कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा
सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात-370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421
Email ID: group2-mundra@gov.in

A.	File NO.	**:**	**F.NO.GEN/ADJ/ADC/1106/2025-Adjn-O/o Pr Commr-Cus-Mundra**
B.	Order-in-Original No.	**:**	**MCH/ADC/ZDC/474/2025-26**
C.	Passed by	**:**	**Dipak Zala,** **Additional Commissioner of Customs,** **Customs House, AP & SEZ, Mundra**
D.	Date of order and Date of issue	**:**	**31.12.2025** **31.12.2025**
E.	SCN F. No. & Date	**:**	**F. NO. CUS/APR/MISC/12067/2023-Gr 2-O/o Pr Commr-Cus-Mundra dated 02.01.2025**
F.	Noticee(s)/Party/ Importer	**:**	**M/s. SUCHITRAA SILK PRIVATE LIMITED (IEC-3202008587), situated at 2594-98, Anand Gali, Teliwara Sadar Bazar, Delhi, India 110006**
G.	DIN	**:**	**20251271MO000000D9D2**

1. यह अपील आदेश संबन्धित को नि:शुल्कप्रदान 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 सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्रसीए- 1-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
   Any person aggrieved by this Order - in – Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

सीमाशुल्क आयुक्त (अपील),

चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,

नवरंगपुरा, अहमदाबाद-380 009

THE COMMISSIONER OF CUSTOMS (APPEALS), Ahmedabad
4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009

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

4. उक्त अपील के उपर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए–
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –
   (i) उक्त अपील की एक प्रति और
   A copy of the appeal, and
   (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम -1870 केमदसं॰ -6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
   This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपीलज्ञापनकेसाथड्यूटि/ ब्याज/ दण्ड/ जुर्मानाआदिकेभुगतानकाप्रमाणसंलग्नकियाजानाचाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम,1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो,अथवा दण्ड में,जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।
An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

1. M/s. SUCHITRAA SILK PRIVATE LIMITED (IEC-3202008587), situated at 2594-98, Anand Gali, Teliwara Sadar Bazar, Delhi, India 110006 (hereinafter also referred to as "the importer/the Noticee" for the sake of brevity") presented following Bill of Entry having details mentioned as under, through their appointed Customs Broker M/s. YASHVI SHIPPING at Custom House, Mundra, for clearance of following imported goods classifying the same under Tariff item 39081019 of first schedule of the Customs Tariff Act, 1975.

Sl. No.	BE NO	Date	Item No.	Item Description	Quantity in MTS	Assess Value (in INR)	Duty
1	8837781	26-05-2022	1	NYLON 6, NATURAL PELLETS)	23.505	3588696	878872
2			2	NYLON 6, NATURAL PELLETS)	23.211	3543807	867857
Total						**71,32,503**	**17,46,750**

2. During the course of Audit conducted by the Customs Receipts Auditors of office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad for the period from April-22 to June-22, the Senior Audit Officer/CRA vide Para 6 of LAR No. 11/2023-24, observed that M/s SUCHITRAA SILK PRIVATE LIMITED had made import of "NYLON 6, NATURAL PELLETS" falling under Chapter heading/ sub-heading 39081019 through 01 Bills of entry 8837781 dated 26-05-2022. The importer paid BCD at the rate of 05% claiming benefit of serial number 273 of Notification 50/2017. However, Sr. No. 273 of Notification 50/2017 is applicable on "NYLON CHIPS". The imported goods, 'Nylon 6, Natural Pellets', don't qualify as Nylon chips, so they fall under Customs Tariff Heading (CTH) 39081019. This classification attracts a 10% Basic Customs Duty (BCD). As per sr. no 273 of exemption notification 50/2017, only 'Nylon chips' are eligible for a concessionary rate. Since 'Nylon 6, Natural Pellets' don't meet this criteria, the incorrect availment of this exemption resulted in a short

levy of duty, amounting to Rs.4,62,899. It's essential to accurately classify imported goods to avoid such discrepancies and ensure compliance with customs regulations.

3. Customs Tariff Heading 39081019 specifically covers "Other primary form polyamide-11 (Nylon-11)". For goods classified under this heading, a 10% Basic Customs Duty (BCD), 10% Social Welfare Surcharge (SWS), and 18% Integrated Goods and Services Tax (IGST) are applicable, resulting in a total duty of 30.98%. However, it's worth noting that sr. no. 273 of exemption notification 50/2017 dated 30.06.2017, provides a concessionary rate of 5% BCD for "Nylon chips" falling under Chapter 3908. But this exemption is limited to "Nylon chips" only and does not apply to "Nylon 6, Natural Pellets", which falls under the heading 39081019. In this case, the importer declared "Nylon 6, Natural Pellets" under Chapter heading/sub-heading 39081019, attracting a total duty of 30.98%. However, the importer paid a lower duty of 24.49%, which appears to be incorrect. The correct total duty payable would be 30.98%.

