प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद
सीमाशुल्कभवन, आलइंडीयारेडीओकेबाजुमे, नवरंगपुरा ,अह्मदाबाद 380009
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OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.
फा. सं./F. No.: VIII/10-22/Pr.Commr/O&A/2018

DIN- **20251171MN0000444CB5**

आदेशकीतारीख/Date of Order :.17 .11.2025
जारीकरनेकीतारीख/Date of Issue :17.11.2025

द्वारापारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**
Passed by :- Shiv Kumar Sharma, Principal Commissioner

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-32-2025-26 dated 17.11.2025 in the case of M/s Grasim Industries Limited, (Unit: Grasim Cellulosic Division),Plot No. 1,GIDC Vilayat Industrial Estate, Taluka:Vagra,District:Bharuch-392012.

1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन , गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

7. 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".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice F.No. VIII/10-22/Pr.Commr/O&A/2018 dated 28.03.2021 issued by the Commissioner, Customs, Ahmedabad to M/s Grasim Industries Limited, (Unit: Grasim Cellulosic Division),Plot No. 1,GIDC Vilayat Industrial Estate, Taluka:Vagra,District:Bharuch-392012.

M/s Grasim Industries Limited, (Unit: Grasim Cellulosic Division), Plot No. 1, GIDC, Vilayat Industrial Estate, Taluka Vagra, District Bharuch-392012 (IEC No. 1188001353), (hereinafter referred to as 'M/s. Grasim' or 'the Noticee' or 'the

Importer" for the sake of brevity) are engaged in the import of "Product BM 5" & other products from Adani Hazira Port since 2016.

2. An intelligence input received from the DRI, Ahmedabad, indicated that "Product BM 5" imported from Hazira Port & other Ports, was classifiable under Chapter Tariff Heading No. 34029049 attracting 10% of Customs Duty as against 7.5% Duty paid by M/s. Grasim. The Noticee filed two self assessed Bills of Entry No.4803533 dated 15.01.2018 & 4833455 dated 17.01.2018 for import of "Product BM 5 (Preparations for Treatment of Textile Material)' under Chapter Tariff Heading No.34039100. Based on the aforesaid intelligence of DRI, both the aforesaid self assessed Bills of Entry were recalled from RMS and ordered for Examination for First Check and drawing of samples for testing to ascertain the correct classification of the product. "Live Samples" were drawn and sent to the Chemical Examiner, CRCL, Vadodara for Test report on 23.01.2018.

2.1 The Chemical Examiner, CRCL, Vadodara, forwarded 2 Test Reports in this regard. Test Report No. RCL/SU/imp/1664 dated 30.01.2018 in respect of Bill of Entry No. 4833455 dated 17.01.2018 concluded as under;

"The sample meets to the requirement of organic surface active agent."

Similarly, Test Report No. RCL/SU/Imp/1663A&B dated 29.01.2018/30.01.2018 in respect of Bill of Entry No.4803533 dated 15.01.2018, concluded as under:-

"Each of the two samples meets to the requirement of organic surface active agent."

2.2 The aforesaid Test Reports clearly indicated that "Product BM 5" meets to the requirement of "Organic Surface Active Agent" and is hence correctly classifiable under Chapter Tariff Heading No.34029049 and not under Chapter Tariff Heading No 34039100 as classified by the Noticee in two self assessed Bills of Entry No. 4803533 dated 15.01.2018 & 4833455 dated 17.01.2018. Therefore, the goods viz. "Product BM 5" imported vide Bills of Entry No.4803533 dated 15.01.2018 & 4833455 dated 17.01.2018 mis-classified/ mis-declared by the Noticee appeared to be liable for confiscation and therefore the same were placed under seizure vide Panchnama dated 01.02.2018 & 16.02.2018. Subsequently, the issue was decided vide Order-In-Original No.2/BPS/ADC-SRT/2019 dated 13.6.2019 issued by the Additional Commissioner, Customs, Surat.

3. The Noticee has filed self assessed Bills of Entry under the provisions of sub- section (1) of **Section 17 of the Customs Act, 1962** by classifying the goods under Chapter Tariff Heading No.34039100 as detailed in:

(i) Annexure 'A' for the imported goods declared as "Product BM 5' (Preparations for Treatment of Textile)" ;
(ii) Annexure 'B' for the imported goods with description' Product BFT 2' (Preparations for Treatment of Textile Materials);
(iii) Annexure 'C' for the imported goods with description 'Product BFT 1' (Preparations for Treatment of Textile Materials)
(iv)

3.1 The Noticee imported the product namely "Product BM 5" (Preparations for Treatment of Textile Material) from M/s Giovanni Bozzetto S.P.A., Italy and classified the product under Chapter Tariff Heading No.34039100 [Preparations for the Treatment of Textile Materials, Leather, Furskins or other Materials] chargeable to Basic Customs Duty (BCD) @ 7.5 % under Notification No: 12/2012-Cus dated 17.3.2012 (Sr. No: 214) and Notification No: 50/2017-Cus dated 30.6.2017 (Sr. No: 240) through Hazira Port, Surat.`

3.2 Amongst the Bills of Entry filed by the Noticee earlier at Hazira Port and listed in Annexure A, Bills of Entry No. 2396420 dated 11.07.2017 & 2451848 dated 14.07.2017 for import of the products "BM 5" (Preparations for Treatment of Textile Materials), "BFT 2"& "BFT 1" under Chapter Tariff Heading No.34039100 along with other products were provisionally assessed and samples were drawn and sent to the Chemical Examiner, CRCL, Vadodara for testing to ascertain the correct classification of the products. The Chemical Examiner, CRCL, Vadodara, forwarded Test Reports for the samples drawn.

(a) Test Report bearing No. RCL/SU/Imp/597 dated 28.08.2017 **(RUD-7)** in respect of Bill of Entry No. 2396420 dated 11.7.2017 for product "BM 5 " ,concluded as under ;

"The sample meets to the requirement of organic surface active preparation. It is other than a textile lubricating preparation"

(b) Test Report bearing No. RCL/SU/Imp/772 dated 28.09.2017 and in respect of Bill of Entry No. 2451848 dated 14.7.2017 for "Product "BFT 2" , concluded as under :
"The sample meets to the requirement of organic surface active preparation. It is other than a textile lubricating preparation"

(c) Test Report bearing No. RCL/SU/Imp/781 dated 4.9.2017 in respect of Bill of Entry No. 2451848 dated 14.7.2017 for "Product BFT 1" ,concluded as under:
"The sample is in the form of white party mass. It is an organic surface active agent along with some additive"

Thus, all the Test Reports confirmed that the products declared as "Product BM 5", "Product BFT 1" and "Product BFT 2" met the requirement of Organic Surface Active Preparation and/or it is an Organic Surface Active Agent" and they were other than a Textile Lubricating Preparation.

3.3 From the web site of the supplier **M/s. Giovanni Bozzetto** S.P.A, Italy i.e. http://www.bozzetto-group.com/en/textile-chemicals/ it appeared that there was no product by the name 'Product BM 5' listed in the Product lists. However there was a product by the name "BIOMEGAPAL" of variant types listed under the category of "Textile Chemicals" with applications as 'Preparation', 'Dyeing' and 'Fashion Art Chemicals' which appeared to be close to the description of 'Product BM 5' declared by the Noticee. The product "BIOMEGAPAL" was claimed by the supplier in the web page to be a wetting-detergent agent; suitable for pre-treatment of synthetic fibers/ linen yarn/rove and cotton on yarn packages/ wool fulling and in washing/ desizing of various fabrics/ pad- batch/ cellulose and blended fabrics in continuous and discontinuous processes; low foaming; biodegradable; non-ionic. The 'Product BM5' thus appeared to be "Organic Surface Active Agent" and a Wetting Agent aptly classifiable under Chapter Tariff Heading No.34029049. The details in this regard have since been removed from the website by the supplier.

3.4 The Noticee also imported other goods namely 'Product BFT 1' and 'Product BFT 2' (Preparations for Treatment of Textile Materials) through Hazira Port from **M/s. Giovanni Bozzetto** S.P.A., Italy, classified the same under Chapter Tariff Heading No.34039100 (Preparations for Treatment of Textile Materials) and paid Basic Customs Duty(BCD) @ 7.5 % under Notification No: 50/2017 (Sr. No: 240).

3.5 The Basic Customs Duty (BCD) payable under Chapter Tariff Heading No.34029049 is 10% as against the Basic Customs Duty of 7.5% paid by them as

per Chapter Tariff Heading No.34039100 for the products i.e. 'Product BM 5' , 'Product BFT 1' and 'Product BFT 2'.

