication after fresh cross examination of the Chemical Assistant Gr.-1, the person who actually undertook the tests. He will produce all the lab records necessary to ascertain actual reading recorded and equipment used during testing and to prove his assertions."

xiv) *By relying upon the above decision, it is submitted that reliance placed on the test reports issued by the Chemical Examiner is misplaced and the impugned notice is not tenable in the eyes of law for the above reasons.*

xv) . *As per para 4.6 of the notice-*

"4.6 Furthermore, from scrutiny of past BEs and Commercial Invoices uploaded on E-Sanchit by M/s. HMT, it is noticed that the supplier in all these cases was same, viz. M/s. Inred (Shanghai) Material Technology Co. Ltd... However, in case of BE No. 2291846 dated 09.01.2021 and 2665035 dated 08.02.2021 (Sr. No. 6 & 8 above), they had classified the imported goods in correct CTH 57033090 and paid the duty @ Rs. 55 per sqm but in remaining 15 cases, it appears that M/s. HMT has imported same item, i.e. Artificial Grass' from same supplier under various consignments but mis-classified with intend to evade customs duty."

xvi) It is alleged that M/s. HMTC "correctly" classified the goods, namely, Artificial Grass under CTH 57033090 in 02 bills of entry (Sl. Nos. 6 & 8) whereas they classified the item of identical description, i.e. Artificial Grass declared in other bills of entry under CTH 5703 9090 (BE at Sl. Nos. 3, 4, 5, 7, 16 and 17) and CTH 3918 9090 (BE at Sl. Nos. 9 & 10). In this regard, it is submitted that CTH 5703 deals with carpets and other textile floor coverings (including turf) of tufted nature.

xvii) It is a settled law that onus of correct classification is on department. However, without test reports, it cannot be alleged that goods declared as artificial grass were carpets of tufted nature so as to justify classification under CTH 5703 3090 and 5703 3990 (with effect from 01.02.2022) for all goods covered by all 15 bills of entry under consideration.

xviii). Without proper test reports, goods covered by none of the bills of entry listed in Table-1 are liable to be classified under CTH 5703 3090 prior to 01.02.2022 and under 5703 3990 after 01.02.2022.

xix). Moreover, the issue involved in the notice is regarding classification on the basis of record retrieved from E-Sanchit already available with department and

interpretation of competing tariff entries. Hence, the notice is not tenable being time barred insofar as Bills of Entry from Sl. Nos.01 to 14 is concerned and also for want of test reports for all bills of entry covered by Table-1 of show cause notice. As such, the allegation regarding mis-classification and proposal at Para No. 9 (i) of the notice to reclassify the goods under CT11 5703 3090 till 01.02.2022 and under CT11 5703 3990 thereafter, 9(iii) regarding confiscation under Section 111 (m) though no mis-declaration regarding description is alleged and (vi) regarding imposition of penalty under Section 112 (a)(ii) ibid is not tenable.

xx) Without prejudice, it is submitted that as per the proviso to Section 114A, where any penalty has been levied under Section 114A, no penalty shall be levied under section 112 or section 114.

xxi). All in all, it is submitted that none of the allegations and consequent proposals contained in the notice is tenable in the eyes of law

xxiii). Owing to above, penalty proposed on the partner of M/s. IIMTC under Section 112 (a)(ii) of Customs Act, 1962 is also not tenable.

xxiv) It is proposed in the notice to confiscate the goods under Section 111 (m) of Customs Act, 1962. However, the goods are not available physically.

xxv) In this regard, reliance is placed on Order-in-Original No. MUN-CUSTM-000-COM-03-24- 25 dated 17.04.2024 passed by Your Honour in the case of M/s. Dhartidhan Metal Alloys. Jamnagar wherein redemption fine is not imposed by observing that goods are neither available nor released provisionally under bond.

xxvi) It is prayed to follow the above order and refrain from imposing redemption fine on goods that are not available for confiscation and redemption.

xxvii) In view of above, it is prayed to give due consideration to the above submissions and vacate the impugned notice issued to M/s. HMTC and Shri Manish A. Parikh, Partner.

12. Discussions and Findings

12.1 I find that on the basis of the investigation conducted as discussed in paras supra, it appears that M/s HMT has imported 'Artificial Grass' etc. by mis-classifying them under CTH- 39189090 & 57039090 and paying duty at the rate 15%/20% (BCD)+10%(SWS)+18%(IGST).

12.2 During the investigation of the live BE No. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022, the test reports of samples of imported goods, Artificial Grass received from the CRCL, Kandla testifies that the sample are made of woven base fabric of Polypropylene strip yarns tufted with green mixed yarns made of polyethylene and polypropylene (cut piles). On the other side it is covered with polyester filaments yarns, further covered with black colored material based on butadiene styrene. As per said test reports, it is very much clear on record that the artificial grass imported by M/s HMT is mainly a covering made of two layers of woven fabric of Polypropylene and polyethylene strips, these pile type strips are tufted in the middle layer and coated with butadiene styrene from the back. The exposed surface is made from strips through tufting

process, the merit classification of the goods is under heading 5703. Further, w.e.f. 01.02.2022, the CTH 57033090 has been replaced with CTH-57033990 and hence, w.e.f. 01.02.2022 the merit classification of the goods declared as artificial grass are under CTH 57033990.

12.3 I find that on pursuance of Rule 6 read with Rule 3(a) of General Rules for the Interpretation of First Schedule of Import Tariff, the merit classification of the goods declared as artificial Grass is alleged to be under CTH 57033990. The rate of duty applicable to the CTH 57033990 at the rate (20% or Rs.55 per Sq. Meter, whichever is higher) (BCD)+0%(SWS)+12%(IGST). Therefore, the goods imported vide BE No. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022 were found liable to confiscation under Section 111 of the Customs Act, 1962 and on request of M/s HMT, the BEs were re-classified and re-assessed on the re-determined value as per NIDB data and the goods have been released provisionally on submission applicable Bond and Bank Guarantee. Thereafter, a Show Cause Notice No. GEN/ADJ/ADC/1504/2023-Adjn-O/o Pr.Commr-Cus-Mundra dated 28.07.2023 has been issued by the Additional Commissioner, Custom House Mundra to M/s HMT in under Section 124 of the Customs Act in respect to these BEs proposing therein reclassification of "Artificial Grass" under CTH-57033090, confiscation of the goods valuing Rs. 36,06,379/- under Section 111 (m) and Penalty under Section 112 (a) (ii) of the Customs Act, 1962. Meanwhile, investigation was extended towards import of similar item, i.e. Artificial Grass by HMT and it appears that M/s HMT has imported Artificial Grass by classifying the same under CTH-39189090 & 57039090 and paying duty at the rate 15%/20% (BCD)+10%(SWS)+18%(IGST). From scrutiny of the past and subsequent BEs and Commercial Invoices in respect to Import of 'Artificial Grass' uploaded on E-Sanchit by M/s HMT, it appears that the supplier in all these cases was M/s Inred (Shanghai) Material Technology Co. Ltd. Room No, 502, No. 458-2 Xinghuia Quare, Guoxia Road, Yangpu, District Shanghai-200001. Further, from scrutiny of the BLs and COO certificates in respect to previous BEs, it appears that in some cases, in the BL & COO, items are mentioned as "Artificial Grass" and HS Code mentioned as 5703090 which attracts BCD @ 20% or Rs. 55 per sqm whichever is higher whereas at the time of filling BE, M/s HMT changed the HSN of the goods as 57039090 which attract BCD@20. Furthermore, in some cases in the BLs, items are mentioned as "Tufted PE Yarn Artificial Grass" and HS Code mentioned as 391890, whereas in the BE, the item is mentioned as Artificial grass with HS Code- 391890. Here, it pertinent to mention that as per the Customs Tariff, Carpets and other textile floor coverings, tufted, whether or not made up are covered under CTH 5703. Here, it is pertinent to mention that w.e.f. 01.02.2022, the CTH 57033090 has been replaced with CTH-57033990 and hence, w.e.f. 01.02.2022 the merit classification of the goods declared as artificial grass are under CTH 57033990. Moreover, it is evident that M/s HMT has imported the same item, namely 'Artificial Grass,' from the same supplier but has declared the item in the customs documents, such as the Bill of Entry (BE), based on their own preferences and not in accordance with the accurate classification. This pattern suggests that M/s HMT may have concealed the correct classification and name of the imported goods intentionally, possibly with the intention of evading Customs duty. This practice raises concerns that the accurate classification might be intentionally obscured to avoid detection by the Customs Department.

Furthermore, on analysis of NIDB data of import of similar items in recent past,

it was noticed that price of the Artificial Grass varies with the size range. Therefore, in the Show Cause Notice it is alleged that the assessable value declared by the importer in the previous BEs is also liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007 for short) and need to be re-determined under the CVR, 2007. In the present case, NIDB data of import of identical item at Mundra Port from China as well as other ports in recent during the period range of the time of filling Bill of Entries has been checked and the price of different size of 'Artificial Grass' are found and required to considered for re-determination of the value of the imported goods in terms of Rule 4 & 5 of the CVR, 2007.