4. Thus, the importer incorrectly claimed a benefit under sr. no. 273 of exemption notification 50/2017, dated 30.06.2017, which only applies to "Nylon Chips". However, they imported "Nylon 6, Natural Pellets" under Chapter heading/sub-heading 39081019. This classification attracts a 10% Basic Customs Duty (BCD), 10% Social Welfare Surcharge (SWS), and 18% Integrated Goods and Services Tax (IGST), resulting in a total duty of 30.98%. As a result, the importer must pay the differential customs duty of **Rs.4,62,899/-**. This amount is calculated based on the difference between the total duty payable (30.98%) and the duty actually paid.

Sl. No.	BE NO	Date	Item No.	Assess Value (in INR)	Duty Paid @24.49% BCD	Duty payable @30.98% BCD (in INR)	Differential Duty
1	8837781	26-05-2022	1	3588696	878872	11,11,778	2,32,906
2			2	3543807	867878	10,97,871	2,29,993
Total				**7132503**	**17,46,750**	**22,09,649**	**4,62,899**

5. *Relevant Legal provisions, in so far as they relate to the facts of the case:-*

A. Customs Notification No. 50/2017-Cus dated- 30.06.2017;

B. The Customs Tariff.

C. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-

"(i) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed".

D. Section 28 (4) of the Customs Act, 1962 provides that "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,

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".

E. Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been shortlevied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

F. Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-

114A - Penalty for short-levy or non-levy of duty in certain 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 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:

6. The importer/noticee has willfully misstated the facts and wrongly claimed the benefit of Serial Number 273 of Exemption Notification 50/2017, dated 30.06.2017, which was applicable only to "Nylon Chips." However, they had imported "Nylon 6, Natural Pellets" falling under Chapter Heading/Sub-heading 39081019, which attracts 10% Basic Customs Duty (BCD), 10% Social Welfare Surcharge (SWS), and 18% Integrated Goods and Services Tax (IGST). Thus, a total duty of 30.98% is payable on the imported goods, instead of the 24.49% paid.

7. In the light of the documentary evidences, as brought out above and the legal position, it appears that a well thought out conspiracy was hatched by the importer/ noticee to evade customs duty by wrongly claiming the benefit of Serial Number 273 of Notification No. 50/2017 dated 30.06.2017 for the imported goods."

8. Whereas, "It is evident that the importer/noticee was aware of the correct nature of the goods but still claimed undue notification benefits to clear the goods under CTH 39081019. They wrongly claimed the benefit of Serial Number 273 of Notification No. 50/2017 dated 30.06.2017, paying a lower rate of duty instead of the correct rate of 10% BCD, 10% SWS, and 18% IGST. Under Section 17 of the Customs Act, 1962, importers are entrusted with the responsibility of correctly self-assessing duties. However, in this case, the importer intentionally failed to pay the correct customs duties on the imported goods. This constitutes a willful violation of Section 17(1) of the Act, as the importer failed to correctly self-assess the impugned goods. Furthermore, they also willfully violated Sub-sections (4) and (4A) of Section 46 of the Act. Given the assessable value of Rs.71,32,503/-, the goods appear liable for confiscation under Section 111(m) of the Customs Act, 1962.

9. Therefore, "It appears that the importer deliberately claimed thebenefit of Serial Number 273 of Notification No. 50/2017 dated 30.06.2017 to evade duty, paying a lower rate instead of the correct 30.98% under CTH 39081019 for the

impugned goods. This resulted in a short levy of duty of Rs.4,62,899/- for the subject Bill of Entry, which is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. The importer's deliberate mis-declaration of goods and wrongful claim of benefit under Serial Number 273 of Notification No. 50/2017 dated 30.06.2017 for duty evasion also renders them liable to penalty under Section 114A of the Customs Act, 1962.

10. Therefore, a Show Cause Notice dated 02.01.2025 bearing F. No. CUS/APR/MISC/12067/2023-Gr 2-O/o Pr Commr-Cus-Mundra was issued to M/s. SUCHITRAA SILK PRIVATE LIMITED (IEC3202008587), situated at 2594-98, Anand Gali, Teliwara Sadar Bazar, Delhi, India 110006, calling upon to show cause to the Deputy Commissioner of Customs, Import Assessment, Custom House, Mundra, having office at PUB Building, 5B, Mundra (Kutch) Gujarat 370 421, as to why:-

i. The benefit claimed under sr. no. 273 of Notification No. 50/2017 for goods imported vide Bills of Entry as detailed in above table under CTH 39081019, should not be rejected and re-asses the same without benefit of Notification.

ii. The goods having assessable value of Rs.71,32,503/-covered under Bill of Entry as detailed in above table, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

iii. The differential duty worked out as short levy amounting to Rs.4,62,899/(Rupees Four Lakhs Sixty Two Thousand Eight Hundred Ninety Nine Only) for subject Bills of Entry as detailed in above table, should not be recovered from importer under Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

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

10.1. I further take note of the corrigendum dated 24.02.2025 issued from F. No. CUS/APR/MISC/12067/2023-Gr 2-O/o Pr Commr-Cus-Mundra by the Deputy Commissioner (Import Assessment), Customs House, Mundra, vide which the adjudication authority has been changed from the Deputy

Commissioner to the Additional Commissioner, Custom House Mundra.