4. In view of the factual position and evidences brought forth in the foregoing paragraphs, all the three impugned imported products/goods i.e. (i) Product BM 5 (ii) Product BFT 1 and (iii) Product BFT 2 appear to be appropriately classifiable under Chapter Tariff Heading No. 34029049. Hence, all the three impugned products/goods are chargeable with 10% BCD. It also appears that the Noticee have wrongly classified the impugned goods under Chapter Tariff Heading No.34039100 and thus short paid BCD @ 7.5%. Hence, the products namely 'Product BM 5', 'Product BFT 1' and 'Product BFT 2' are required to be classified under Chapter Tariff Heading No 34029049 and consequently M/s. Grasim is liable to pay the differential Customs Duty. The differential Customs Duty for the 'Product BM 5' imported during the period 2016 to 2017 has been worked out to Rs.79,54,491/- as per the details mentioned in the Annexure 'A' and differential Customs Duty for 'Product BFT 2' imported during the period 2016 to 2017 has been worked out to Rs.1,79,727/- as per the details mentioned in the Annexure 'B' whereas the differential Customs Duty for 'Product BFT 1' imported during the period 2016 to 2020 has been worked out to Rs.7,42,895/- as per the details mentioned in the Annexure 'C' attached to the Show Cause Notice. Therefore, the total differential Customs Duty short paid amounted to Rs. 88,77,113/- in respect of the goods imported vide various Bills of Entry filed at Hazira Port, Surat. The details in this regard are briefly tabulated below and detailed in the Annexure 'A' , 'B' & 'C' to the Show Cause Notice, The Customs Duty short paid was required to be demanded in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

Name of the Product	**Assessable Value (Rs.)**	**Total Duty Payable Rs.)**	**Total Duty Paid in Rs.**	**Differential Duty Payable by noticee (Rs.)**
Product BM 5	25,58,89,301/-	8,31,80,922/-	7,52,26,431/-	79,54,491/-
Product BFT 2	57,88,326/-	22,10,052/-	20,30,325/-	1,79,727/-
Product BFT 1	2,33,91,543/-	75,88,853/-	68,45,957/-	7,42,895/-
TOTAL	**28,50,69,170/-**	**9,29,79,827/-**	**8,41,02,713/-**	**88,77,113/-**

5. The Noticee has subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry, in terms of Section 46(4) of the Customs Act, 1962 in respect of all their Bills of Entry. As per Section 111(m) of the Customs Act, 1962, any goods which do not correspond in respect of value or in any other particular with the Entry made under the Customs Act, 1962 are liable for confiscation under the said Section. Further, with the introduction of self assessment and consequent amendments to Section 17, since April 2011, it is the responsibility of the Importer to correctly classify, determine and pay the Duty applicable in respect of the imported goods. In this case as discussed supra, the Importer knew that these goods were classifiable under Chapter Tariff Heading No.34029049. The Noticee has thus violated the provisions of Section 46(4) of the Customs Act, 1962. In view of the above, it appears that the Noticee have rendered the goods valued at Rs.28,50,69,170/- covered under the said Bills of Entry liable for confiscation under Section 111(m) of the Customs Act, 1962 in as much as they mis-classified the product imported by them to avail benefit of Notification No.12/2012-Cus dated 17.3.2012 (upto 30.6.2017) and Notification No.50/2017-Cus dated 30.6.2017(w.e.f

01.07.2017) and thereby to evade payment of correct and due amount of Customs Duty.

6. It appeared that the Noticee had indulged themselves in mis-declaring and mis-classifying the products under the wrong Chapter Tariff Heading No.34039100 claiming lower rate of Basic Customs Duty @ 7.5% in place of correct Chapter Tariff Heading No.34029049 attracting Basic Customs Duty @ 10% and thereby rendered the goods liable for confiscation in terms of Section 111 (m) of the Customs Act, 1962, in respect of the self assessed Bills of Entry mentioned in Annexure 'A', Annexure 'B' & Annexure 'C' attached to the Show Cause Notice and suppressed the facts from the Department.

7. For these acts of omission and commission, the Noticee appeared to be liable to penalty under Section 112(a) and 114A of the Customs Act, 1962 in as much as they have rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and they have intentionally made and used false and incorrect declaration / statements/documents to evade payment of legitimate Customs Duty as discussed in the preceding paras.

8. As narrated in the above paras, it appeared that the Noticee had indulged themselves in mis-classification/mis-declaration of the products i.e. ' Product BM 5' , 'Product BFT 2' and 'Product BFT 1' under wrong Chapter Tariff Heading No .34039100 claiming lower rate of 7.5% Basic Customs Duty in place of correct Chapter Tariff Heading No.34029049 @ 10% Basic Customs Duty and thereby rendered themselves liable for penalty under Section 112 of the Customs Act, 1962 for mis-classification / mis- declaration of the 'Product BM 5' , 'Product BFT 2' & 'Product BFT 1' at lower rate of Duty.

9. In view of the above facts, it appeared that the Noticee had deliberately mis-classified their items i.e. 'Product BM 5', product 'Product BFT 2' & 'Product BFT 1' under wrong Chapter Tariff Heading No.34039100 claiming lower rate of 7.5% Basic Customs Duty in place of correct Chapter Tariff Heading No.34029049 @ 10% with an intent to evade payment of appropriate Customs Duty on these products at the time of their import. By their act of willful mis-declaration, they appear to have contravened the following provisions of the Customs Act, 1962:

(i) As per Section 46 (4) of the Customs Act, 1962, the Importer has to make true declaration with regard to the contents of the Bills of Entry. However, the Noticee, willfully mis-declared items imported by them i.e. 'Product BM 5' , 'Product BFT 2' & 'Product BFT 1' under wrong Chapter Tariff Heading No.34039100 claiming lower rate of Basic Customs Duty @7.5% in place of correct Chapter Tariff Heading No.34029049 wherein Basic Customs Duty is 10%, in the Bills of Entry as detailed in the said Annexure A , B & C to the Show Cause Notice. Therefore, these items were required to be classified under Chapter Tariff Heading No.34029049 and accordingly, the differential Customs Duty to the tune of Rs.88,77,113/- was liable to be recovered from them under the provisions of Section 18(2) read with Section 28(4) *(erstwhile proviso to Section 28(1) of the Customs Act 1962)* of the Customs Act, 1962 along with Interest at applicable rate under Section 18(3) read with Section 28AA of the Customs Act, 1962 *(erstwhile Section 28 AB of the Customs Act 1962)*. Duty has been demanded on the quantity of all the three subject goods imported.

(ii) The Noticee, by their act of willful misstatement and suppression of facts, have rendered their import of the products i.e. 'Product BM 5', 'Product BFT 2' & 'Product BFT 1' imported vide Bills of Entry as detailed in Annexures A, B & C to the Show Cause Notice, having assessable value of Rs. 28,50,69,170/-, liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. The Noticee, by their acts of willful misstatement of description and classification in the concerned Bills of Entry, and thereby evasion of applicable Customs Duty on import of 'Product BM 5', 'Product BFT 2' & Product BFT 1', have rendered

themselves liable for penalty under Section 112(a) as well as Section 114A of the Customs Act, 1962.

(iii) The Noticee appears to have intentionally signed and filed Documents like Bills of Entry which contained incorrect or false details about classification of the goods, claiming benefit of Exemption Notification which they had all reasons to believe were not available to them, with intent to evade payment of Customs Duty and for all these acts of commission and omission, the Noticee were liable to penalty under Section 114AA of the Customs Act,1962.

10. Therefore, Show Cause Notice F.No.VIII/10-22/Pr.Commr./O&A/2018 dated 28.03.2021 was issued to **M/s. Grasim Industries Limited**, (Unit: Grasim Cellulosic Division), Plot No. 1,GIDC Vilayat Industrial Estate, Taluka:Vagra,District:Bharuch-392012, asking them to Show Cause to the Principal Commissioner of Customs, Ahmedabad, as to why:-

(a) Imported goods namely 'Product BM 5' , 'Product BFT 2' and 'Product BFT 1' should not be classified under Chapter Tariff Heading No.34029049 as 'Organic Surface Active Preparation'/'Organic Surface Agent' instead of Chapter Tariff Heading No.34039100, in respect of all imports under Bills of Entry as listed in Annexure 'A' , 'B' & 'C' to the Show Cause Notice.