12.4 I find that the 'Artificial Grass' imported by M/s HMT vide 15 BEs as tabulated above by classifying the same under CTH-39189090 & 57039090 merits classification under CTH- 57033090, which is also mentioned in the BLs of some BEs as discussed above and attracts BCD @ 20% or Rs. 55 per sqm whichever is higher + 0% SWC+12% IGST. In the BEs, M/s HMT has declared the unit of quantity in kg, therefore to ascertain the duty payable on the imported items, the quantity in sqm has been taken from the BL/commercial invoice/packing list of the respective BEs as mentioned in the Annexure-A, attached to this notice. It is noticed that in all cases BCD @ Rs. 55 per sqm is higher. Thus, duty liability on the above said BEs has been calculated as Rs 1,04,44,710.

12.5 I find that the main issues involved in the case which are to be decided in the present adjudication are as below whether:

i) In the 15 BEs tabulated in Table-3 above, the classification of item "Artificial Grass" under CTH 39189090/ 57039090, as the case may be is liable to rejected and the said goods is classifiable under CTH-57033090 till 01.02.2022 and thereafter under CTH-57033990 under the Customs Tariff Act, 1975.

ii) The assessable value of the said goods as declared by M/s HMT in these BEs are liable to be rejected under Rule 12 of the CVR, 2007, as amended and to be re-determined in terms of Rule 4 & 5 of the CVR, 2007.

iii) the goods imported vide above 15 BEs, having re-determined assessable Value of **Rs. 4,28,16,878/-** (as detailed in 'Table-3' above) are liable for confiscation under Section 111(m) of the Customs Act, 1962;

iv) Differential duty of **Rs. 1,04,44,710/- (BCD+SWC+IGST) (Rupees One Crore Four Lakhs Forty Four Thousand Seven Hundred Ten only)** for the period from **29.01.2020 to 03.07.2022** is to be demanded, confirmed and to be recovered from them under Section 28 (4) of the Customs Act, 1962;

v) Interest at appropriate rates is to be levied and recovered from them under Section 28AA of the Customs Act, 1962.

vi) Penalty is imposable upon them under the provisions of Section 112 (a) (ii) of the Customs Act, 1962.

vii) Penalty should not be imposed upon them under the provisions of Section 114A of the Customs Act, 1962.

12.6 Before deciding the main issue, I would like to examine the written submission and personal hearing submission in this case which is mandatory for determining the case on merit.

i) In Para 1-4, Noticee has stated the facts of the case.

ii) In para 5.1 to 5.6, it has been submitted that *it is respectfully submitted that without prejudice to invocation of Rule 12 of Customs Valuation Rules, 2007 ("CVR"), there is no provision in law to invoke Rule 4 & 5 of CVR simultaneously for one and same goods. Hence, the proposal is without authority of law. In addition, reliance is placed on undisclosed NIDB data to reject the transaction value and determine the same under Rule 4 & 5.The notice does not disclose and provide NIDB data. The notice does not disclose "recent past". The notice admits that size of artificial grass varies. Not only size, Rule 4 and Rule 5 both rules require the following parameters to be considered:*

(a) Whether reference goods were sold for export to India and imported at or about the same time as the goods being valued.

(b) Whether reference goods were sold at the same commercial level and in substantially the same quantity as the goods being valued.

(c) Whether if more than one transaction value of reference goods is found, the lowest such value is used to determine the value of imported goods.

(d) Whether the reference goods are identical (Rule 4) or similar (Rule 5) to goods under consideration.

The notice, without following any of the above criteria laid down in valuation rules, directly puts a value "as per NIDB" in Table-2, Table-3 and Table-4, which is completely arbitrary and without support of a single provision of Customs Valuation Rules, 2007.

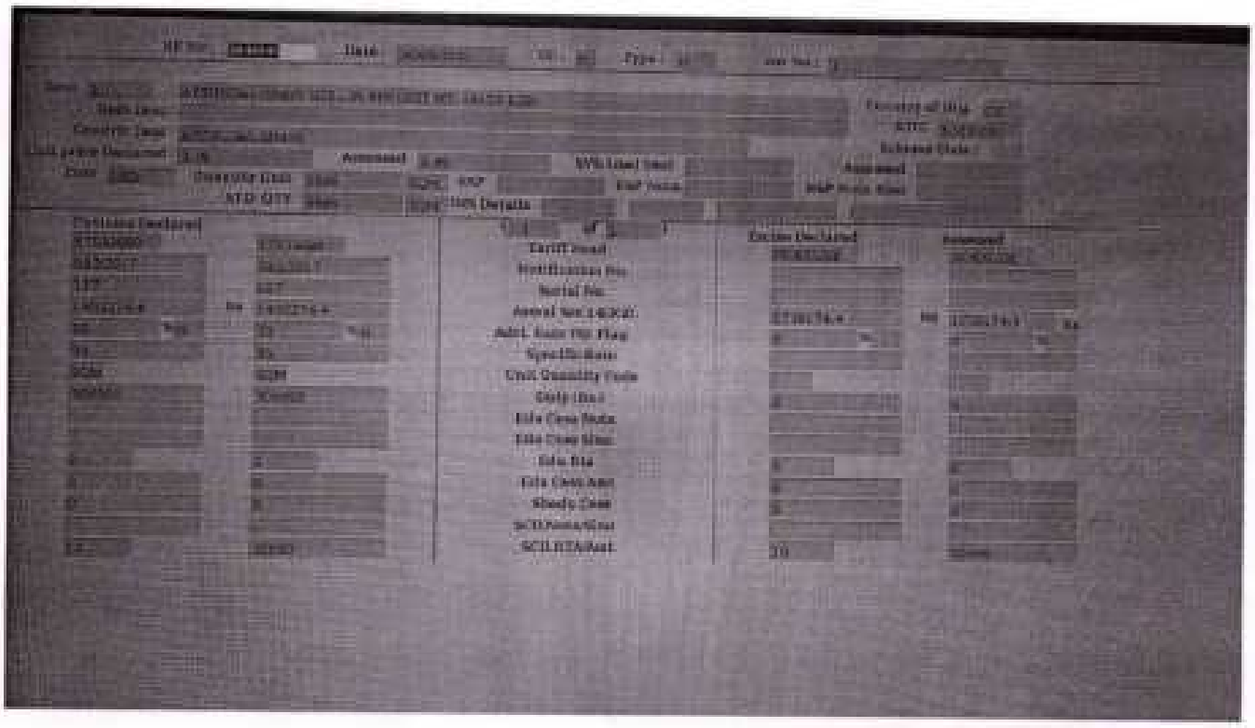
Moreover, there is no evidence of any payment over and above the invoice price. Hence, it is submitted that the value determined by simply referring to NIDB data (without disclosing and providing any) and by invoking both Rule 4 & 5 (without applying any criteria laid down therein) is completely untenable in the eyes of law in whichever way it is considered.

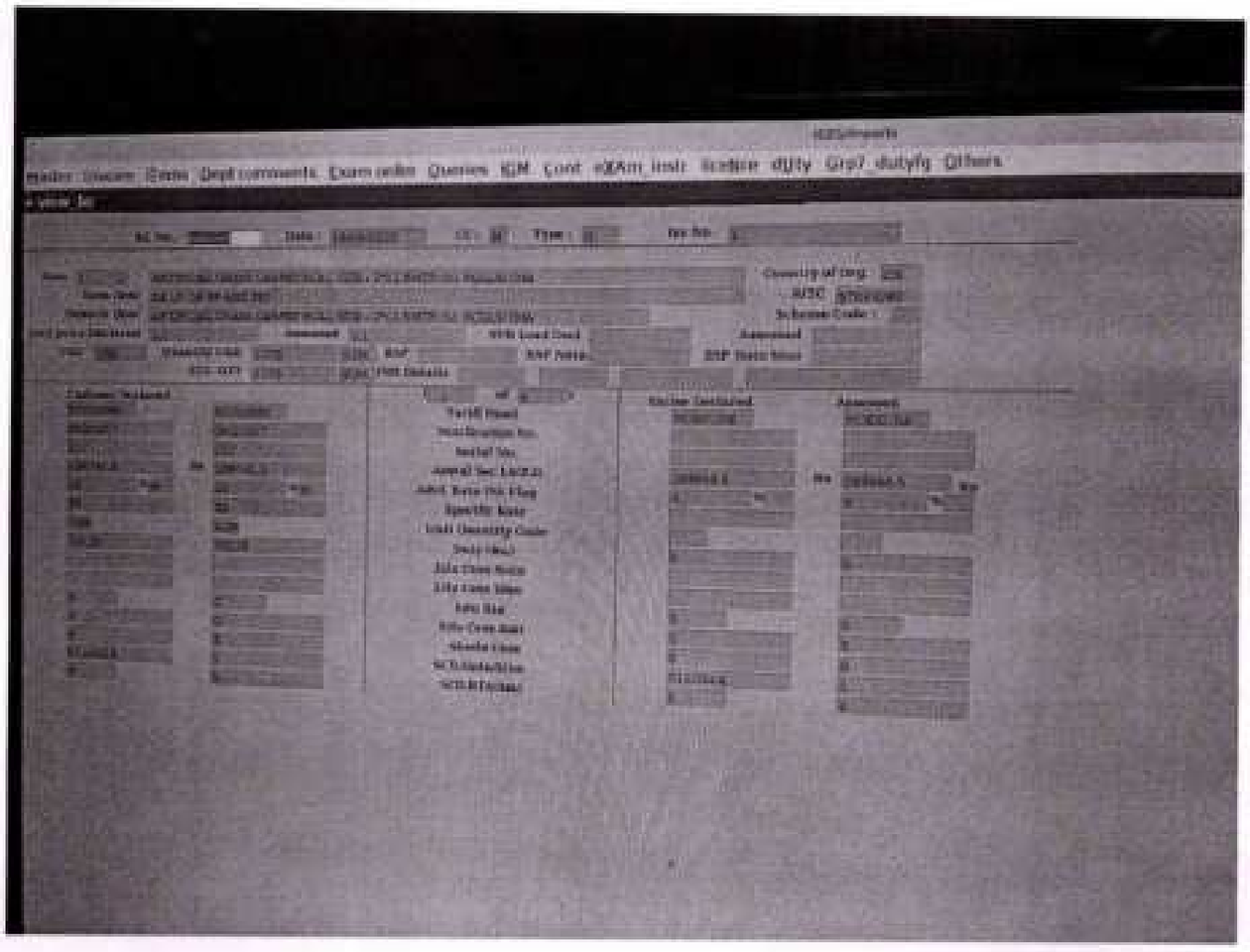
Ongoing through the Show Cause Notice, it has been mentioned in para 4.8 that NIDB data of import of identical item at Mundra port from China as well as other ports during the period range of the time of filing of Bills of Entry has been checked and the price of different size of "Artificial Grass" are found and required to considered for re-determination of the value of the imported goods in terms of Rule 4 & 5 of the CVR 2007. In this regard, the exact NIDB data was sought from investigation agencies from which the rate was compared and fixed. The same is reproduced below:

Table-A

DETAIL OF IMPORTED ITEMS								
Sr. No.	BE No.	Date	Item No.	Description	Rate as per investigation (PER SQM)	Ref. BE PORT as PER NIDB	BE	Date
1	6681758	29-01-2020	1	TUFTED PE YARN ARTIFICIAL GRASS-HEIGHT:25MM STITCH	199.26	INTKD6	6749834	04-02-2020 00:00
	6681758	29-01-2020	2	TUFTED PE YARN ARTIFICIAL GRASS-HEIGHT:35MM STITCH	222.07	INTKD6	6749834	04-02-2020 00:00
	6681758	29-01-2020	3	TUFTEDPEYARNARTIFICIALGRASS-HEIGHT:25MMSTITCHES:13	222.07			
	6681758	29-01-2020	4	TUFTED PE YARN ARTIFICIAL GRASS-HEIGHT:40MM STITCH	252.5	INTKD6	6749834	04-02-2020 00:00
	6681758	29-01-2020	5	TUFTED PE YARN ARTIFICIAL GRASS-TUFTED PE YARN ALT	199.26			
2	8796858	14-09-2020	1	TUFTED PE YARN ARTIFICIAL GRASS-HEIGHT:18MM STITCH	156.66	INMUN1	8880065	19-09-2020 00:00
	8796858	14-09-2020	2	TUFTEDPEYARNARTIFICIAL GRASS-HEIGHT:25MMSTITCHES:1	156.66	INMUN1	8880065	19-09-2020 00:00
	8796858	14-09-2020	3	TUFTEDPEYARNARTIFICIALGRASS-HEIGHT:35MMSTITCHES:14	156.66	INMUN1	8880065	19-09-2020 00:00
	8796858	14-09-2020	4	ARTIFICIAL GRASS SAMPLE	156.66	INMUN1	8880065	19-09-2020 00:00
3	9523840	10-11-2020	1	ARTIFICIAL GRASS	187.71	INDHA6	9424889	05-11-2020 00:00
	9523840	10-11-2020	2	ARTIFICIAL GRASS	187.71	INDHA6	9424889	05-11-2020 00:00
4	9668500	23-11-2020	1	ARTIFICIAL GRASS	150.17	INDHA6	9424889	05-11-2020 00:00
	9668500	23-11-2020	2	ARTIFICIAL GRASS	187.71	INDHA6	9424889	05-11-2020 00:00
	9668500	23-11-2020	3	ARTIFICIAL GRASS	225.25	INDHA6	9424889	05-11-2020 00:00
5	2134425	28-12-2020	1	ARTIFICIAL GRASS	150.17	INDHA6	9424889	05-11-2020 00:00
	2134425	28-12-2020	2	ARTIFICIAL GRASS	187.71	INDHA6	9424889	05-11-2020 00:00
	2134425	28-12-2020	3	ARTIFICIAL GRASS	150.17	INDHA6	9424889	05-11-2020 00:00
6	3414402	19-01-2021	1	ARTIFICIAL GRASS OTHER BYLS AS PER INV&PACK	232.03	INMSA1	2511185	27-01-2021 00:00
	3414402	19-01-2021	2	ARTIFICIAL GRASS OTHER BYLS AS PER INV&PACK	250.92	INMSA1	2702737	10-02-2021 00:00
7	3900791	11-05-2021	1	ARTIFICIAL GRASS	250.92	INMSA1	2702737	10-02-2021 00:00
	3900791	11-05-2021	2	ARTIFICIAL GRASS	250.92	INMSA1	2702737	10-02-2021 00:00
8	4020005	21-05-2021	1	ARTIFICIAL GRASS	232.03	INMSA1	2511185	27-01-2021 00:00
	4020005	21-05-2021	2	ARTIFICIAL GRASS	250.92	INMSA1	2702737	10-02-2021 00:00
9	4805662	24-07-2021	1	ARTIFICIAL GRASS	256.68	INMSA1	3646645	30-09-2021 00:00
	4805662	24-07-2021	2	ARTIFICIAL GRASS	256.68	INMSA1	3646645	30-09-2021 00:00
	4805662	24-07-2021	3	ARTIFICIAL GRASS	256.68	INMSA1	3646645	30-09-2021 00:00
10	4847735	28-07-2021	1	ARTIFICIAL GRASS	256.68	INMSA1	3646645	30-09-2021 00:00
	4847735	28-07-2021	2	ARTIFICIAL GRASS	256.68	INMSA1	3646645	30-09-2021 00:00
	4847735	28-07-2021	3	ARTIFICIAL GRASS	256.68	INMSA1	3646645	30-09-2021 00:00
11	5303043	09-09-2021	1	ARTIFICIAL GRASS	256.68	INMSA1	3646645	30-09-2021 00:00
	5303043	09-09-2021	2	ARTIFICIAL GRASS	256.68	INMSA1	3646645	30-09-2021 00:00
12	5805929	19-10-2021	1	ARTIFICIAL GRASS	256.68	INMSA1	3646645	30-09-2021 00:00
13	7314781	31-01-2022	1	ARTIFICIAL GRASS	256.68	INMSA1	3646645	30-09-2021 00:00
14	9269957	24-06-2022	1	ARTIFICIAL GRASS 25MM	147.77	INMUN	7754779	05.03.2022
	9269957	24-06-2022	2	ARTIFICIAL GRASS 35MM	193.79	INMUN	7754779	05.03.2022
	9269957	24-06-2022	3	ARTIFICIAL GRASS 40MM	212.37	INMUN	7754779	05.03.2022
15	9291165	03-07-2022	1	ARTIFICIAL GRASS	212.37	INMUN	7754779	05.03.2022

Hence, from above data it is evident that Bills of the same period has been taken for consideration. Further, it has been verified that goods are similar in quantity and identity. Screenshot of some of the Bills of Entry are placed below:





Further in the Show Cause Notice it has been mentioned that re-determination of the value has been done in rule 4 and 5 of the CVR, 2007.

For ready references, the Customs Valuation Rules Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 has been reproduced below:

Determination of the method of valuation.-
(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -
(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –
(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;
(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time. (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India; (ii) the deductive value for identical goods or similar goods; (iii) the computed value for identical goods or similar goods: Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9. 4.

Transaction value of identical goods. —

(1)(a)Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

5. Transaction value of similar goods. —

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued: Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

12. Rejection of declared value. —

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule

(1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1). Explanation.-(1) For the removal of doubts, it is hereby declared that:– (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9. (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers. (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -
(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
(c) the sale involves special discounts limited to exclusive agents;
(d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value; (f) the fraudulent or manipulated documents.

In the Show Cause Notice it has been alleged that on analysis of NIDB data of import of similar items in recent past, it was noticed that price of the Artificial Grass varies with the size range. Therefore, undervaluation of the imported items was also suspected in the present matter. It appears that the assessable value declared by the importer in the previous BEs are also liable to be rejected under Rule 12 of the CVR 2007.

On scrutiny of the NIDB data used for comparing the prices, it is found that the value of the similar goods of comparable quantity imported in the same time period appears to be high, hence the value of the goods are rejectable under Rule 12 of the CVR 2007. Further regarding re-determination of the same, it appears that goods are similar in nature and not identical and they are imported in the same period and of almost same quantity. Accordingly, the most appropriate for re-determining the same is Rule 5 of CVR, 2007.