DEFENCE SUBMISSION

11.1. In response to the impugned SCN, the noticee vide their letter dated 04.02.2025 submitted their defence reply on 07.02.2025, wherein they inter alia made following submissions:

(A) Show Cause Notice is vague and lacks necessary details:

- That at the outset, it is submitted that the SCN is vague and lacks necessary details which cause prejudice the noticee. It is undisputed that a document audit of the Dy. Commissioner, Customs House Mundra for the period April 2022 to June 2022 was conducted by the Officers from the office of Principal Director of Audit (Central), Audit Bhavan, Ahmedabad. Pursuant to the said audit, the Senior Audit Officer / CRA observed some discrepancy regarding availment of concessional BCD rate @5% by the noticee on import of subject goods. These facts are duly averred in para 2 of the SCN.

- That subsequently, the Asstt. Commr., Import Assessment Gr. 2G, Custom House, Mundra issued a letter no. 3433 dated 08.08.2024 to the noticee (Annexure-2) wherein it was alleged that the subject goods imported by the noticee vide B/E dated 26.05.2022 were not entitled to benefit of concessional BCD rate @ 5% under Sl. No. 273 of exemption notification no. 50/2017-Cus. on the ground that imported goods viz., 'Nylon 6, Natural Pellets' were not same as 'Nylon Chips'. As the benefit of concessional BCD is available to import of Nylon Chips of heading 3908, the Asstt. Commr. directed the noticee to deposit differential customs duty aggregating Rs.4,62,899/- alongwith applicable interest and penalty. This was the very first time when noticee was informed about the alleged incorrect availment of benefit of Sl. No. 273 of Exemption Notification on import of subject goods. As per the Audit, the BCD @ 10% was applicable on import of Nylon 6 in primary form falling under CTH 3908.10.19 of the Customs Tariff.

- That in response to the above letter dated 08.08.2024, the noticee submitted their detailed reply in the office of Asstt. Commr. of Customs, Import Assessment Group-2G, Mundra on 12.11.2024 (Annexure-3). Vide this reply,

the noticee explained that they have correctly availed the benefit of Sl. No. 273 of Exemption Notification on the ground that Nylon 6, natural pellets were imported by the noticee in granules which are the same as 'nylon chips' in trade parlance and in trade parlance, nylon granules, nylon chips and nylon resin are used inter changeably and virtually there is no difference between these forms of Nylons 6 polyamides. In support the noticee refer to the judgment of the CESTAT, South Zonal Bench, Chennai in the case of **M/s Superfil Products Ltd. Vs. Commissioner of Customs, Chennai reported in 2014 (304) ELT 138 (Tri-Chennai)**. The noticee further informed that in case of identical goods subsequently imported and cleared from the same port in March 2024, the Customs authorities, Mundra Port, collected samples and got the same tested through CIPET, Ahmedabad. Pursuant to the test report of the CIPET confirming that the tested goods are white colour granules with regular shape and size. The Customs authorities did not raise any objection against the noticee who filed B/E claiming the benefit of concessional BCD @ 5% on clearance natural pellets under CTH 3908.10.19 of the Customs Tariff.

- That the noticee are surprised to receive the present SCN from the office of Dy. Commissioner, Import Assessment Group-2G, Custom House, Mundra. The SCN is totally silent about the issuance of letter dated 08.08.2024 by the Asstt. Commr., Gr-2G, nor the SCN has referred to the reply submitted by the noticee on 12.11.2024 in the Custom House, Mundra. This action goes to the root of the matter and seriously affects the case of the noticee as the SCN is incomplete, non-speaking and lacks necessary details which are imperative to the case.

- That in the case of **CCE, Bangalore vs. Brindavan Beverages (P) Ltd. reported in 2007 (213) ELT 487 (SC)**, the Apex Court held that – "The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice."

- That the SCN portrays that the Customs authorities have informed the noticee about short-payment of customs duty on import of subject goods for the first time vide the present SCN whereas necessary details like contentions raised by the noticee vide its earlier reply filed on 12.11.2024 are totally absent from the record of SCN. Accordingly, the SCN is vague, lacks necessary details and deserves to be dropped on this ground alone.

(B) On merit, Nylon Pellets / granules imported by the noticee are entitled to the benefit of concessional customs duty:

- That on merit, the noticee submits that the subject goods viz., Nylon 6, natural pellets in granule form are properly classifiable under CTH 3908.10.19 and are entitled to benefit of 5% BCD under Sl. No. 273 of notification No. 50/2017-Cus dated 30.06.2017 as Nylon chips.

- That as regards classification of Nylon 6, CTH 3908 specifically covers Polyamides in primary form. Polyamide-6 (Nylon 6) is specifically covered by name under Heading 3908.10. Other primary forms of Nylon 6 are also covered under Sub-Heading 3908.10.19 of the Customs Tariff.

- That the expression "primary forms" used in headings 3908 is specifically defined in Chapter Note 6 of Chapter 39 (Plastics and Articles thereof) of the Customs Tariff. For ready reference, Chapter Note 6 is reproduced below:-

> "6. In headings 3901 to 3914, the expression "primary forms" applies only to the following forms:
>
> (a) liquids and pastes, including dispersions (emulsions and suspensions) and solutions;
>
> (b) blocks of irregular shape, lumps, powders (including moulding powders), granules, flakes and similar bulk forms."