(b) Imported goods valued at **Rs.28,50,69,170/-(Twenty Eight Crores Fifty Lakhs Sixty Nine Thousand One Hundred and Seventy only)** involving total differential Customs Duty of **Rs.88,77,113/-(Rupees Eighty Eight Lakhs Seventy Seven thousand One Hundred and Thirteen only)** imported by M/s.Grasim as listed in Annexure 'A' , 'B' & 'C' to the Show Cause Notice should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962;

(c) Differential Customs Duty of **Rs.88,77,113/- (Rupees Eighty Eight Lakhs Seventy Seven thousand One Hundred and Thirteen only)** should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;

(d) Interest at appropriate rate as applicable on the Customs Duty evaded as mentioned in (c) above, should not be recovered from them under Section 28AA of the Customs Act, 1962.

(e) Penalty should not be imposed on them under Section 112 (a) & (b) of the Customs Act,1962 ;

(f) Penalty should not be imposed on them under Section 114A of the Customs Act,1962 ;

(g) Penalty should not be imposed on them under Section 114AA of the Customs Act,1962 ;

11. WRITTEN SUBMISSION: The noticee vide their letter dated 17.10.2025 filed written submission alongwith compilation of relevant CTH entries of Customs Tariff Act, 1975 and case laws. The noticee vide aforesaid written submission interalia submitted as under:

11.1 that the impugned goods are correctly classifiable under CTH 3403; they have correctly classified the impugned goods under CTH 3403 and more specifically under CTT 3403 91 00 as "Preparation for the treatment of textile

materials". The impugned goods are used in the treatment of textiles and more specifically to increase the tenacity and quality of VSF; that as per the HSN Explanatory Notes of CTH 34.03, goods used to soften textile fabrics are included in the CTH 34.03; that also, fatty substances with surface-active agents fall under CTH 3403 and produced relevant extract of HSN to CTH 34.03 ; that the impugned order has erred in placing reliance on the test reports issued by CRCL, which stated that the absence of mineral oil would remove the impugned goods from being classified under Heading 3403. However, the abovementioned extract clearly states "mixtures of mineral oil or fatty substances with surface-active agents (eg. sulphoricinoleates)", the use of term "or" means that if the goods fall under "fatty substances with surface-active agents", they would be classified under CTH 3403; that the impugned goods contain fatty alcohol substances as per the Certificate dated 16.06.2023 received from the supplier thus, fulfilling the "or" condition abovementioned and therefore the ground for rejection of classification under CTH 3403 in the impugned order is incorrect. A copy of the Certificate dated 16.06.2023 is enclosed with submission as Annexure-6; that the CRCL test report has failed to mention about the presence of fatty alcohol substances in the impugned goods and thus making it unreliable and therefore should not be considered; that Certificates from the Supplier also confirm that the impugned goods are used in the treatment of textiles; that the supplier in the Certificates issued by him stated the correct classification of the impugned goods as 3403 91 00 and also pointed out its usage in the textile field; that the certificate also mentions that the impugned goods are neither used as organic surface active agents nor as wetting agents, implying that the classification adopted by the Department under CTH 3402 is incorrect; that copies of the Certificates dated 08.02.2018 and 07.01.2019 as enclosed as Annexure-7 and Annexure-8 to their submission; that a perusal of the Safety Data Sheet provided by the supplier also substantiates that the impugned goods are used for textile finishing and copy of the Safety Data Sheet pertaining to the product in question is enclosed as Annexure-9; that Impugned goods are excluded from falling under CTH 3402 as per the HSN Explanatory Notes;

11.2 that the present issue is squarely covered by the decision of the Hon'ble CESTAT Ahmedabad in the case of Colourtex Industries Private Limited v. CC Ahmedabad, CESTAT Final Order No. 10508-10512/2024 dated 28.02.2024; that the classification adopted by the Department of the impugned goods under CTH 3402 is incorrect as they are excluded from falling under CTH 3402 as per the HSN Explanatory Notes to chapter 3402 and referred the relevant portion of HSN Explanatory Notes prescribing certain exclusions ; that reliance in this regard is placed on the case of Colourtex Industries Private Limited v. CC Ahmedabad, CESTAT Final Order No. 10508-10512/2024 dated 28.02.2024 which squarely covers the issue in the present case; that the explanatory note to Chapter heading 3402 also prescribes the exclusion from the said heading and referred the Note which prescribes exclusions and submitted that , it is clear from the preparations containing surface active agents where surface active function is either not required or only subsidiary to the main function of the preparation would not fall under heading 3402, the impugned order relies on the technical literature of the supplier namely M/s Pulcra Chemicals which was produced by Shri Subramanium Iyer, DGM (Procurement); that the main function of the impugned goods is the treatment of textiles and the surface active function is a subsidiary function to the main function of the preparation which as per the abovementioned exclusion, excludes the impugned goods from falling under CTH 3402 as specified by the Department; that to support the above contention, they placed reliance on (i0 I.C.I. (I) Ltd v. C.C. Ex., Mumbai 2004 (171) E.E.T. 172 (Tri) (ii) Commissioner

of C.Ex., Chennai v. Textan Chemicals (P) Ltd., 2009 (241) ELT 285 (Tri.-Chennai) (iii) CCE Vs Abilash Chemicals Pvt. Ltd, 2008 (230) ELT 435 (T) & (iv) CCE Vs Textan Chemicals (P) Ltd, 2009 (241) ELT 285 (1); that for understanding the meaning of term "preparation", reliance is placed on the case of Silver Oak Labs v. C.C., Bombay 1999 (108) E.L.T. 293 (Tri), wherein it was held that the terms 'Preparation', 'compound' and 'mixtures' are synonyms and can be used interchangeably; that test report issued by CRCL Vadodara is non-conclusive; that the test report issued by CRCL Vadodara is non-conclusive for deciding the classification of impugned goods as samples were drawn from Bills of Entry which are not related to the concerned show cause notice and therefore the report cannot be relied upon; that reliance in this regard is placed on C.C. Ex. & S.T., Calicut v. Jupiter Trading Company-2019 (369) E.L.T. 1524 (Tri-Bang.);

11.3 that Impugned goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962; that the impugned goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962 as mere misclassification does not amount to misdeclaration and placed reliance on the decision (i) Lewek Altair Shipping Private Limited v. CC, 2019 (366) E.L.T. 318 (Tri. Hyd.) [Affirmed by Supreme Court at 2019 (367) E.LT. A328 (S.C.)] (ii) Northern Plastic Ltd. vs. Collector Of Customs & Central Excise, 1998 (101) E.L.T. 549 (S.C.) (iii) Surbhit Impex Pvt. Ltd. v. CC (EP), Mumbai, 2012 (283) ELT 556 (Tri-Mumbai); that no Redemption Fine is imposable under Section 125 of the Customs Act, 1962; that provisions of Section 125 of the Customs Act would only get attracted only if the goods are liable for confiscation; that in the present case, the impugned goods are not liable for confiscation and thus, no Redemption Fine is imposable on the same; that Redemption Fine is not imposable when goods are not available for confiscation and in this regard, reliance is placed on the decision of the Hon'ble Bombay High Court in the case of CC Vs. Finesse Creation Inc, 2009 (248) ELT 122 (Bom.) which has been affirmed by the Supreme Court in 2010 (255) ELT A120; Further cited the decision i.e. (i) Weston Component Vs. CC, 2000 (115) ELT 278 (SC), CC Vs. Raja Impex 2008 (229) ELT 185 (P&H) and (iii) CCE, Ahmedabd-I V. Bhairavi Exim Pvt. Ltd CESTAT Final Order No. 10474/2023 dated 17.03.2023; that no penalty is imposable in the instant case as they were under bonafide belief that the classification adopted by them was correct; that no penalty can be imposed under Section 114A of the Customs Act, 1962 in the cases involving interpretation of the classification of the imported goods and placed reliance on (i) Jai Research Foundation v. Commr. of C.Ex.& Service Tax, Vapi 2019 (25) G.S.T.L. 473 (Tri. Ahmd), Bahar Agrochem & Feeds Pvt. Ltd. V. C. Ex. 2012(277) ELT 382 (Tri. And Decostyle Technical (P) Ltd. V. C. Ex 2005 (182) ELT 381 (Tri.); that interest cannot be levied under Section 28AA of the Customs Act, 1962 and placed reliance on the decision of Pratibha Processors V Union of India, 1996 (88) ELT 12 (SC).