Hence, it appears that the value of the goods is rejectable under Rule 12 and the same can be determined by using NIDB data for similar goods under Rule 5 of CVR 2007.

iii) In para 5.7, Noticee has submitted that *proposals at Sl. No. 9 (ii), (iv), (v) and (vii) regarding rejection of transaction value and determination of value totaling to Rs. 4,28,16,878/- for demanding differential duty amounting to Rs. 1,04,44,710/- under Section 28 (4) along with interest under Section 28AA and mandatory penalty under Section 114A of Customs Act, 1962, are not tenable in*

the eyes of law.

As the value of the goods are rejectable under Rule 12 of the Customs Value (Determination of Value of Imported Goods) Rule 2007 and rightly re-determined under Rule 5 of the Customs Value (Determination of Value of Imported Goods) Rule 2007, the contention of Noticee that demand under Section 28(4) is not sustainable is not valid.

iv) In para 5.8, Noticee has submitted that invocation of extended period except for Bills of Entry at Sl No. 15, 16 and 17, is not tenable as all of the documents were uploaded on the e-sanchit.

Ongoing through the facts of the Show Cause Notice it has been found that after introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. It becomes evident that in numerous cases, the Bills of Lading (BLs) correctly specify the Harmonized System Nomenclature (HSN) code of the imported item as 57033090. However, a deliberate discrepancy arises during the filing of Bill of Entries (BEs) by M/s HMT, wherein the Customs Tariff Heading (CTH) is intentionally altered to CTH-39189090. This intentional alteration seems to be an attempt to evade Customs Duty, constituting willful misstatement and suppression of facts on the part of M/s HMT, leading to the evasion of duty. It is noteworthy that M/s HMT was fully cognizant of the technical specifications of their product, which warranted classification under CTH-57033090. Despite this awareness, they persistently misclassified their product under an incorrect CTH, presumably with the motive of reducing duty payments. This intentional misclassification would likely have gone unnoticed if not brought to light through a customs department inquiry.

As it is evident from table-I of the Show Cause Notice that in several Bills of Entry, Noticee has resorted to mis-declaration of the CTH despite the fact that right CTH was written on Bill of Lading. Further, in some cases, they have rightly declared the classification and paid the appropriate duty. Hence, they were in complete knowledge of the nature of the goods and the duty applicability. From these facts, the intention of the Noticee is clear that they have wilfully and knowingly mis-declared the classification of the goods with a clear intent to evade the Customs Duty. Hence, by merely raising the contention that they have uploaded the documents in the e-sanchit and hence the extended period can't be evoked is not sustainable in the eyes of law.

v) In para 6 of the submission, Noticee has submitted that it may be appreciated that out of 15 bills of entry (after excluding 2 bills of entry at Sl. Nos. 6 & 8 as per foot note to the table), there is no mismatch in description of goods in bills of entry at Sl. Nos. 1, 2, 3, 4, 5, 7, 9, 10 and 16. Hence, charge of mis-declaration of description and the consequent proposal for confiscation under Section 111 (m) of Customs Act, 1962 is ill-conceived. Moreover, for bills of entry at Sl. Nos. 3, 4, 5, 7, 9, 10 and 16, there is no evidence to show that goods were "tufted" and hence, demand to recover duty by treating them as "tufted" is not tenable. The test reports relied in the notice pertain to samples drawn from other consignments and hence, the same cannot be applied to earlier bills of entry, as duly held by Hon'ble Tribunal in the case of Hindustan Fibres Ltd. v/s

Commissioner of C. Ex., Jaipur, 2009 (245) ELT 337 (Tri. - Del.)

As it is evident from table-I of the Show Cause Notice, in several Bills of Entry, Noticee has resorted to mis-declaration of the CTH despite the fact that right CTH was written on Bill of Lading. Further, in some cases, they have rightly declared the classification and paid the appropriate duty. Hence, they were in complete knowledge of the nature of the goods and the duty applicability. From these facts, the intention of the Noticee is clear that they have wilfully and knowingly mis-declared the classification of the goods with a clear intent to evade the Customs Duty. It further can be said that by their act of omission and commission, mis-declaration of CTH and undervaluation of the goods has been committed with an intent to evade payment of customs duty amounting to Rs 1,04,44,710 in the subject goods valuing Rs 4,28,16,878/. With the introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the importer, has been entrusted with the responsibiiity to correctly self-assess the duty. However, in the instance case, the importer intentionally abused this faith placed upon it by the law of the land. Therefore, it appears that the importer has wilfully violated the provisions of Section 17(1) of the Act inasmuch as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Hence, I force no contention in the arguments of Noticee that goods are not liable for confiscation under section 111 (m) of the Customs Act, 1962.

Noticee has further stated that there is no mismatch in description of goods in bills of entry at Sl. Nos. 1, 2, 3, 4, 5, 7, 9, 10 and 16. Hence, charge of mis-declaration of description and the consequent proposal for confiscation under Section 111 (m) of Customs Act, 1962 is ill-conceived. Moreover, for bills of entry at Sl. Nos. 3, 4, 5, 7, 9, 10 and 16, there is no evidence to show that goods were "tufted" and hence, demand to recover duty by treating them as "tufted" is not tenable. From the table, only it can be observed that in the Bill of Entry at Sr No. 3,4,5,7,11,12,13,14,15,16,17 there is clear mis-match in terms of description or CTH from Bill of lading. Further, in Two B/Es appearing at 6 and 8 they have already classified goods in the right CTH for same item i.e. Artificial Grass from the same supplier. Different view of Importer in certain Bills of Entry for the same goods from the same supplier clearly shows an intent to evade duty. Noticee has failed to appreciate the fact that not only the test reports but also their practice of mis-declaration of goods in terms of description and CTH despite having the right classification in their documents i.e. B/L and COO that has been made basis for the whole case. This can't be justified in any law that for the same goods Noticee is resorting to two different classification by stating that supplier has mentioned the CTH, however the same is also not sustainable as it can be perceived from table that in many instances, they have declared the CTH and description of the goods imported different from the description and HSN mentioned on the Bill of Ladings. Noticee has placed reliance on Hon'ble Tribunal in the case of ***Hindustan Fibres Ltd. v/s Commissioner of C. Ex., Jaipur, 2009 (245) ELT 337 (Tri. - Del.)***, ongoing through the case, it was found that appellant in that case has their factory at Banbirpur, Bhiwadi, Rajasthan, manufacture cotton yarn in cone and hank form falling under Chapter heading 52.05 of the Central Excise Tariff Act, 1985. The cotton yarn in plain reel hank form is fully exempt. Central Excise Duty under Notification No. 3/01-C.E.,

dated 1-03-01 and its predecessor notifications. The point of dispute is as to whether the cotton yarn manufactured by the appellants was in plain reel hank form and hence fully exempt from duty, as claimed by the Appellants or was in cross reel hank form and hence liable for duty, as held by the Revenue. From this, it can be inferred that the case is different from the case cited as the same doesn't deal with import. In import many ports are following the practice of relying on previous test report for certain periods for clearance of consignments.

vi) Noticee has submitted in para 6.1 that goods covered by Bills of Entry at Sl No. 11,12,13,14,15,17, goods have not been found to be tufted. I find no logic in the arguments made by Noticee, it is clear and evident that on Bill of Lading the description of the goods have been mentioned as Tufted PE yarn Artificial Grass. The Noticee has willfully mis-declared the same with an intent to evade duty can be ascertained. For the same goods from the same supplier the Noticee has already rightly classified in case of Sr No. 6 and 7 of the Table. Hence, the contention raised here appears highly mis-leading and deprived of the facts and truth. Further in the statement dated 23.03.2022 recorded under Section 108 of the Customs Act, it has been stated that the goods imported in past were similar to the consignments for which test reports have been relied. Hence from this also, it can be corroborated that the goods were tufted.

vii) Noticee in para 6.2 and 6.3 has submitted that *"Moreover, the Chemical Examiner, who was cross-examined, has deposed that "tufting" is a mechanical process and not chemical process. He has claimed that he is qualified to test items resulting from mechanical process based on literature and reference books (and not on account of his qualification). When asked to produce observation sheets, he has not produced any. Also, he could not confirm that he had noted the observations in observation sheet. The reports issued by him were based on visual observation and not by virtue of any testing. Thus, the tests reports concluding the "tufted" nature of goods are neither applicable (since they pertain to past) nor backed by any tests or even observations by the Chemical Examiner noted in the log books maintained by the laboratory. In the backdrop of facts and circumstances where a specific request is made during cross- examination to produce observation sheets containing the relevant observations to support the conclusion, the Chemical Examiner is bound to produce the same, as duly held by Hon'ble Tribunal in Final Order No. A/11138-11142/2020 dated 25.08.2020 in the case of M/s. Neptune Trade Link Pvt. Ltd. & others. In this case, Hon'ble Tribunal has held that:*