From the above Chapter Note, it is clear that the products in the form of blocks of irregular shape, lumps, powders, granules, flakes and similar bulk forms are considered as products of primary form. It is submitted that the Nylon 6, Natural Pellets imported by the noticee are in granule form and used for manufacture of Nylon filament yarn or for extrusion with glass fiber

reinforced for increasing mechanical, electrical and thermal properties in plastic moulding components.

- That it is submitted that though the tariff rate of BCD of nylon chips / flakes / granules falling under sub-heading CTH 3908.10 is 10%, however, Sl. No. 273 of Customs Notification No. 50/2017-Cus dated 30.06.2017 prescribe a concessional BCD rate of 5% on import of "Nylon chips" falling under Heading 3908. For reference, entry no. 273 of the notification is reproduced as under:

Sl. No.	Chapter / Heading/ Sub-Heading	Description of goods	Standard Rate
273	3908	Nylon Chips	5%

- That vide the SCN, your good self has alleged that the noticee is not entitled to avail benefit of the above entry on the ground that the said entry applies to 'nylon chips' only whereas the goods imported by the noticee are 'nylon pellets' which are not the same. Hence, it is alleged that the subject goods imported by the noticee do not qualify for exemption under the above entry.

- That in this regard, it is submitted that in trade parlance, nylon chips are also known as nylon granules and as such nylon chips and nylon granules are one and the same product. The expression 'nylon chips' and 'nylon granules' are used interchangeably and both the goods are primary forms of nylon 6 as per Chapter Note 6 of Chapter 39.

- That with respect to admissibility of concessional rate of BCD on import of "Nylon 6 resin" in the form of granules, the noticee places reliance in the case of **M/s. Superfil Products Ltd. vs. Commissioner of Customs, Chennai reported in 2014(304) ELT 138 (Tri-Chennai)**. In this case, the appellant was a manufacturer of nylon filament yarn. For the purpose of manufacturing the said yarn, the appellant imported raw material declaring the goods in the B/E as "Ultramid B 35F Nylon 6 Resin" and claimed the benefit of concessional duty under Sl. No. 145 & 146 of Notification No. 21/2002-Cus dated 01.03.2002. This exemption was available to "Nylon chips for manufacture of nylon filament yarn" falling under Heading 3908 of

the Customs Tariff. The objection of the Revenue was that the exemption entry was applicable only to "Nylon chips" and not to "Nylon 6 Resin" as declared in the B/E. The adjudicating authority held that what was imported was "Nylon resin" in the form of granules and these goods could not be treated at par with "nylon chips" as claimed by the Importer. In appeal, the Commissioner (Appeals) confirmed the adjudication order and rejected the appeal filed by the appellant.

- That the appellant filed second appeal before the Tribunal. The Tribunal noted that HSN notes classified primary forms of products of Chapter 39 into 3 groups viz.:-

  (a) Liquids and pastes;

  (b) Powder granules and pastes;

  (c) Blocks of irregular shapes, lumps and other bulk forms.

  The Tribunal observed that the word "chip" is not defined in the Customs Tariff nor in the Notification nor in the HSN Explanatory notes. By relying on dictionary meanings and the Directory of Fiber and Textile Technology, the Tribunal observed that the words "granules", "chips" or "resin" are used interchangeably and virtually there is no difference between these forms of Nylon 6 polyamides. The Tribunal also relied upon opinion of the Prof. of High Polymer Engineering Laboratory, Chemical Engineering Department, IIT Madras saying that these words are used interchangeably and these words so used vary from country to country. The Tribunal further observed that no authoritative text showing any difference between nylon chips and nylon granules was produced before the court. Considering all these aspects, the Tribunal did not find any merit in the arguments of the Revenue to deny exemption to the goods (Nylon 6 resin in granules) in question. The relevant Para 11 of the judgment is reproduced below:-

  > "11. Para 13 of the impugned order concludes that it is obvious that chips are different from granules. But the preceding Paragraphs 9 to 12 do not rely on any authentic source dealing with chip vis-a-vis granule to make out the difference. The meaning of the word "chip" is not defined in Customs Tariff or the notification or HSN notes. So the word has to be understood as it is commonly understood in the concerned industry. The Directory of Fibre and Textile Technology defines chips as "the form of polymer feedstock used in fibre

> production". No geometric shape is assigned to the goods covered by the description "chips". Even going by the Concise Oxford Dictionary the meaning given for chip is "a small thin piece removed in the course of chopping, cutting or breaking a hard material". The meaning given in the same dictionary for "granule" is "a small compact particle". The difference in meanings is very thin and vague. So the basis of "strict interpretation" of notification canvassed by Revenue is based on such vague difference. The opinion of Professor of High Polymer Engineering Laboratory, Chemical Engineering Department, IIT, Madras states that these words are used interchangeably. The paper submitted by the ld. AR showing Nylon Feedstocks and Fibre Market Report also does not show prices for chips vis-a-vis Resin or Chip vis-a-vis Granules for the same geographical area which fact confirms the opinion of the said Professor that these words used vary from country to country. No authoritative text showing any difference between Nylon Chips and Nylon Granules has been produced. A search on internet shows similar physical forms for goods marketed as "Nylon Chips" and as "Nylon Granules". Considering all these aspects we find no merit in the argument of Revenue to deny the exemption to the goods in question. Therefore we set aside the impugned order and allow the appeals."