12. RECORD OF PERSONAL HEARING: Personal Hearing (in virtual mode) in the case was fixed for 17.10.2025. Shri Manish Jain, Advocate of noticee attended the Personal Hearing (through virtual mode) on 17.10.2025. The Advocate for the Noticee reiterated their submissions dated 17.10.2025.

13. DISCUSSION AND FINDINGS: I have carefully gone through the Show Cause Notice dated 28.03.2021, written submission dated 17.10.2025 as well as written submission dated 17.06.2021 filed during the first adjudicating proceedings, all the evidences submitted by the noticee, Hon'ble CESTAT's Order No A/11930-11931/2024 dated 02.09.2024 and relevant provisions of law and various decisions relied on by the advocate in their submission on behalf of Noticee and records of personal hearing held on 17.10.2025.

14. This denovo proceeding has been initiated consequent to the CESTAT's Final Order No A/11930-11931/2024 dated 02.09.2024 in respect of Appeal No. C/10338/2020 and Misc. Application No. C/10315/2023 filed by M/s. Grasim Industries Ltd. Relevant Para of CESTAT's Final Order No A/11930-11931/2024 dated 02.09.2024 is re-produced :-

"3. We find that the evidence is relevant to decide the nature and classification of the matter. However, the department did not have the opportunity to comment upon the same at the relevant point of time due to non-production. Therefore, while admitting the additional evidence as sought by the appellant, since same is desirable considering that classification dispute is involved, we remit the matter back to the adjudicating authority. It shall examine the relevant piece of evidence and any other case law or any other material which may be produced by the party, the department on its part shall also be free to bring on record any of their evidence to rebut the evidence which has been produced by the party but only after affording due opportunity to the appellant. The matter is accordingly remanded back. Miscellaneous application is allowed. Appeals are allowed by way of remand."

15. I find that in the instant case, initially Show Cause Notice No. VIII/10-22/Pr.Commr/O&A/ 2018 dated 28.03.2021 was adjudicated by the then Commissioner of Customs vide Order In Original No. AHM-CUSTM-000-030-21-22 dated 24.03.2022 wherein the Adjudicating Authority had upheld the classification of imported goods viz. 'Product BM 5', 'Product BFT2' and 'Product BFT1' under CTI 34029049 and had rejected the classification under CTI 34039100 declared by the noticee. Further, the Adjudicating Authority had dropped the demand of Customs Duty of Rs.79,54,491/- out of total Demand of Differential Customs Duty of Rs.88,77,113/- proposed in Show Cause Notice and demand of Rs. Rs.9,22,622/- was confirmed alongwith interest and equal penalty of Rs. 9,22,622/- under Section 114A of the Customs Act, 1962. Further the imported impugned goods valued @ Rs. 28,50,69,170/- was held liable for confiscation under Section 111(m) of the Customs Act, 1962 and Redemption fine of Rs. 2,85,06,900/- was imposed. Further Penalty proposed under Section 112 and 114AA were dropped. The Order In Original has been accepted by the Department as intimated by the CCO Office vide F.No. CCO/REV/OIO/143/2022-REV-O/o CC-CUS-ZON-AHMEDABAD dated 11.05.2022. Being aggrieved with the said OIO, the noticee had filed an appeal before CESTAT vide Appeal No. C/10338/2022 with Misc. Application No. 10315/2023. The Hon'ble CESTAT's Final Order No A/11930-11931/2024 dated 02.09.2024 had allowed the said appeal by way of remand. Therefore, limited issue to be decided in the present case is classification of impugned good and whether the differential duty of Rs. 9,22,622/- is required to be recovered under Section 28(4) of the Customs Act, 1962 alongwith interest and further whether goods valued @ Rs. 28,50,69,170/- is liable for confiscation under section 111(m) of the Customs Act, 1962 and penalty under Section 114A is liable to be imposed or otherwise.

16. Vital issue for consideration before me in this denovo proceeding is whether the imported goods viz. 'Product BM 5', 'Product BFT2' and 'Product BFT1' are classifiable under Customs Tariff Item No.34039100 as claimed by the Noticee or under Customs Tariff Item No.34029049 as proposed in the Show Cause Notice.

16.1 For the purpose of ascertaining the merit classification of the impugned goods viz. 'Product BM 5', 'product BFT2' and 'product BFT1', it would be worth to make a reference to the Customs Tariff Heading 3403 claimed by the noticee and Customs Tariff Heading 3402 alleged by the Department, as appearing in the Customs Tariff Act, 1975 as well its sub headings as appearing thereunder, which are as under:

3403 LUBRICATING PREPARATIONS (INCLUDING CUTTING OIL PREPARATIONS, BOLT OR NUT RELEASE PREPARATIONS, ANTI-RUST OR ANTI-CORROSION PREPARATIONS AND MOULD RELEASE PREPARATIONS,BASED ON LUBRICANTS) AND PREPARATIONS OF A KIND USED FOR THE OIL OR GREASE TREATMENT OF TEXTILE MATERIALS, LEATHER, FURSKINS OR OTHER MATERIALS, BUT EXCLUDING PREPARATIONS CONTAINING, AS BASIC CONSTITUENTS, 70 % OR MORE BY WEIGHT OF PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS

- Containing petroleum oils or oils obtained from bituminous minerals:

3403 11 00 - Preparations for the treatment of textile materials, leather, furskins or other materials

3403 19 00 - Other

-Other:

3403 91 00 - Preparations for the treatment of textile materials, leather, furskins or other materials

3403 99 00 - Other

3402 ORGANIC SURFACE-ACTIVE AGENTS (OTHER THAN SOAP), SURFACE-ACTIVE PREPARATIONS, WASHING PREPARATIONS (INCLUDING AUXILIARY WASHING PREPARATIONS) AND CLEANING PREPARATIONS, WHETHER OR NOT CONTAINING SOAP, OTHER THAN THOSE OF HEADING 3401

- Organic surface-active agents, whether or not put up for retail sale:

3402 11 *- Anionic:*

3402 11 10 - Silicone surfactant

3402 11 90 - Other

3402 12 00 - Cationinc

3402 13 00 - Non-ionic

3402 19 00 - Other

3402 20 *- Preparations put up for retail sale:*

3402 20 10 - Washing preparations (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other Organic Surface Active Agents

3402 20 20 - Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents

3402 20 90 - Other -

3402 90 *- Other:*

- Synthetic detergents:

3402 90 11 - Washing preparations (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other Organic Surface Active Agents

3402 90 12 - Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents

3402 90 19 - Other -

3402 90 20 - Sulphonated or sulphated or oxidized or chlorinated castor oil; sulphonated or sulphated or oxidized or chlorinated fish oil; sulphonated or sulphated or oxidized or chlorinated sperm oil; sulphonated or sulphated or oxidized or chlorinated neats foot oil

3402 90 30 - Penetrators.

- *Wetting agents:*

3402 90 41 - Washing preparations (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other Organic Surface Active Agents

3402 90 42 - Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents

3402 90 49 - Other

- *Washing preparations whether or not containing soap :*

3402 90 51 - Washing preparations (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other Organic Surface Active Agents

3402 90 52 - Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents

3402 90 59 - Other –

- *Other :*

3402 90 91 - Washing preparations (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other Organic Surface Active Agents

3402 90 92 - Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents

3402 90 99 ---- Other

16.2 Sample were drawn for the imported product 'BM 5', 'BFT 2' and 'BFT 1' and sent for testing to CRCL, Vadodara. CRCL, Vadodara has given the reports as under:

Sr.No.	Details of Test Memo	Purpose for sending the sample	Test Report No. & date	Details of the Test Report
01.	83/17-18 dt.19.7.2017 of product **BM5**	To ascertain whether it is product BM5 or otherwise(Preparations for Treatment of Textile).	RCL/SU/Imp/597 dated 28.8.2017.	The sample meets to the requirement of Organic Surface Active Agent. It is other than a textile lubricating preparation.

02.	87/17-18 dt.26.7.2017 of product **BFT2**	To ascertain whether it is product BFT2(Preparations for Treatment of Textile Materials) or otherwise.	RCL/SU/Imp/772 dated 28.9.2017.	The sample meets to the requirement of Organic Surface Active Agent. It is other than a textile lubricating preparation.
03.	89/17-18 dt.19.7.2017 of product **BFT1**	To ascertain whether it is product BFT1(Preparations for Treatment of Textile Materials) or otherwise.	RCL/SU/Imp/781 dated 4.9.2017.	The sample is in the form of White Party Mass. It is an Organic Surface Active Agent along with some additive.