"From the above it is apparent that Commissioner after examining all the facts of the case and the cross examination of Assistant Chemical Examiner Chemical Assistant Grade-I could only reach to a conclusion that the appellant have failed to establish of ASTM D 86 method was not followed. Thus, we find the impugned order cannot be sustained in the present form. It is seen that during cross examination of the Chemical Assistant Grade-1 has clearly stated that log books and the registers are maintained in their laboratory, however, appellants chose not to ask for the same and Revenue chose not to produce the same. It was upto the Commissioner to get the necessary log books and lab records to bring out the real facts. It was also upto appellants to demand the same to prove their point. The matter was earlier remanded by allowing cross-

examination in order to bring correct facts on record. The entire purpose of remanding the case is defeated if the facts are not brought out completely. In view of above we set aside the order and remand the matter for fresh adjudication after fresh cross examination of the Chemical Assistant Gr.-1, the person who actually undertook the tests. He will produce all the lab records necessary to ascertain actual reading recorded and equipment used during testing and to prove his assertions." *By relying upon the above decision, it is submitted that reliance placed on the test reports issued by the Chemical Examiner is misplaced and the impugned notice is not tenable in the eyes of law for the above reasons.*

In this regard, the contention of the Noticee that Chemical examiner is not qualified appears to be not sustainable as the Officer has been given responsibilities after following due procedures. If we talk about the tufting

Tufting is a textile manufacturing process used to create a variety of products, including carpets, rugs, and upholstery fabrics. It involves the insertion of yarns or fibers into a backing material to create a pile or looped surface

The Tufting Process

The tufting process can be broken down into three main steps:

1. **Backing Preparation:** The first step in the tufting process is to prepare the backing material. This can be done by weaving or knitting a fabric or by using a pre-made backing material. The backing material is stretched onto a frame or a loom, where it is held in place during the tufting process.
2. **Tufting:** Once the backing material is prepared, the tufting process begins. This involves using a tufting machine to insert yarns or fibres into the backing material. The tufting machine uses a needle-like device to insert the yarns into the backing material, creating a pile or looped surface.
3. **Finishing:** After the tufting process is complete, the textile is finished by trimming the fibres to create an even surface. The textile may also be treated with a stain-resistant or fire-retardant coating to improve its performance.

If we refer tufting in the book Customs classification of Textile and textile articles by Ajay Kumar Gupta, it defines as:

Tufting is a derivative of embroidery. In fact, tufting originated from the Embroidery of thick chenille fabrics. In hand tufting, designs are drawn onto a backing material and the tufts of wool (or other yarn) are pushed through the backing with a simple hand tool known as tufting gun. When all the pile has been 'tufted' the backing material is covered with a latex solution and a 'secondary' backing is put. This results in a strong rug construction.

Hence, from above it can be seen, tufting is not so complex process involving the various ISO standard testing to verify it. I don't find it a genuine ground to reject the Test report that the observation regarding testing has not been provided. In case, if it has required some ISO standard testing then in order to verify that Chemical Examiner has followed that standard or not the observation sheet may be a mandatory documents. But in this Case, I don't find a suitable reason to decline the test report observation.

Further Noticee has put reliance on the ***Final Order No. A/11138-11142/2020 dated 25.08.2020 in the case of M/s. Neptune Trade Link Pvt. Ltd. & others*** *wherein facts of the case was too different. The classification was to be decided based on the testing by certain standards i.e.* However, this case is entirely different. For verifying the goods are tufted, no standard has been set in Customs Tariff Act, 1972. Hence, the contention of the Noticee is just mis-leading and not sustainable.

Moreover, the current case is more based on the practices followed by the Noticee by willfully mis-declaration of the goods in terms of value, cth and description, despite having the relevant documents regarding right classification supplied by overseas supplier.

viii) Further, in para 7 ,7.1 and 7.2 of the submission, Noticee has submitted that onus of correct classification is on department. However, without test reports, it cannot be alleged that goods declared as artificial grass were carpets of tufted nature so as to justify the classification for 15 Bills of Entry. The whole intention of the Noticee is of wilful mis-declaration with an intent to evade duty as discussed in above para supra. With the introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the importer, has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer intentionally abused this faith placed upon it by the law of the land. As discussed above, from seeing table-I it is evident and clear that many of the B/Es i.e. Sr No. 1, 2, 11-15 and 17, the description given in B/L is Tufted PE Yarn Artificial Grass. Further, Noticee in case of Sr No. 6 and 8 has himself classified the goods with description as "Artificial Grass" in 57033090. In case of B/Es appearing at Sr No. 3,4,5,7 classification stated in B/L is 57033090. From this, it is evident that Noticee in his statement dated 23.03.2022 has accepted that goods were similar in nature in the past import, however he has mentioned CTH 39189090 as declared by supplier (although it is not the case as in many case he has not declared the classification declared by supplier). He also agreed with the re-classification of goods under CTH 57033090 and ready to pay the differential duty. It is pertinent to mention here he has never retracted the statement. So, the proof of wilful mis-declaration is evident and clear, hence the contention of Noticee is not sustainable and appears just mis-leading.

ix) In para 8 of the submission, Noticee has stated that without proper test reports, goods covered by none of the bills of Entry listed in Table-I are liable to be classified under 57033090 prior to 01.02.2022 and 57033990 after 01.02.2022. The issue has been discussed in the para 12.6 vii) and viii) in length. It is just not only the case made on the basis of Test report, the facts of wilful mis-declaration is being established by seeing the Table-I on the basis of Bill of lading and the classification adopted in case of B/Es appearing at Sr No. 6 and 8.

x) In para 9 to 12, it has been subnitted that the extended period is not applicable in this case. Further, penalty and confiscation is not sustainable in

this on Noticee and its partner. I find that the element of wilful mis-statement/ misdeclaration has already been established in the case based on discussion above supra. Further, after introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. In light of the discussions in the preceding paragraphs, it becomes evident that in numerous cases, the Bills of Lading (BLs) correctly specify the Harmonized System Nomenclature (HSN) code of the imported item as 57033090. However, a deliberate discrepancy arises during the filing of Bill of Entries (BEs) by M/s HMT, wherein the Customs Tariff Heading (CTH) is intentionally altered to CTH-39189090. This intentional alteration seems to be an attempt to evade Customs Duty, constituting willful misstatement and suppression of facts on the part of M/s HMT, leading to the evasion of duty. It is noteworthy that M/s HMT was fully cognizant of the technical specifications of their product, which warranted classification under CTH-57033090. Despite this awareness, they persistently misclassified their product under an incorrect CTH, presumably with the motive of reducing duty payments. This intentional misclassification would likely have gone unnoticed if not brought to light through a customs department inquiry. Further, in the statement dated 23.03.2022 Noticee has accepted that goods were similar in nature in the past import, however he has mentioned CTH 39189090 as declared by supplier (although it is not the case as in many case he has not declared the classification declared by supplier). He also agreed with the re-classification of goods under CTH 57033090 and ready to pay the differential duty. It is pertinent to mention here he has never retracted to the statement. Accordingly, I find that goods were willfully mis-declared in terms of value, CTH and descriptions with an intent to evade the customs duty. Hence, the goods are liable for confiscation.

Furthermore, it appears that Shri Manish Ashwinbhai Parikh, Partner of M/s HMT in his statement recorded on 23.03.2022 has categorically stated that he was looking after important work, sales and other activities of the firm and he himself had finalized the Classification of Artificial Grass under CTH 39189090 in the check list of bills of entry on the basis of import documents. Therefore, it appears that Shri Manish Ashwinbhai Parikh was responsible for classifying the Artificial Grass under wrong CTH-39189090 which resulted into short levy and payment of customs duty amounting to Rs. 1,04,44,710/- to the government exchequer. Manish Parikh was responsible for classifying the item under wrong CTH 39189090 which resulted into short levy and payment of customs duty. By this act of omission and commission, Sh Manish Ashwinbhai Parikh has rendered the goods liable for confiscation under Section 111 (m) of the Customs Act and hence, rendered himself liable for penal action under section 112 a (ii) of the Customs Act, 1962.

12.7 Now I will proceed to discuss the arguments made during Personal hearing conducted on 26.12.2024

During Personal hearing the consultant of Noticee appeared before me and reiterated the written submission, However for sake of brevity I am reproducing the same :

M/s H M Trading Co., has imported artificial grass. This particular notice actually has its roots in one earlier show cause notice where 2 bills of entry were filed by them. Those both bill of entry were held up, and show cause notice was issued. It

was adjudicated, and the party has filed appeal before commissioner appeals. That appeal is pending before commissioner appeals where the issue of classification, etc, will be dealt with us and when it comes up for hearing and decision.

This notice is a sequel to that notice. Once those 2 bills of entries were, scrutinized, department also took up the earlier imports. And the details of the earlier imports are given in table number 1 of the present show cause notice where they have listed 17 bills of entry where the party has classified correctly in 2 Bills of Entry and for the remaining 15 bill of entries, department is saying that classification is wrong. Now apart from classification, department is also challenging valuation. For the same goods, they are invoking both the rules 4 and 5. Rule 4 is for our identical goods and rule 5 is for similar goods.