- That in view of the above legal position, the noticee submits that they have correctly availed benefit of concessional BCD @ 5% on import of Nylon 6 in the forms of granules / chips which are considered as products of primary form properly classifiable under CTH 3908.10.19 of the Customs Tariff Schedule. The present SCN seeking to demand differential duty by denying the benefit of concessional BCD under Sl. No. 273 is not maintainable on merit and deserves to be dropped accordingly.

(C) Identical goods were imported by the noticee in 2024, tested and cleared by admitting concessional BCD @ 5% under Sl. No. 273 of the notification No. 50/2017-Cus:

- That the noticee submits that in March 2024, the noticee imported identical goods viz. Nylon 6, Natural pellets (product code PA6) and filed B/E No. 2617142 dated 17.03.2024 at Mundra port. The noticee claimed 5% BCD under entry no. 273 of exemption Notification. The Customs authorities at Mundra collected sample of the natural pellets and sent the sample for testing to the Central Institute of Plastics Engineering and Technology (CIPET), Ahmedabad. The CIPET vide their Test Report no. 40 dated 05.04.2024 declared the test result by describing the physical examination

of the product as “white colour granules of regular shape and size”. As regards the analysis of the material, the test report identified the material as Nylon 6 with density as 1.11 gm / cc and melting point as 224.6 degree Celsius. The test report concludes by saying that the material may be considered as Nylon 6 granules and it is a single thermoplastic and free from contamination. A copy of B/E No. 2617142 dated 17.03.2024 along with Invoice No. 569944 dated 06.02.2024 and Invoice No. 569948 dated 06.02.2024 raised by the overseas supplier and Test Report No. 40 dated 05.04.2024 issued by CIPET, Ahmedabad with respect to the goods (natural pellets) imported by the noticee are enclosed as Annexure-5.

- That based on the Test Report declaring the natural pellets as Nylon 6 granules, the customs allowed the clearance of goods by extending the benefit of concessional BCD @ 5% as claimed by the noticee under Sl. No. 273 of exemption notification No. 50/2017-Cus. Accordingly, the concessional rate of duty discharged by the noticee on import of nylon 6 pellets has been accepted by the Revenue.

- That the noticee submits that by taking into account the test report from CIPET describing the product as Nylon 6 granules and the fact that there is no difference between nylon granules, nylon resin and the nylon chips as viewed by the CESTAT, Chennai in the case of Superfil Products (supra), the noticee submits that they had correctly availed the benefit of concessional BCD @5% on import of Nylon 6 pellets / granules which are nothing but Nylon chips and hence are covered by Sl. No. 273 of Notification No. 50/2017-Cus dated 30.06.2017.

- That following the results of the Test Report of natural pellets imported and declared by the noticee in the above referred B/E No. 2617142 dated 17.03.2024, the customs authorities at Mundra port allowed clearances of identical goods (natural pellets of Nylon 6) of CTH 3908.10.19 by allowing the benefit of 5% BCD under Sl. No. 273 of the exemption notification. The noticee, inter alia, cite reference of the following B/Es:

B/E No. & Date	Description of goods	CTH	BCD paid @ 5%
2947817 dt. 09.04.2024	Natural Pellets (product code: PA6 Natural)	3908.10.19	Under Sl. No. 273 of Noti. No.

			50/2017-Cus
3102092 dt. 19.04.2024	-do-	-do-	-do-
4880224 dt. 05.08.2024	-do-	-do-	-do-
4930987 dt.07.08.2024	-do-	-do-	-do-

- That it is clear that the Department is allowing the import clearances of natural pellets of Nylon 6 granules by giving the benefit of concessional BCD @5% under Sl. No. 273 by accepting that the material imported by the noticee is Nylon chips or Nylon granules which are covered under Sl. No. 273 of the notification. In view of this admitted position, the proceedings initiated under the present SCN demanding BCD @ 10% and not 5% as claimed by the noticee at the time of filing the subject B/E No. 8837781 dated 26.05.2022 are not legally sustainable under law.

- That it is clear that the Department is allowing the import clearances of natural pellets of Nylon 6 granules by giving the benefit of concessional BCD @5% under Sl. No. 273 by accepting that the material imported by the noticee is Nylon chips or Nylon granules which are covered under Sl. No. 273 of the notification. In view of this admitted position, the proceedings initiated under the present SCN demanding BCD @ 10% and not 5% as claimed by the noticee at the time of filing the subject B/E No. 8837781 dated 26.05.2022 are not legally sustainable under law.