16.3 Plain reading of Chapter Heading No. 3402 suggests that it is meant for 'Organic Surface Active Agents (Other than Soap), Surface-Active Preparation, Washing Preparation (Including Auxiliary Washing Preparation) and Cleaning Preparation, Whether or not containing Soap, other than those of heading 3401' Whereas Chapter Heading 3403 is meant for ' Lubricating Preparations (including Cutting Oil Preparations, Bolt or Nut Release Preparations, Anti-Rust or Anti-Corrosion Preparations and Mould Release Preparation, based on lubricants) and Preparation of a kind used for the oil or grease treatment of textile materials, leather, fur skins or other materials, but excluding preparation containing, as basic constituents, 70 % or more by weight of Petroleum Oils or of Oils obtained from Bituminous Minerals). I find that the noticee have declared the impugned goods as 'Preparations for the treatment of Textile Materials' and classified by them under Customs Tariff Item No. **34039100** which means that impugned goods have characteristics of 'Preparations for the Oil & Grease Treatment of Textile Materials' Whereas Test Report for sample of 'Product BFT1' specifically states that *'It is an Organic Surface Active Agent along with some additive'*, Test Reports in respect of the samples of 'Product BM5' and 'Product BFT2' states that *'they meet the requirement of Organic Surface Active Agent and are other than a Textile Lubricating Preparation.'* Thus, it is crystal clear from the aforesaid Test Reports that the Products are not 'Preparations' for Textile Materials but are either Organic Surface Active Agents or meet the requirements of an 'Organic Surface Active Agent' and are other than Textile Lubricating Preparations as claimed by the noticee and its merit classification is **34029049** .

16.4 Further, I find that Noticee have also submitted the Test Report dated 26.06.2019 of CRCL, New Delhi issued in respect of 4 samples i.e. 2 samples each of the products namely 'Product BM 5' and 'Product BFT 2' of the noticee. I find it worth to mention herein below as the same is relevant to the present case. The details of the Test Reports given by the Noticee in respect of the samples of 'Product BFT 2' and 'Product BM 5' are as under:

1.Lab No.CLR-01 dated 14.06.2019, B.E.No.2451848 dated 14.07.2017, Sample No.87 dated 26.07.2017, T.M.87 dated 26.07.2017.

Description: Product BFT 2

The sample is in the form of off white pasty mass. On the basis of Chemical, Chrometographic and Spectroscopic examinations, it ***is a preparation based on Organic Surface Active Agent(anionic in nature)*** *having the following properties:*

i. *Solubility: Soluble in water.*
ii. *pH(5% soln.): 8.0*
iii. *NVR: 74.14% by wt.*
iv. *Ash: 7.79% by wt.*
v. *Presence of mineral oil: Negative.*
vi. ***The sample when mixed with water at a concentration of 0.5% at 20oC and left to stand for one hour at same temperature gives translucent liquid without separation of insoluble matter which reduces surface tension of water below 45 dyne/cm(Actual being = 41.83 dyne/cm).***

On the basis of above, it meets the ***requirements of surface active preparation****. It is other than preparation based on lubricant for textile treatment.*

2.Lab No.CLR-02 dated 14.06.2019, B.E.No.2368619 dated 11.03.2019, Sample No.728 dated 14.03.2019, T.M.728 dated 14.03.2019.

Description: Product BM 5:

The sample is in the form of yellowish viscous liquid. On the basis of Chemical, Chrometographic and Spectroscopic examinations, it is a preparation based on Organic Surface Active Agent(non-ionic in nature) in aqueous medium having the following properties:

i. *Solubility: Soluble in water.*
ii. *pH (as such): 7.0*
iii. *pH(5% soln.): 8.0 – 9.0*
iv. *Sp.Gravity (at 15oC): 1003.8 kg/m3*
v. *NVR: 96.4%*
vi. *Ash: 0.12%*
vii. *Presence of mineral oil: Negative.*
viii. ***The sample when mixed with water at a concentration of 0.5% at 20oC and left to stand for one hour at same temperature gives transparent liquid without separation of insoluble matter which reduces surface tension of water below 45 dyne/cm(Actual being = 26.14 dyne/cm).***

On the basis of above, it ***meets the requirements of surface active preparation****.* ***It is other than preparation based on lubricant for textile treatment.***

3.Lab No.CLR-03 dated 14.06.2019, B.E.No.2465995 dated 18.03.2019, Sample No.747 dated 22.03.2019, T.M.747 dated 22.03.2019.

Description: Product BFT 2

The sample is in the form of off white pasty mass. On the basis of Chemical, Chrometographic and Spectroscopic examinations, it is a preparation based on Organic Surface Active Agent(anionic in nature) having the following properties:

i. *Solubility: Soluble in water.*
ii. *pH(5% soln.): 8.0*
iii. *NVR: 73.9% by wt.*
iv. *Ash: 8.14% by wt.*
v. *Presence of mineral oil: Negative.*
vi. ***The sample when mixed with water at a concentration of 0.5% at 20oC and left to stand for one hour at same temperature gives***

translucent liquid without separation of insoluble matter which reduces surface tension of water below 45 dyne/cm(Actual being = 40.83 dyne/cm).

vii.

On the basis of above, ***it meets the requirements of surface active preparation. It is other than preparation based on lubricant for textile treatment.***

4.Lab No.CLR-04 dated 14.06.2019, B.E.No.4803533 dated 15.01.2018, Sample No.297 dated 23.01.2018, T.M.297 dated 23.01.2018.

Description: Product BM 5:

The sample is in the form of yellowish viscous liquid. On the basis of Chemical, Chrometographic and Spectroscopic examinations, it is a preparation based on Organic Surface Active Agent(non-ionic in nature) in aqueous solution having the following properties:

i. Solubility: Soluble in water.
ii. pH (as such): 7.0
iii. pH(5% soln.): 8.0 – 9.0
iv. Sp.Gravity (at 15oC): 1.1034.8 kg/m3
v. NVR: 96.4%
vi. Ash: 0.14%
vii. Presence of mineral oil: Negative.
viii. The sample when mixed with water at a concentration of 0.5% at 20oC and left to stand for one hour at same temperature gives transparent liquid without separation of insoluble matter which reduces surface tension of water below 45 dyne/cm(Actual being = 25.69 dyne/cm).

On the basis of above, it meets the ***requirements of surface active preparation. It is other than preparation based on lubricant for textile treatment.***

16.5 I find that aforesaid Test Report dated 26.06.2019 of CRCL, New Delhi as mentioned in Para 16.4 above, has also categorically reported that 'Product BM 5' and 'Product BFT 2' meets the **requirements of surface active preparation and it is other than preparation based on lubricant for textile treatment.** Thus, I find that it is very clear that merit classification of impugned goods is 34029049 and not 34039100 claimed by the noticee. Further, I find that the noticee in its submission have claimed that test regarding stability of Emulsion is the Determinative Test for 'Organic Surface Active Agent'. The aforesaid Test Report of CRCL, Delhi has made the test regarding stability of Emulsion and only after the said determination of the stability of the emulsion, has reported that it meets the **requirements of surface active preparation. It is other than preparation based on lubricant for textile treatment.** As the said Test Report is Re-testing of Sample No.87 dated 26.07.2017 for the product BFT-2 by the CRCL, Delhi and it has given their report about requirements of surface active preparation after the determination of the stability of the emulsion. Further, since the products being imported by the noticee are patented products as seen from the documents submitted by the noticee as well from the browsing of the website of the overseas supplier, the product would remain constant in their composition as well as characteristic and therefore, the report of CRCL, Delhi which also confirms the report of CRCL, Vadodara is binding on the Noticee. In view of the aforesaid both the Test Report of CRCL Vadodara and CRCL, Delhi, merit classification of impugned goods would be CTI 34029049.

16.6 Further, on browsing the website 'https://www.bozzetto-group.com/certifications/' of Bozzetto group, the overseas supplier, it is revealed that they are engaged in Textile Solutions, Dispersion Solutions, Water Solutions , Chemistry and Sustainability. Since the Noticee has intended to use in Textile

Industry, further segment of 'Textile Solution' were browsed and none of the product in name of BM5, BFT-1, BFT-2 are found mentioned there in. Further, under 'Textile Solution' further it is categorised as 'Man Made Fibres', 'Sizing', 'Pretreatment', 'Dyes', 'Finishing', 'Printings', 'Digital Printing', 'Denim Washing' and 'Garment Dyeing'. Since the noticee has claimed the impugned goods as Preparations for Treatment of Textile Material and classified under CTI 34039100, 'Pretreatment' segment was browsed but no product in name of BM5, BFT-1, BFT-2 are found mentioned therein. Further, the various products with Lead name as ' BIOMEGAPAL' was found. Further, on cross verification of actual usage of product 'BIOMEGAPAL', website https://icea.bio/wp-content/ uploads/ 2019/07/Approved-Chemicals.pdf was browsed wherein the list of product approved with GOTS were uploaded. The Global Organic Textile Standard (GOTS) refers to specific dyes, auxiliaries, and other chemical inputs that have been independently assessed and approved for use in the processing of GOTS-certified organic textiles. The GOTS has mentioned the usage of 'BIOMEGAPAL' as 'Detergent'. Thus, these facts are corroborated with the test reports of CRCL, Vadodara as well CRCL, Delhi.