He stated that demand is time barred. They cross examined the chemical examiner. And he's stated that testing as such is not involving any chemical process, but it is mechanical process. He stated that he requested to provide register and other, log sheets where Chemical Examiner must have mentioned the observations. Chemical Examiner stated that if available, he will provide. But perhaps they were not provided, but he has simply forwarded theoretical book, which is part of the book wherein what he tried to do is read out those attended book in the cross examination and try to justify his strength. Now he has filed the written submission for consideration. He has recited a particular judgment of Hon'ble Ahmedabad Tribunal itself in our own case.

He stated that the chemical examiner cannot simply come to the conclusion. He has to follow a particular process. Just as we get some marks in the examination, the process is, first, he write the answers, then the answers are checked by the invigilator and therefore, the process is complete. Straight away, it cannot enter marks. So here, what has happened is here straight away, we have some reference or testing, etc, and based on which we have tried to classify these goods.

He further stated that there are two difficulties, The first difficulty is that the test reports that the department is relying in this notice were actually of earlier and therefore some different consignment. They are not of these particular of 17 bills of entry. They have relied upon those 2 test reports because these goods were cleared. And therefore, department as such had the one of the alternative was to rely upon this test report.

They cross examine the chemical examiner then. He has not been able to justify his findings. He actually brings out the logbooks, etcetera, to justify his findings. Even if we assume that he must have correctly observed the procedure, etcetera, the fact remains that those test reports have nothing to do with the because these consignments. Department is trying to do an analogy by saying that this supplier was the same. So as such, we have to make out to that, either the samples must be tested, otherwise, we cannot rely on test report of other consignments because there are innumerable case laws. One of them he has cited today, which says that we cannot rely upon a test report of (a) to judge (b). So we are falling short there.

So on classification, he said that they have reports which very clearly deal with these goods, they must not be relied. Secondly, even department is trying to rely on such test report the same is disputed. Chemical Examiner himself is saying that no chemical process is involved. He says that mechanical process is involved. And he says that he is not qualified, but he has done it out of experience.

What has happened is that by visual examination, he formed an opinion, which is not the correct way of going by the, process for which chemical examiners are normally dropped in. So he has taken that into his submission. And the issue is

about classification and in para 4.6, they have very clearly mentioned that tehy have borrowed the data from E-sanchit. So rightly or wrongly, the party has filed bills of entry along with the invoices and very much there on the record of department.

Now if department is impressing upon the extended period, then, obviously, there must be a case of collusion or which is not the case here. May not. Everything is there on record. So I'm, first of all, on the part of time barred.

He has taken this ground in his submission. In valuation part, department has referred to NIDB data. Department is saying that NIDB data of recent past and all these things are being taken to consideration.

The data is nowhere disclosed in the notice. Secondly, even if we go by rule 4 or 5, rule 4 is about identical goods, 5 is about similar goods. But then there are very categorical criteria about commercial level quantity and so many other things. Now when we are completely silent on that particular criteria, we are not dealing or deliberating over even one criteria.

Department has not provided the details of bills of entry. Department is only saying that past imports had more than other ports. Now what was the commercial level? Was it the same goods? Notice itself will say that these goods are of different sizes.

So then what was the size of these goods? The notice is completely silent. So what happens is that today, he expect a when no data is provided for him to defend, then it is obviously violation of principal natural justice. Either this data may be provided or this notice will not stand sooner or later.

So his humble submission will be that either the data may be provided or the so far as valuation is concerned, this notice in the present form cannot be taken further in the law. Because what is the data based on which department has tried. We cannot simply come to the conclusion that it should be y and not x.

There is no provision that would enable one to simultaneously invoke 4 & 5. Either we be in 4 or we be in 5.

So his submission here will be that first data may be provided. Secondly, he may be given an opportunity and specify the rule under the department wants to go ahead with this. All the notice may kindly be dropped. Obviously, as a hardcore professional, he will obviously pray and focus.

But he is still on the principles of natural justice. Right? There has to be even ground to fight the case. Result is secondary. Here, there is no even ground below. There is no legality in raising the demand in this case.

The demand falls, then interest will not be payable. 114A which is mandatory penalty will automatically go. 112A and 114 A can't be applied simultaneously. But his first and foremost submission is that even the goods are not liable for confiscation because department is not able to make out a case on classification as well as, valuation bill.

If that doesn't happen, then there is no confiscation. And therefore, 112 a for the purpose of imposing penalty will also not apply. Even otherwise, adjudicating authority is taking a view that when the goods are not available for confiscation, then fine is not impossible. He will refer to one of the judgments passed by your honor. So on this point, he said that even if the goods are held liable for confiscation, a redemption fine may not be imposed.

And lastly, it's about the partner. he said that simultaneous penalty of the

partnership for an partner may not be impossible in the same offense. So overall, in the in the in the entire things, his humble submission is that this notice is not tenable,. He requested to consider his defense that he has attempted to file, which touches all these points. And he has reiterated the same in the personal hearing.

I find that all the points has been well-discussed in the above para 12.6. Further, regarding exact data of NIDB not mentioned in the Show Cause Notice, it is to state that the same was sought from investigating agency and has been discussed in length in para 12.6. Noticee has not requested to forward the same in their submission made earlier vide letter dated 15.04.2024 wherein they have requested to cross examine the Chemical Examiner. At this point, the request of forwarding the same appears to be full with motive to delay the process of adjudication. The detailed discussion on NIDB data and valuation rules have already been done in above paras. Accordingly, I opt not to repeat the same to avoid repetition in the order.

13. Now I further proceed to examine the main issues which are to be decided:

13.1 Rejection of Classification and re-determination

I find that during the investigation of the live BE No. 7427798 dated 09.02.2022 and 7459324 dated 11.02.2022, the test reports of samples of imported goods, Artificial Grass received from the CRCL, Kandla testifies that the sample are made of woven base fabric of Polypropylene strip yarns tufted with green mixed yarns made of polyethylene and polypropylene (cut piles). On the other side it is covered with polyester filaments yarns, further covered with black colored material based on butadiene styrene. As per said test reports, it is very much clear on record that the artificial grass imported by Noticee is mainly covering made of two layers of woven fabric of Polypropylene and polyethylene strips, these pile type strips are tufted in the middle layer and coated with butadiene styrene from the back. The exposed surface is made from strips through tufting process

If we refer to the Chapter Notes

The Note 1 of Chapter 57 is reproduced below:

"1. For the purposes of this Chapter, the term "carpets and other textile floor coverings" means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes..."

Further, if we move on explanatory notes of 5703 by WCO it covers:

The heading covers tufted carpets and other tufted textile floor coverings produced on tufting machines which by means of a system of needles and hooks, insert textile yarn into a pre-existing backing (usually a woven fabric or a non-woven) thus producing loops, or if the needles and hooks are combined with a cutting device, tufts. The yarns forming the pile are then normally fixed by a coating of rubber or plastics. Usually before the coating is allowed to dry it is either covered by a secondary backing of loosely woven textile material e.g. jute or by foamed rubber.

This heading also covers turf, which is a tufted textile floor covering that imitates grass irrespective of colour.

Hand tufting and machine tufting is based on the same principle. In hand tufting, the tufting gun is held in hand and is pushed through the primary backing. In machine tufting, the primary backing passes through a multi-needled machine. More than 95 % of the primary backings for tufted carpet are made of polypropylene/olefin (woven and non-woven); occasionally jute and spun-bonded polyester primary backing are used. Polyester is intended primarily for use on fine-gauge carpets. Secondary backings for tufted carpets usually are jute (nearly 20%), polypropylene/olefin (about 75%) or foam (about 5%). Tufted yarns are wool, acrylic, polyamide and polypropylene.

Further if we see heading 3918 it states

3918	**Floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles; wall or ceiling coverings of plastics, as defined in Note 9 to this Chapter**
3918 10	- Of polymers of vinyl chloride:
3918 10 10	-- Wall or ceiling coverings combined with knitted or woven fabrics, - nonwovens or felts
3918 10 90	-- Other -
3918 90	- Of other plastics :
3918 90 10	-- Floor coverings of linoxyn -
3918 90 20	-- Wall or ceiling coverings combined with knitted or woven fabrics, non - wovens or felts
3918 90 90	-- Other -

Further, if we see the Note 9 to the Chpater

For the purposes of heading 3918, the expression "wall or ceiling coverings of plastics" applies to products in rolls, of a width not less than 45 cm, suitable for wall or ceiling decoration, consisting of plastics fixed permanently on a backing of any material other than paper, the layer of plastics (on the face side) being grained, embossed, coloured, design-printed or otherwise decorated.

So from above, it is clearly implied that the goods are not qualified for classification under 3918 and in the goods, textile materials serve as the exposed surface of the article when in use and also it is an article having the characteristics of textile floor coverings it may be observed that as per the above discussion, the goods are more appropriately classifiable under 57033090 before 01.02.202 and 57033990 from 01.02.2022 (as per subsequent changes in CTA 1972).