(D) Imported goods are not liable to confiscation under section 111(m) of the Customs Act

- That the SCN has proposed to confiscate the imported goods having total assessable value of Rs.71,32,503/- u/s 111(m) of the Customs Act, 1962. For reference, clause (m) of section 111 of the Act is reproduced below:-

> "(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 u/s 77 in respect thereof or in the case of goods under transhipment, with a declaration for transhipment referred to in the proviso to sub-section (1) of section 54."

- That the contravention mentioned in clause (m) is not applicable in their case. It is not the case of the Department that the noticee has under-valued the goods or the particulars of the goods do not tally with the entry made under the Customs Act. In fact, as confirmed from the Test Report No. 40 dated 05.04.2024 of CIPET, Ahmedabad, the noticee has correctly declared the subject goods as 'nylon 6, natural pellets' which were in the form of granules. Further, the provisions regarding declaration in the case of import of baggage or transshipment of goods are not applicable in the present case. In the absence of applicability of ingredients of clause (m), the noticee submit that the SCN seeks to confiscate the goods on flimsy / mechanical grounds without appreciating that none of the ingredient of clause (m) are not attracted in the facts and circumstances of the case.

- That the issue whether confiscation and consequent redemption fine can be imposed by the Customs authorities when the goods are no longer in the custody of the customs authorities and the goods were already released to the importer without execution of bond has been the subject matter of adjudication before the courts. The Hon'ble Supreme Court in the case of **Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.)** held that wherever the imported goods are released to the importer on execution of bond and subsequently it is found that the import was not valid or that there was some irregularity which would enable the customs authority to confiscate the goods, the Apex court held that mere fact that the goods were released on bond would not take away the power of the customs authority to levy redemption fine in lieu of confiscation. As corollary, where the imported goods are released by the customs for home consumption without submitting any PD bond, the customs authorities are not competent to confiscate the goods (which are not available for confiscation) or impose redemption fine.

- That reliance is also placed on the judgement of the Hon'ble Punjab & Haryana High Court in the case of **Commissioner of Customs, Amritsar vs. Raja Impex (P) Ltd. reported at 2008 (229) ELT 185 (P&H)** wherein the Hon'ble High Court, after considering the Apex Court judgment in Weston

Components case (supra), held that the redemption fine could not be imposed in the absence of the availability of goods which had already been released by the customs authorities to the importer without execution of any bond/undertaking.

- That the Apex Court judgment in the case of Weston Components Ltd. (supra) was referred to by the Bombay High Court in the case of **Commissioner of Customs (Import), Mumbai Vs. Finesse Creation Inc. reported at 2009 (248) ELT 122 (Bom)**. The Bombay High Court noted that the goods were not available in the custody of the customs authorities to confiscate the said goods and the concept of redemption fine arises only when the goods are physically available and are to be redeemed. Once the goods are not available, there is no question of redemption of goods and consequently the redemption fine cannot be imposed under section 125 of the Customs Act, 1962. That against the Bombay High Court judgment in the case of Finesse Creation Inc., the Department filed a Writ Petition before the Hon'ble Supreme Court which was dismissed by the Apex Court relying the judgment of Hon'ble Supreme Court in the case of Weston Components (supra).

- That the Bombay High Court in the case of **Commissioner of Customs, Export Vs. National Leather Cloth Mfg. Co. reported at 2015 (321) ELT 135 (Bom)** has once again confirmed that physical availability of goods for confiscation is must. The High Court further held that since the goods were exported by the assessee and the export obligation was discharged, the goods were not liable for confiscation merely on the ground that the export goods manufactured in India were not exigible for input credit and the credit was taken wrongly. The High Court held that once the export obligation was discharged, the provisions of section 125 of the Customs Act, 1962 are not applicable.

- That the Hon'ble Tribunal-Larger Bench, Mumbai in the case of **Shiv Kripa Ispat Pvt. Ltd. Vs. Commissioner of Central Excise & Customs, Nasik reported at 2009 (235) ELT 623 (Tri-LB)** noted the Apex Court judgment in the case of Weston Components Ltd. and also the Punjab & Haryana High Court judgment in the case of Raja Impex (P) Ltd. and held that the goods

imported or exported in contravention to the provisions of Customs Act or any other law are not confiscable when those goods have already been imported / exported without execution of any bond / undertaking and consequently no redemption fine is imposable under section 125 of the Customs Act, 1962.

- That against the judgment delivered by the Larger Bench, the Commissioner of Customs (Import) filed an appeal before the Bombay High Court which the High Court dismissed saying that no substantial question of law is involved in the legal position that no redemption fine can be imposed when the goods are not physically available for confiscation.

- That in view of the above settled legal position, the noticee submits that in their case the goods were imported and cleared from customs without resorting to any provisional release or provisional assessment of goods. The B/E filed by the noticee was self-assessed and cleared by the customs without any objection as to the classification or rate of duty or value declared by the noticee. Since the goods are not physically available in the custody of the customs nor were the goods earlier released against Bond / LUT, the goods cannot be confiscated now under section 111(m) of the Customs Act, 1962.