16.7 I find that noticee have submitted the overseas suppliers' certificate as well as safety data sheet of impugned goods and have claimed that their product would be classified under CTI 34029049. Hon'ble Tribunal, in its Order dated 02.09.2024 has stated that evidence is relevant to decide the nature and classification of the matter and directed to examine relevant piece of evidence and any other case law or any other material which may be produced by the party. I hereby take up the documents submitted for consideration.

16.7.1 Noticee has submitted Certificate issued by the overseas supplier/s. GIOVANNI BOZZETTO of the imported goods which states that "the goods are classifiable under Chapter Tariff Heading No.34039100 of the Customs Tariff as it is used in the textile field, in particular during fiber production and it is used neither as organic surface-active agent nor as a wetting agent."; and further certified that the product is not a "Surface Active Agent" nor any kind of preparation for washing or detergency application but are preparations used as performance additive and are thus, Preparation for Treatment of Textile Materials." And further submitted the Safety Data Sheet of each impugned products.

In this regard, I have gone through the aforementioned Certificates of the supplier issued in respect of the products i.e. 'Product BM 5', 'Product BFT 1' and "Product BFT2' and find that there is no mention therein as to how the products are used in the fiber production. The supplier has also not mentioned the grounds on which they certify that the products are used neither as organic surface-active agent nor as a wetting agent" or the grounds on which they certify that the said products are classifiable under Chapter Tariff Heading No.34039100. Also, as discussed earlier, the Test Reports of CRCL, Vadodara and CRCL, New Delhi states that the products meet the requirements of 'Organic Surface Active Agent', are 'other than a lubricating preparation' and show 'NEGATIVE' presence of 'Mineral Oil'. The Chemical Examiner is the authoritative person so far as the Chemical Analysis of a product is concerned and would inevitably outweigh the Certificates issued by the manufacturer/supplier who is not an independent entity in the instant case. I, therefore, find that the aforementioned Certificates do not, in any way, support the cause of the Noticee.

16.7.2 Without prejudice to the findings mentioned in Para 15.6.1, I have gone through the safety Data Sheet of 'Product BM 5'. On perusal of the said Sheet, under **Section 1: Identification of the substance/mixture and the company undertaking**: Chemical composition: **Preparation of non-Ionic surfactant** and Application of the substance/the mixture: **Textile finishing.** I find that A non-

ionic surfactant is a surface-active agent that does not ionize (form charged particles) in an aqueous solution because its hydrophilic group is of a non-dissociable type, such as an **alcohol**, phenol, ether, ester, or amide. They are commonly created by the condensation of long-chain alcohols with ethylene oxide (ethoxylates). Thus, I find that the said safety data sheet which specifically says that Chemical composition of 'Product BM5' is **'Preparation of non-Ionic surfactant' which corroborates with the Test Report of CRCL Vadodara as well as CRCL, Delhi. Therefore, I find that in the Certificate dated 06.02.18 in respect of product BM5** it has been certified that "it is not used neither as organic surface active agent neither as wetting agent and it has been classified under HS Code 3403910000" is not acceptable.

16.7.3 I have gone through the safety Data Sheet of Product 'BFT 2'. On perusal of the said Sheet, under **"Section 1: Identification of the substance/mixture and the company undertaking" no such details such as mention with regard to 'Product BM5' are mentioned. However, under the head of SECTION 2**: Hazard Identification: **Substance that contribute to the classification:** 'Paraffin waxes and Hydrocarbon waxes, chloro, sulfochlorinated, **saponified**' is mentioned. Further under Section 3: Composition /Information on Ingredients; the composition of the product is mentioned as 'Paraffin waxes and Hydrocarbon waxes, chloro, sulfochlorinated, **saponified**'. Since the overseas supplier's certificate dated 16.06.2023 in respect of 'Product BFT 2' certified that " it contains fatty alcohol substance as ingredients". Thus, the product is not of 'Paraffin waxes and Hydrocarbon waxes' but is saponified product which are corroborates with the Test Result that it meets the *requirements of surface active preparation.*

16.7.4 I have also gone through the safety Data Sheet of Product 'BFT 1'. On perusal of the said Sheet, no such details are shown against ' Product Identifier head' or under head 'composition/information on ingredients'. Therefore, in absence of vital details, same cannot be considered.

16.7.5 I find that noticee have contended that HSN notes to 3403 provides that preparation for Treatment of Textile Materials includes Mixtures of Fatty Substances with Surface Active Agents ; that as their products are not used as Surface Active Agents and as preparation for the treatment of Textile Materials, they are excluded from Chapter Heading 3402 and therefore cannot be classified under Chapter Heading 3402 and contended that in the present case, Surface Active Agent is not the primary function of imported goods as it is used in textile processing; that relevant portion to the HSN 3402 provides that *"This heading does not cover Preparations, containing surface-active agents where the surface-active function is either not required or is only subsidiary to the main function of the preparation (headings 34.03, 34.05, 38.08, 38.09, 38.24 etc., as the case may be*);

I find that since the period from issuance of the Show Cause Notice to the present denovo proceedings, noticee has not filed/submitted any evidences to demonstrate as to how the impugned goods are use during main function i.e fibre production as certified by the overses suppler and there is no surface-active function even as subsidiary. Further, neither the noticee nor their overseas supplier have ever submitted the chemical composition/ ingredients of the product as they have merely mentioned the 'Product name as 'BM 5', 'BFT1', and 'BFT2' only. Further no contrary evidence are produced to rebut the CRCL Report of Vadodara. On the contrary, Test Report of CRCL, Delhi which are submitted by the noticee itself reports that 'the product meets the requirements of surface active preparation. It is other than preparation based on lubricant for textile treatment'. Therefore, I find that in absence of any contrary evidence, the report of CRCL Vadodara and CRCL Delhi is enough to determine the classification of impugned goods under CTI 34029049.

16.7.6 To fortify my above stand, I rely on the ratio of the following decisions:

(a) Hon'ble Delhi Tribunal in the case of Bhilai Engineering Corp. Ltd Vs. Commissioner of C.Ex. Raipur reported in 2016 (344) E.L.T. 649 (Tri. - Del.). Relevant Para of said decision are reproduced as under:

"4. We have perused the records and heard ld. DR. We find that the primary adjudication order as also the impugned orders-in-appeal are speaking orders and cannot be said to have been passed summarily. The orders rationally discuss the nature of the impugned goods vis-à-vis entries in the Central Excise Tariff to arrive at the classification. We also find that while the appellant made certain assertions regarding classification, it did not give any supporting evidence. It is well settled that a mere assertion not based on any evidence is of no avail. Indeed the Commissioner (Appeals) has categorically observed that the appellant did not produce any technical write up in support of its contention regarding classification. The Supreme Court in the case of *S.P. Chengalvaraya Naidu (Dead)* v. *V. Jagannath (Dead) by Lrs. & Ors.* reported in 1993 (4) SCALE 51 have held that -

"..... A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

6. The appellant cited several judgments in its appeal to the effect that the onus to establish classification is on Revenue. There is no doubt with regard to that proposition. However, we find that the lower adjudicating authorities have discharged their onus by giving the basis/grounds for determining the classification while the appellant never submitted any literature/documents/ evidence to support its assertions. Its contention that a mere opinion of M/s. L&T (unsupported by any literature, etc.) about classification should be accepted as final verdict in the matter is mentioned here only to be rejected as untenable. "

(b) I rely on the ratio of decision of Hon'ble Delhi Tribunal in case of *Commissioner* v. *Gas Authority of India Ltd.* reported in **2019 (366) E.L.T. 941 (Tri. - Del.)** . Relevant Para of said decision are re-produced as under:

"14. The case law as relied upon by the respondent to impress that it was the duty of Department to prove the classification of the product/article is not applicable to the present facts and circumstances as **department herein has already discharged its burden of proving the product manufactured by respondent is NGL and not Naphtha. Thereafter it is for respondent to rebut if they feel aggrieved. But there is nothing brought on record to falsify the said report except the minor procedural discrepancy while obtaining the samples from the other units of respondent and while getting those samples tested. Also the respondent had opportunity to contest the said report below itself. But admittedly said option has not been exercised by the respondent**. From the above discussion it becomes clear that chemistry involved in extraction & segregation of various hydrocarbons in a refinery or petroleum industry supports that the product extracted by respondent is Natural Gasoline liquid and not Naphtha."