Furthermore, as discussed above in para 12.6 (viii) the whole intention of the Noticee is of wilful mis-declaration with an intent to evade duty as discussed in

above para supra. With the introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the importer, he has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer intentionally abused this faith placed upon it by the law of the land. As discussed above, from seeing table-I it is evident and clear that many of the B/Es i.e. Sr No. 1, 2, 11-15 and 17, the description given in B/L is Tufted PE Yarn Artificial Grass, however the same has been mis-declared in Bills of Entry. Further, Noticee in case of Sr No. 6 and 8 has himself classified the goods with description as "Artificial Grass" in 57033090. In case of B/Es appearing at Sr No. 3,4,5,7 classification stated in B/L is 57033090, however the same is mis-declared in B/Es. Further, it is evident that Noticee in his statement dated 23.03.2022 has accepted that goods were similar in nature in the past import, however he has mentioned CTH 39189090 as declared by supplier (although it is not the case as in many case he has not declared the classification declared by supplier). He also agreed with the re-classification of goods under CTH 57033090 and ready to pay the differential duty. It is pertinent to mention here he has never retracted to the statement. It is pertinent to mention here that statement recorded under Section 108 of the Customs Act, 1962 has evidential value. The same has been cited in various judgement of Hon'ble Courts. Some of them are reproduced below:

Union of India vs. Padam Narain Aggarwal and Ors. 2008 (231) E.L.T. 397 (S.C.)

This section does not contemplate magisterial intervention. The power is exercised by a Gazetted Officer of the Department. It obliges the person summoned to state truth upon any subject respecting which he is examined. **He is not absolved from speaking truth on the ground that such statement is admissible in evidence and could be used against him**. The provision thus enables the officer to elicit truth from the person examined. The underlying object of Section 108 is to ensure that the officer questioning the person gets all the truth concerning the incident

N. J. Sukhawani vs. Union of India 1996 (83) E.L.T. 258 (S.C.)

It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine.

Ramesh Chandra v. State of West Bengal 1999 (110) E.L.T. 324 (S.C.)

This case reaffirmed that statements recorded under Section 108 are admissible in evidence, reinforcing the legal principle established in earlier cases Bhana Khalpa Bhai Patel VS Assistant Collector Of Customs, Bulsar, Gujarat - Supreme Court.

Naresh Kumar Sukhwani Vs Union of India1996(83) ELT 285(SC)

The Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.

Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)

It was held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty

Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)

Hon'ble High Court decision in the case of Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.) wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement-and was not influenced by threat, duress or inducement etc. is a true one

Govind Lal vs. Commissioner of Customs Jaipur (2000(117) E.L.T. 515(Tri)

In the case of **Govind Lal vs. Commissioner of Customs Jaipur (2000(117) E.L.T. 515(Tri)**- wherein Hon'ble Tribunal held that— 'Smuggling evidence-statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'.

Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC

In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC**. Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is valid evidence under law.

The Noticee has himself classified similar goods under the appropriate CTH i.e. 57033090 in few Bills of Entry. Further as per test report, goods are appropriately classifiable under CTH 57033090. In his statement Noticee has accepted that the imported past goods are similar to the current one and agreed with the re-classification of goods under CTH 57033090 and ready to pay the differential duty. Hence, on the basis of above discussion and facts on record, I find that goods are rightly classifiable under CTH 57033090 till 01.02.2022 and thereafter under CTH 57033990 (due to subsequent changes made in CTA 1972).

13.2 Rejection of assessable value and re-determination of the same.

The issue has been discussed in length in para 12.6 (ii). However, for the sake of brevity I opt to re-discuss the fact here.

Ongoing through the Show Cause Notice, it has been mentioned in para 4.8 that NIDB data of import of identical item at Mundra port from China as well as other ports during the period range of the time of filing of Bills of Entry has been checked and the price of different size of 'Artificial Grass" are found and required to considered for re-determination of the value of the imported goods in terms of Rule 4 & 5 of the CVR 2007. In this regard, the exact NIDB data was sought from investigation agencies from which the rate was compared and fixed. The same is given in table-A above.

Hence, from above data it is evident that Bills of the same period has been taken for consideration. Further, it has been verified that goods are similar in quantity and identity above in para 12.6(ii).

Further, in the Show Cause Notice it has been mentioned that re-determination of the value has been done in rule 4 and 5 of the CVR, 2007.
For ready references, the Customs Valuation Rules Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 has been reproduced below:

Determination of the method of valuation.-
(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;
(2) Value of imported goods under sub-rule (1) shall be accepted:
Provided that -
(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –
(i) are imposed or required by law or by the public authorities in India; or
(ii) limit the geographical area in which the goods may be resold; or
(iii) do not substantially affect the value of the goods;
(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.
(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.
(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time. (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India; (ii) the deductive value for identical goods or similar goods; (iii) the computed value for identical goods or similar goods: Provided

that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9. 4.

Transaction value of identical goods. —

(1)(a)Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

5. Transaction value of similar goods. —

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued: Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Rule 12

12. Rejection of declared value. —

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value

of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.
(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1). Explanation.-(1) For the removal of doubts, it is hereby declared that:- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9. (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers. (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -
(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
(c) the sale involves special discounts limited to exclusive agents;
(d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value; (f) the fraudulent or manipulated documents.

In the Show Cause Notice it has been alleged that whereas on analysis of NIDB data of import of similar items in recent past, it was noticed that price of the Artificial Grass varies with the size range. Therefore, undervaluation of the imported items was also suspected in the present matter. It appears that the assessable value declared by the importer in the previous BEs are also liable to be rejected under Rule 12 of the CVR 2007.

On scrutiny of the NIDB data used for comparing the prices, it is found that the value of the similar goods of comparable quantity imported in the same time period appears to be high, hence the value of the goods are rejectable under Rule 12 of the CVR 2007. Further regarding re-determination of the same, it appears that goods are similar in nature and not identical and they are imported in the same period and of almost same quantity. As the value can't be determined under Rule 3 and 4, the same is appropriately determined under Rule 5. Accordingly, the most appropriate Customs Valuation Rules 2007 is Rule 5.

Hence, I find that the value of the goods is rejectable under Rule 12 and the same can be determined by using NIDB data for similar goods under Rule 5 of CVR 2007.

13.3 Confiscation of the Goods

As discussed in para 13.1 & 13.2, the Noticee has wilfully mis-declared the goods in terms of description, value and CTH with a clear intent to evade the Customs

Duty.

Further After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. In the instant matter, in many cases it becomes evident that in numerous cases, the Bills of Lading (BLs) correctly specify the Harmonized System Nomenclature (HSN) code of the imported item as 57033090. However, a deliberate discrepancy arises during the filing of Bill of Entries (BEs) by M/s HMT, wherein the Customs Tariff Heading (CTH) is intentionally altered to CTH-39189090. This intentional alteration seems to be an attempt to evade Customs Duty, constituting willful misstatement and suppression of facts on the part of M/s HMT, leading to the evasion of duty. It is noteworthy that M/s HMT was fully cognizant of the technical specifications of their product, which warranted classification under CTH-57033090. Despite this awareness, they persistently misclassified their product under an incorrect CTH, presumably with the motive of reducing duty payments. This intentional misclassification would likely have gone unnoticed if not brought to light through a customs department inquiry. Further, in the statement dated 23.03.2022 Noticee has accepted that goods were similar in nature in the past import, however he has mentioned CTH 39189090 as declared by supplier (although it is not the case as in many case he has not declared the classification declared by supplier). He also agreed with the re-classification of goods under CTH 57033090 and ready to pay the differential duty. It is pertinent to mention here he has never retracted to the statement. Accordingly, I find that goods were wilfully mis-declared in terms of value, CTH and descriptions with an intent to evade the customs duty has violated the provision of Section 17 and section 46 (4) of the Customs Act, 1962. Hence, the goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

As the impugned goods are found to be liable for confiscation under Section 111(m) 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 in respect of the impugned goods as alleged vide subject SCN. The Section 125 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 1[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."*

***Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [3] [no such fine shall be imposed]:*

***Provided** further that] , without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

[4] [(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

[5][(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

***Explanation** .-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]*

first proviso which was introduced vide Finance Act, 2018 which says that *where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply.* Behind the proviso, there is an assumption that goods become liable for confiscation when there is demand under Section 28. Interestingly, the liability to confiscation is assumed to arise even in cases that do not involve an extended period of limitation not being cases of collusion or wilful mis-statement or suppression of facts.

At this point, one has to understand that there cannot be a demand of duty, where the goods are seized and are in the possession of the government. It is a basic principle that goods and duty travel together. Thus, when the goods are in the possession of the government having been seized, there cannot be a demand for duty. Duty payment, even differential duty payment arises when the goods are confiscated and ordered for release to the importer. Section 125(2) which provides that *where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods,* makes this above position clear.

Thus, the proviso which is inserted in Section 125 referring to cases under Section 28 which are essentially in respect of demand of duty where the goods are not seized/ detained by the department, gives room for interpretation that Redemption fine is imposable even if the goods are not seized and are not 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

authorized by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization 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."