- That the noticee further submits that the imported goods cannot be confiscated under section 111(m) merely because the Revenue holds a different view than the importer regarding classification of imported goods. In the recent case of **M/s Vivo Mobile India Pvt. Ltd. vs. Principal Commissioner of Customs, New Delhi reported in 2024-VIL-156-CESTAT-DEL-CU** the Department proposed reclassification of mobile parts imported by the importer-assessee. Apart from recovery of differential duty, the Department also proposed confiscation of imported goods u/s 111(m) of the Customs Act. The Tribunal observed that at the time of filing bill of entry, the importer will self-assess all aspects of imported goods including inter-alia the classification to be declared and at that stage the importer cannot predict the mind of the proper officer so as to confirm it later. If classification in the bill of entry do not match the views taken by the proper officer / audit authorities, then goods cannot be confiscated u/s 111(m) of

the Customs Act, even if the classification made by the importer-assessee is found to be incorrect. With these observations, the Tribunal set aside the confiscation confirmed by the lower authorities u/s 111(m) of the Customs Act.

- That the noticee submits that even if it is contended that the noticee is not entitled to the benefit of concessional BCD, nevertheless the noticee availed the said exemption by making self-declaration in the B/E based on its self-assessment and under a bona fide belief. Therefore, in view of the above decision in Vivo Mobiles (supra), the subject goods cannot be made liable to confiscation under Section 111(m) of the Customs Act.

(E) Without prejudice, the entire proceedings initiated by SCN are time barred:

- That without prejudice to the submissions on merit that no differential duty is payable by the noticee and / or the subject goods are not liable to confiscation, it is submitted that the entire proceedings initiated vide the present SCN are time barred and are not sustainable on limitation alone.

- That it is submitted that u/s 28(1) of Customs Act, the normal period of issuing the SCN to recover duty paid / short paid by any reason other than by way of collusion, wilful misstatement or suppression of facts is 2 years from the relevant date. However, the provisions of section 28(4) of the Act empowers the proper officer to issue the SCN within extended period of 5 years from the relevant date, if the duty has been short-paid / not paid by reason of collusion, wilful misstatement or suppression of facts. Further, as per Explanation 1(a) to section 28, the “relevant date” in case of duty not paid / short-paid is the date on which proper officer makes an order for clearance of goods from the customs port. This is the date when out-of-charge order is given by the proper officer.

- That in the present case, the SCN has been issued to demand differential duty by invoking provisions of section 28(4) of the Act so as to cover extended period of limitation. As submitted above, the provisions of section 28(4) of the Act allow a proper officer to raise demand of duty not paid or short-paid etc. by reason of collusion, wilful mis-statement or suppression of facts. Thus, the rigours of section 28(4) are attracted only where collusion,

wilful mis-statement or suppression of facts are alleged and established by the Department and not otherwise.

- That the SCN has merely alleged that the noticee wilfully misstated the facts and deliberately claimed benefit of exemption notification to pay lower customs duty. It is also alleged that a well thought out conspiracy was hatched by the noticee to evade payment of customs duty by wrongly claiming the said benefit knowing well the nature of goods. On this basis, the SCN has invoked provisions of section 28(4) of the Act.

- That in this regard, the noticee submits that the expression 'suppression of facts' has been analysed by the Apex Court in several rulings some of which are cited below:-
    - Padmini Products v. CCE – 1989 (43) ELT 195 (SC)
    - Pushpam Pharmaceuticals Company v. CCE – 1995 (78) ELT 401 (SC)
    - Anand Nishikawa Co. Ltd. v. CCE – 2005 (188) ELT 149 (SC)

- That in the above rulings, the Apex Court has propounded that the expression 'suppression of facts' does not mean mere omission or negligence on the part of the assessee to pay duty but postulate a deliberate or positive act of concealment to escape the payment of duty and the same has to be proved on the basis of strong evidence.

- That it has been held by the Hon'ble Supreme Court in the case of **Tamilnadu Housing Board Vs. CCE reported at 1995 (74) ELT 9 (SC)** that powers to extend the period from 1 year to 5 years under proviso to section 11A are exceptional powers and have to be construed strictly. It was held that fraud, collusion, etc. and intention to evade duty both must concur and the intention to evade payment of duty is not a mere failure to pay duty and it must be something more, that is, the assessee is aware that duty was payable and he must deliberately avoid payment of duty.

- That in the case of CC v. Reliance Industries Limited reported at 2015 (325) ELT 223 (SC), the importer declared classification of imported goods in the bill of entry in terms of its own bona fide belief and availed exemption available to such goods. A show cause notice was issued to the importer under Section 28(4) of Customs Act alleging deliberate misdeclaration. The

Apex Court observed that the importer was under a bona fide understanding of the classification of the imported goods and accordingly it could not be accused of mis-declaration, fraud etc. Basis the said reasoning, Apex Court negated the Department's action of invoking section 28(4) of Customs Act.