(c) Hon'ble Tribunal in the case of M.P. Industries v. Commissioner — 2002 (145) E.L.T. 448 (Tribunal) has held as under:

4. We have considered the submissions of both the sides. It is not in dispute that the goods in question were subjected to test by the Chemical Examiner, Customs

House who gave his report to the effect that "the coating is visible with naked eye". Once the test laboratory of the Customs House gave a categorical report that the coating is visible to the naked eye, there was no need to refer the samples to the Textile Committee unless and until some collusion was charged. We do not find any reason given in either show cause notice or in the impugned order for referring the samples for re-test to the Textile Committee. Further the Textile Committee itself has reported, under letter dated 9-10-2001 "Visibility to the naked eye is the subjective test only, which we visually see under the light; and for that no instrument or chemical are being used in the Laboratory." **It is settled law that test reports of Departmental Chemist/Chief Chemist are to be preferred to opinion of outside agencies while classifying a product. Tribunal has held in the case of *C.C.Ex., Ahmedabad* v. *Cellulose Products of India* - 2000 (124) E.L.T. 1133 (T) that "the classification of the products manufactured by the assessee in these appeals should be decided in accordance with the test reports of the Departmental Chemist/Chief Chemist..... and not on the basis of the opinion expressed by certain outside agencies." The Hon'ble Supreme Court has also held in the case of *Reliance Cellulose Products Ltd.* (supra), that the views expressed by the Chemical Examiner and the Chief Chemist cannot be lightly brushed aside.** We agree with the submissions of the ld. Advocate that the Adjudicating authority cannot determine the classification of any product on the basis of the majority of opinions. It is also settled law that in interpreting the taxing statute, liberal interpretation is to be applied. **We are of the view that the matter should have been decided on the basis of test reports given by the Chemical Examiner which have been brushed aside without giving any cogent reasons.** The Adjudicating Authority cannot go by the majority of the opinions. We also observe that it has been agreed by the Adjudicating Authority in the impugned Order that the Appellants had pointed out that the Department should have followed the established practice and sent the samples to the C.R.C. L., New Delhi, if there was any necessity for a second opinion. The Adjudicating Authority, however, has given his findings that the Appellants should have insisted for the opinion of the C.R.C.L. This finding does not find favour with us as the determination of proper classification is to be done by the Department and the reports of the Chemical Examiner were in favour of the Appellants. It was for the Department to approach the Chief Chemist, C.R.C.L., New Delhi as was done in the case of M/s. Vaibhav Textile. In view of this, we are of the view that the benefit of doubt should be extended to the Appellants.

(c) Hon'ble Supreme Court in the case of Reliance Cellulose Products Ltd. v. Commissioner reported in 1997 (93) E.L.T. 646 (S.C.) has held that "Test report of Chemical Examiner and Chief Chemist of the Government, unless demonstrated to be erroneous, cannot be lightly brushed aside on the basis of opinion of some private persons obtained by assessee". In view of the aforesaid decision, Certificate produced by the noticee from the overseas supplier is not admissible as there is clear test report is given by CRCL, Vadodara.

In view of the above discussions, I find that that in the instant case, the subject goods are appropriately classifiable under Customs Tariff Item No.34029049 instead of the declared Customs Tariff Item No.34039100.

17. Whether differential duty of Rs. 9,22,622/- is required to be recovered under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962 from M/s Grasim Industries Limited?

17.1 I find that in the Show Cause Notice dated 28.03.2021, differential Customs Duty of Rs. Rs.88,77,113/-was proposed to be recovered under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962. During the first adjudication, the adjudicating authority vide Order In Original No. AHM-CUSTM-000-030-21-22 dated 24.03.2022 had dropped the

demand of Customs Duty of Rs.79,54,491/- out of total Demand of Differential Customs Duty of Rs.88,77,113/- proposed in Show Cause Notice and demand of Rs. Rs.9,22,622/- was confirmed alongwith interest. The said Order In Original has been accepted by the Department as intimated by the CCO Office vide F.No. CCO/REV/OIO/143/2022-REV-O/o CC-CUS-ZON-AHMEDABAD dated 11.05.2022.

17.2 I find that in the present case, since the Show Cause Notice for the imported goods viz. 'Product BM 5' were already issued prior to the SCN covered in the present case and therefore the demand of differential duty on account of mis classification of imported goods viz. 'Product BM 5' covered under SCN covered in the present case was dropped by the then Adjudicating Authority in its Order In Original No. AHM-CUSTM-000-030-21-22 dated 24.03.2022.However, as far as the other two products i.e. 'Product BFT 1' and 'Product BFT 2' imported by the Noticee are concerned, I find that no previous Show Cause Notice has been issued to the Noticee prior to 28.03.2021 and therefore the extended period invoked in the Show Cause Notice covered in the present case was upheld.

17.3 As discussed at paras supra, the goods imported are found as mis-classified under Customs Tariff Item No. 34039100 instead of correct classification of the product which is Customs Tariff Item No.34029049 which has resulted in evasion of Customs duty amounting to Rs. 9,22,622/- by the said noticee. I find that in terms of Section 46 (4) of the Customs Act, 1962, the noticee was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty but they have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have mis-classified the goods imported and thereby short paid the duty with clear intent to evade payment of Customs Duty.

17.4 It is also evident that the Noticee, despite being well aware of the nature and appropriate classification of goods, has willfully mis-classified the goods to evade payment of Customs Duty. The Noticee has been regularly importing these goods since long and are therefore, very well aware about the nature and characteristics/properties of the said goods. Therefore, they have suppressed these vital facts from the Department and cleared these goods by self-assessing the same under Customs Tariff Item No.34039100 paying lower rate of BCD @7.5% instead of Customs Tariff Item No.34029049 (where the BCD is @10%) as the said goods are correctly classifiable under Customs Tariff Item No.34029049. As such, the Noticee has evaded the payment of due Customs Duty by recourse to willful mis-statement & suppression of facts thereby violating the provisions of Section 46 of the Customs Act, 1962

17.5 Thus, from the above discussion, I find that the noticee had knowingly and deliberately indulged in suppression of facts and had wilfully misrepresented/mis-stated the material facts regarding the goods imported by them, in the declarations made in the import documents including Check lists presented for filing of Bills of Entry presented before the Customs at the time of import for assessment and clearance, with an intent to evade payment of applicable Customs Duty. Therefore, the Duty not paid/short paid is liable to be recovered from the noticee by invoking the extended period of five yeas as per Section 28(4) of the Customs Act, 1962, in as much as the duty is short paid on account of wilful mis-statement as narrated above. Accordingly, differential Customs Duty of Rs.1,79,727/- for the 'Product BFT 2' pertaining to the period 26.05.2016 to 09.10.2017, as well as the differential Customs Duty of Rs.7,42,895/- for the 'Product BFT 1' pertaining to the period from 21.04.2016 to 02.03.2020 is required to be demanded and recovered from the noticee invoking the provision of extended period under Section 28(4) of the Customs Act, 1962. It has also been proposed in the Show Cause Notice to demand

and recover interest on the aforesaid differential Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid. I have already held that Customs Duty is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is to be recovered under Section 28AA of the Customs Act, 1962.