Further, In the case of ***M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai)*** it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the mis-declaration in respect of the parallel invoices issued prior to the date of filing of the Bills of Entry. Hence, there is mis-declaration and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

In case of M/s Asia Motor Works vs Commissioner of Customs 2020 (371) E.L.T. 729 (Tri. - Ahmd.) Hon'ble tribunal have demarcated between the words, ***"Liable for confiscation" and "Confiscation".***

Hence, from the above discussion and relying on the above judgments, I find that goods are liable for confiscation and redemption fine can be imposed in view of judgment in case of ***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.)).***

Hence, from above discussion we have come to the conclusion regarding fourth issue in this case i.e. impugned goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and redemption fine is applicable as per section 125 of the Customs Act, 1962.

13.4 Demand of Differential Duty under Section 28 (4) of the Customs Act, 1962 with applicable interest under Section 28AA of the Customs Act, 1962.

The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

> *"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*
> *(4) 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, 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."

I observe that in terms of Section 28AA (1) of the Customs Act, 1962 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. Therefore, interest at the appropriate rate also recoverable from Noticee.

As discussed in para 13.3 and above paras , it becomes evident that in numerous cases, the Bills of Lading (BLs) correctly specify the Harmonized System Nomenclature (HSN) code of the imported item as 57033090. However, a deliberate discrepancy arises during the filing of Bill of Entries (BEs) by M/s HMT, wherein the Customs Tariff Heading (CTH) is intentionally altered to CTH-39189090. This intentional alteration seems to be an attempt to evade Customs Duty, constituting willful misstatement and suppression of facts on the part of M/s HMT, leading to the evasion of duty. It is noteworthy that M/s HMT was fully cognizant of the technical specifications of their product, which warranted classification under CTH-57033090. Despite this awareness, they persistently misclassified their product under an incorrect CTH, presumably with the motive of reducing duty payments. This intentional misclassification would likely have gone unnoticed if not brought to light through a customs department inquiry. Further, in the statement dated 23.03.2022 Noticee has accepted that goods were similar in nature in the past import, however he has mentioned CTH 39189090 as declared by supplier (although it is not the case as in many case he has not declared the classification declared by supplier). He also agreed with the re-classification of goods under CTH 57033090 and ready to pay the differential duty. It is pertinent to mention here he has never retracted to the statement. Accordingly, I find that goods were wilfully mis-declared in terms of value, CTH and descriptions with an intent to evade the customs duty. Hence, I find that the differential duty of Rs 1,04,44,710 for the period from 29.01.2020 to 03.07.2022 is recoverable from the Noticee as per section 28 (4) of the Customs Act, 1962 with applicable interest under Section 28 (AA) of the Customs Act, 1962.

13.5 Applicability of penalty provisions

I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also be liable to pay penalty under Section 114A. These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962. The penalty under Section 114A is a type of mandatory penalty for the duty demand under Section 28(4) of the Customs Act, 1962.

As discussed, the Bills of Lading (BLs) correctly specify the Harmonized System Nomenclature (HSN) code of the imported item as 57033090. However, a deliberate discrepancy arises during the filing of Bill of Entries (BEs) by M/s HMT, wherein the Customs Tariff Heading (CTH) is intentionally altered to CTH-39189090. This intentional alteration seems to be an attempt to evade Customs Duty, constituting willful misstatement and suppression of facts on the part of M/s HMT, leading to the evasion of duty. It is noteworthy that M/s HMT was fully cognizant of the technical specifications of their product, which warranted

classification under CTH-57033090. Despite this awareness, they persistently misclassified their product under an incorrect CTH, presumably with the motive of reducing duty payments. This intentional misclassification would likely have gone unnoticed if not brought to light through a customs department inquiry. Further, in the statement dated 23.03.2022 Noticee has accepted that goods were similar in nature in the past import, however he has mentioned CTH 39189090 as declared by supplier (although it is not the case as in many case he has not declared the classification declared by supplier). He also agreed with the re-classification of goods under CTH 57033090 and ready to pay the differential duty. It is pertinent to mention here he has never retracted to the statement. Accordingly, I find that goods were wilfully mis-declared in terms of value, CTH and descriptions with an intent to evade the customs duty. Hence, Noticee had resorted to willful mis-declaration of correct classification of goods in the Bills of Entry of the imported goods by suppressing the said material facts, which shows the ulterior motive of the importer to evade payment of applicable Customs Duty in respect of said imported goods cleared for home consumption. It further appears that by their act of omission and commission in as much as mis-declaration of CTH and undervaluation of the goods with an intent to evade payment of Customs Duty. Accordingly, I hold that Noticee (M/s H.M. Trading Co.) is liable to be penalized under Section 114(A) of the Customs Act, 1962.

I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable.

I find that there is a mandatory provision of penalty under Section 114A of customs act, 1962 where duty is determined under section 28 of customs act, 1962. **Therefore, I opt to refrain myself from imposing penalty upon M/s. H.M. Trading Co. under Section 112(a) (ii) of Customs Act, 1962. . Hence, the last issue involved has also been decided in the case.**

Penalty on Shri Manish Ashwinbhai Parikh, Partner of M/s H.M. Trading Co. under Section 112 (a) (ii)

Section 112 of the Customs Act, 1962

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

ii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereinafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees]

Shri Manish Ashwinbhai Parikh, Partner of M/s HMT in his statement recorded on 23.03.2022 has categorically stated that he was looking after important work, sales and other activities of the firm and he himself had finalized the Classification of Artificial Grass under CTH 39189090 in the check list of bills of entry on the basis of import documents. Therefore, it appears that Shri Manish

Ashwinbhai Parikh was responsible for classifying the Artificial Grass under wrong CTH-39189090 which resulted into short levy and payment of customs duty amounting to Rs. 1,04,44,710/- to the government exchequer. Manish Parikh was responsible for classifying the item under wrong CTH 39189090 which resulted into short levy and payment of customs duty. By this act of omission and commission, Sh Manish Ashwinbhai Parikh has rendered the goods liable for confiscation under Section 111 (m) of the Customs Act and hence, rendered himself liable for penal action under section 112 a (ii) of the Customs Act, 1962.

Accordingly, I hold that Sh Manish **Ashwinbhai Parikh, Partner of M/s H.M. Trading Co.** is liable to be penalized under Section 112 a (ii) of the Customs Act, 1962.

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

ORDER

14.1 I hold that in the 15 BEs tabulated in Table-3 above, the classification of item "Artificial Grass" under CTH 39189090/ 57039090, as the case may be is rejectable and the said goods are classifiable under CTH- 57033090 till 01.02.2022 and thereafter under CTH-57033990 under the Customs Tariff Act, 1975.

14.2 I hold that the assessable value of the said goods as declared by M/s HMT in these BEs is rejectable under Rule 12 of the CVR, 2007, and the same are to be re-determined under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

14.3 I hold that the goods imported vide above 15 BEs, having re-determined assessable Value of **Rs. 4,28,16,878/-** *(Rupees Four Crore Twenty Eight Lakh Sixteen Thousand Eight Hundred and Seventy Eight Only)*(as detailed in 'Table-3' above) are liable for confiscation under Section 111(m) of the Customs Act, 1962. Further I impose redemption fine of **Rs. 20,00,000/-** *(Rupees Twenty Lakh Only)* under Section 125 of the Customs Act, 1962.

14.4 I confirm the differential duty of **Rs. 1,04,44,710/- (BCD+SWC+IGST)** *(Rupees One Crore Four Lakhs Forty Four Thousand Seven Hundred Ten only)* for the period from 29.01.2020 to 03.07.2022, determined in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962 with applicable interest under section 28AA of the Customs Act, 1962 which is recoverable from Noticee M/s H. M. Trading Co.

14.5 I impose penalty of **Rs. 1,04,44,710/-** (BCD+SWC+IGST) *(Rupees One Crore Four Lakhs Forty Four Thousand Seven Hundred Ten only)* on M/s H. M.

Trading Co. under Section 114A of the Customs Act, 1962. I refrain from imposing penalty under section 112 (a) (ii) of the Customs Act, 1962, since as per 5th proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

14.6 I impose penalty of **Rs 5,00,000/-** *(Rupees Five Lakh Only)* on Sh Manish Ashwinbhai Parikh, Partner of M/s H.M. Trading Co. under Section 112 (a) (ii) of the Customs Act, 1962.

15. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

(K. Engineer)
Commissioner of Customs,
Custom House, Mundra.

To, (The Noticee),

i) M/s. H.M. Trading Co. (IEC-AAHFH2742R)
B-216, Gopal Palace, Near Shiromani Complex,
Nehrunagar, Ahmedabad-380015

ii) Shri Manish Ashwinbhai Parikh
Partner, M/s. H.M. Trading Co. (IEC-AAHFH2742R)
B-216, Gopal Palace, Near Shiromani Complex
Nehrunagar, Ahmedabad-380015

Copy to:

1) The Chief Commissioner of Customs, CCO, Ahmedabad.
2) The Additional Commissioner of Customs, SIIB(I)
3) The Deputy/ Assistant Commissioner (EDI), Custom House, Mundra.
4) The Prosecution Cell/Legal Cell, Mundra
5) The Tax Recovery Cell, Mundra
4) Notice Board.
5) Guard File.