18. Whether M/s Grasim Industries Limited is liable for penalty under Section 114A of the Customs Act, 1962.

18.1 Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the noticee. I find that Show Cause Notice is issued under Section 28(4) of the Customs Act,1962. I find that in order to sensitize the Importer and Exporter about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. Under para-1.3 of Chapter-1 of the above manual, Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the options as (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBEC/ICEGATE web portal (www.cbic.gov.in),or (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3 (a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para-2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non-compliant importers/ exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

18.2 I find that the Noticee has not only indulged in mis-classification but also mis-declaration of the imported goods. The Noticee have declared only the partial description of the goods in the Bills of Entry in as much as they declared the goods as 'Product BM 5', 'Product BFT 1' and 'Product BFT 2' therein instead of mentioning the Chemical name of these products/goods. Even the official website of the overseas supplier do not mention the said product in name of Product BM 5', 'Product BFT 1' and 'Product BFT 2' . Thus, it is evident that only the noticee and overseas supplier was aware of the composition/ nature of goods . However, noticee made the partial Declaration which is akin to suppression of the correct description of goods. The principles of linguistic construction imply that a partial truth always hints at a partial untruth which is withheld. By no figment of imagination it can be said that the Noticee was not aware about the entire technical specifications of the goods/products that he has purchased. However, the Noticee has opted to present only a part of the information in their declaration. The Department has assessed the Bills of Entry on the basis of such partial declaration on the part of the Noticee. It is only owing to the fact that the goods/products were sent for analysis to the CRCL, Vadodara, it came to light that the imported goods were actually 'Organic Surface Active Agents' and it was only thereafter that the investigations in the matter were initiated. Thus, I find that the wrong classification is attributable to wilful mis-statement , mis-declaration, mis-classification and

suppression of material facts regarding the correct description of the goods/products imported by the Noticee. Thus, in the instant case, the noticee intentionally abused this faith placed upon him by the law of the land. Therefore, it appears that the noticee has wilfully violated the provisions of Section 17(1) of the Act inasmuch as they have failed to correctly classify the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962, hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty in terms of Section 114A of the Customs Act, 1962.

18.3 Further, I find that demand of differential Customs Duty amounting to Rs. 9,22,622/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the noticee under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of suppression of facts and wilful mis-statement by the noticee has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A ibid.

19. Whether the goods valued at Rs. 28,50,69,170/- (as detailed in Annexure A, B & C to Show Cause Notice) should be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962?

19.1 Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(m) of the Customs Act, 1962. If the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the purview of Section 111(m) of Customs Act, 1962. It is to reiterate that in the present case, it is an admitted fact that the classification of the product are mis-declared in the concerned import goods viz. 'Product BM 5', 'Product BFT 1' and 'Product BFT 2' under Customs Tariff Item No. 34039100 with an intention to avoid higher rate of Customs Duty applicable to the merit classification under Customs Tariff Item No. 34029049. The noticee has mis-classified the said goods imported by them thereby contravening the provisions of Section 47 of the Customs Act, 1962 since the Bill of Entry has not been filed in compliance to Section 46 of the Customs Act, 1962. Thus, the said goods imported by them are liable for confiscation under Section 111(m) of the Customs Act, 1962.

19.2 I find that though the differential duty in respect of imported goods viz. 'Product BM 5' demanded under Section 28 (4) of the Customs had been dropped by vide Order In Original No. AHM-CUSTM-000-030-21-22 dated 24.03.2022 as it was found barred by the limitation. However, as regards the proposal for confiscation of the said goods, it is worth to mention that no time limit for issuance of Show Cause Notice has been specified with regard to confiscation or penalty as evident from the text of Section 124 of the Customs Act, 1962 which reads 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 writing with the prior approval of the officer of Customs not below the rank of 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

The above statute specifies that the order for confiscation of goods is preceded by issuance of a Show Cause Notice. However, no time limit had been prescribed in Section 124 of the Customs Act, 1962 as against the time limit of 5 years specified under Section 28(4) of the Customs Act, 1962. Thus, imported goods viz. 'Product BM 5' detailed under Annexure A of the Show Cause Notice are not hit by limitation so far as the confiscation of the same is concerned.

19.3 I find that in terms of Section 46 (4) of the Customs Act, 1962, the noticee was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty but they have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have mis-classified the goods imported and thereby short paid the duty with clear intent to evade payment of Customs Duty. Accordingly, the noticee has wilfully mis-stated about the goods imported. Thus, I find that they have violated the provisions of Section 46 (4) of the Customs Act,1962 in as much as they have mis-classified the goods imported and thereby short paid the duty with clear intent to evade payment of Customs duty. Accordingly, the noticee has wilfully mis-stated about the goods imported. Thus, I find that they have violated the provisions of Section 46(4) of the Customs Act. All these acts on the part of noticee have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962.

19.4 I find that the noticee had imported impugned goods totally valued at Rs. 28,50,69,170/- by mis-classifying the same under Customs Tariff Item No. 34039100. Therefore, they have suppressed these vital facts from the Department and cleared these goods by self-assessing the same under Chapter Tariff Heading No.34039100 paying lower rate of BCD @7.5% instead of Chapter Tariff Heading No.34029049 (where the BCD is @10%) as the said goods are correctly classifiable under Chapter Tariff Heading No.34029049. As such, the Noticee has evaded the Customs Duty by recourse to willful mis-statement & suppression of facts thereby violating the provisions of Section 46 of the Customs Act, 1962. Therefore, the goods covered under Bills of Entry as mentioned in Annexure A, B & C to the Show Cause Notice having total value of Rs. 28,50,69,170/- is liable for confiscation under Section 111(m) of Customs Act, 1962.

19.5 As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 can be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) of the Customs Act, 1962 reads as under: -

"125 Option to pay fine in lieu of confiscation –

(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 [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..."

19.6 I find that the noticee has by self-assessing the impugned goods under Customs Tariff Item 34039100 paying lower rate of BCD @7.5% instead of Customs Tariff Item 34029049 (where the BCD is @10%) by resorting to the mis classification of the imported goods whereas the said goods are correctly classifiable under Customs Tariff Item No.34029049. I find that in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

"....
....
....

23. *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....",brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fines 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. We accordingly answer question No. (iii).*

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...."

19.7 The Hon'ble High Court of Gujarat by relying on aforesaid judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.),** has held *inter alia* as under: -

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174. ***.....*** *In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The

fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

In view of the above, I find that impugned goods totally valued at Rs. 28,50,69,170/- by mis-classifying the same under Customs Tariff Item No. 34039100 though not available are liable for confiscation under Section 111(m) of the Customs Act, 1962 and accordingly, in view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods having total assessable value of Rs. 28,50,69,170/- as detailed in Annexure A, B & C to Show Cause Notice.

20. In view of discussions and findings in paras supra, I pass the following order:

-:ORDER:-

(a) I reject the declared classification of the subject good viz. "Product BM 5", "Product BFT 2" and "Product BFT 1" under Customs Tariff Item No.34039100 as detailed in Annexure A, B & C to Show Cause Notice and order to re-classify the said goods under Customs Tariff Item No.34029049 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and to reassess the subject Bills of Entry accordingly.

(b) I hold the Imported goods valued at Rs.28,50,69,170/-(Twenty Eight Crore, Fifty Lakh, Sixty Nine Thousand, One Hundred and Seventy only) imported by M/s. Grasim Industries Ltd. as listed in Annexure 'A' , 'B' & 'C' to the Show Cause Notice liable to confiscation under Section 111 (m) of the Customs Act, 1962 and impose a Redemption Fine of Rs. 2,85,00,000/- (Rupees Two Crore and Eighty Five Lakh only), in lieu of confiscation in terms of Section 125(1) of the Customs Act, 1962.

(c) I confirm the Demand of Differential Customs Duty of Rs.9,22,622/- (Rupees Nine Lakh, Twenty Two Thousand, Six Hundred and Twenty Two only) as appearing in Annexure-B and C to the Show Cause Notice and

order recovery of the same in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962;

(d) I order recovery of Interest at appropriate rate as applicable on the Customs Duty evaded as mentioned in Para 20 (c) above from M/s. Grasim Industries Ltd. in terms of the provisions of Section 28AA of the Customs Act, 1962;

(e) I impose penalty of Rs.9,22,622/- (Rupees Nine Lakh, Twenty Two Thousand, Six Hundred and Twenty Two only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Grasim Industries Ltd.. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the noticee M/s. Grasim Industries Ltd. to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

21 This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

22 The Show Cause Notice No. VIII/10-22/Pr.Commr./O&A/2018 dated 28.03.2021 is disposed off in above terms.

17.11.2025

(Shiv Kumar Sharma)

Principal Commissioner of Customs

DIN: 20251171MN0000444CB5

F. No. VIII/10-22/Pr.Commr./O&A/2018 Date: 17.11.2025.

To,

M/s Grasim Industries Limited,
(Unit: Grasim Cellulosic Division),
Plot No. 1,GIDC Vilayat Industrial Estate,
Taluka:Vagra,District:Bharuch-392012.

Copy to:-

1. The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad.
2. The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
3. The Deputy Commissioner of Customs, Customs House, Hazira, Surat;
4. The Superintendent, System, Customs, HQ (in PDF format) for uploading the order on the website of Ahmedabad Customs Commissionerate.
5. Guard File