- That further the noticee rely upon the case of **Intercontinental Polymer Pvt. Ltd. vs CCE&ST, Daman reported in(2023) 9 Centax 180 (Tri.-Ahmd.)** wherein the appellant was engaged in production of polyamide chips, re-processed plastic granules etc. and the appellant manufactured and cleared the same without payment of excise duty by taking benefit of excise exemption notification. The Department alleged that the appellant was not entitled to the said exemption and hence confirmed the demand of duty against the appellant at lower stages. In appeal before the Tribunal, the appellant inter-alia argued that the demand was time-barred as larger period of limitation was not invocable in the said case. The Tribunal, while allowing the appeal in favour of the appellant on merits as well as on limitation, held as under:

> *"4.3……..The Revenue was not prevented to find out the eligibility of the exemption notification and view of the Revenue could be expressed immediately on filing of ER-1 return and the show cause notice could have been issued within a normal period. Therefore, claiming the exemption notification which was in the knowledge of the Revenue, the suppression of fact or malafide on the part of the appellant cannot be attributed.* ***The issue involved is clearly an interpretational issue of exemption notification and the interpretation made by the Revenue could have been made from the claim of notification as declared in their ER-1 return****. It is also fact on record that the appellant have cleared the goods by filing bills of entry and the fact that the goods imported is not classified under 3915 was well informed to the Department. Therefore, in the peculiar facts as noted above there is no suppression of fact or malafide intention on part of the appellant, therefore, the invocation of extended period is illegal and incorrect. Accordingly, the demand for the longer period is not sustainable on the ground of time bar also. The demand is set aside on merit as well as on limitation."*

- That in view of the above settled legal position, the noticee submits that was no deliberate or wilful attempt made by the noticee to evade any customs duty on import of subject goods and the noticee always entertained a bonafide belief regarding availability of exemption under Entry no. 273 to

the subject goods. This bonafide belief of the noticee is well-founded on the basis of trade parlance, judgement of Superfil products (supra) and also the CIPET test reports.

- That reliance is also placed upon the judgment of the Tribunal in the case of **Shreeji Shipping vs. Commissioner of Customs, Mundra reported in (2024) 16 Centax 393 (Tri.-Ahmd.)** wherein the Department issued the SCN u/s 28(4) by invoking larger period proposing to re-classify the goods imported by the importer-assessee and recover differential duty. The Tribunal set aside the consequent demand orders only on the ground that the Dept. erred in issuing the SCN by invoking larger period as in cases involving interpretation of entries of classification, in the absence of any clinching evidence against the importer, allegations of wilful misstatement, suppression or collusion cannot be levelled.

Relevant portion of the judgement is reproduced as under:

> *4.1 .....It is settled position in law that unless allegation of suppression of facts or mis-statement with intention to evade payment of duty is supported by credible or clinching independent evidence, the same cannot be sustained merely on unsustainable allegations. This being a case of interpretation regarding classification of imported crane and Grab, in absence of any clinching evidence to evade payment of duty, charge of suppression of facts, willful misstatement, fraud, etc., cannot be levelled, for initiation of SCN beyond the normal time limitation. Extended period cannot be invoked in every case of short payment of duty, but only in cases of wilful and deliberate suppression of fact having element of deception or malpractice is required to prove wilful and deliberate suppression of fact with intent to evade duty and this is not the case of wilful/deliberate suppression. It is settled law that there must be deliberate attempt by Appellant to suppress facts from Department with intention to evade payment of customs duty, which is not existing in facts of this case. Merely change in view by another authority after clearance of goods regarding classification, cannot be held against the appellant as view of assessee was also based on documents and it was approved by the authorities, when the Bill of Entry was assessed and the said goods were allowed clearance for home consumption. We find that the various decisions of the tribunal hold such view. Consequently, extended period under Section 28(4) of the Customs Act, 1962 cannot be legally invoked in the SCN or upheld subsequently.*

- That in the case of **Daxen Agritech India Pvt. Ltd. vs. Principal Commr. of Customs (Import) reported at (2024) 20 Centax 467 (Tri.-Del.)**, the Tribunal, while considering the invocation of extended period by the Dept. in a case involving mis-classification by the importer, held as follows:

> *"12. The law on invocation of extended period of limitation is well settled. Mere omission or merely classifying the goods/services under incorrect head does not amount to fraud or collusion or wilful statement or suppression of facts and therefore the extended period of limitation is not invocable."*

- That in view of the above legal position,it is submitted that the provisions of section 28(4) are not invocable in the present case merely because the customs Department is of the view that noticee is not entitled to the benefit of an exemption notification availed by the noticee. As the availment of benefit of exemption involves interpretation of entries of notification, it is erroneous to hold that the noticee resorted to any kind of wilful misstatement of facts to evade customs duty. Consequently, the extended period of 5 years as provided in section 28(4) of the Act is not applicable in the facts of the case and the present SCN could only have been issued u/s 28(1) of the Act as tabulated under:

B/E No.	B/E dated	Time limit to issue SCN u/s 28(1) - 2 years	Date of issuance of SCN	Status of SCN
8837781	26.05.2022	26.05.2024	02.01.2025	Time-barred

- That it is submitted that as the SCN has been issued on 02.01.2025 i.e., beyond the normal time limit of 26.05.2024 (2 years counted from the date of B/E), the entire proceedings for demand of differential customs duty and penalties are not sustainable on limitation alone. Consequently, the SCN needs to be dropped on this ground alone.

(F) Penalty u/s 114A of the Act is not imposable:-

- That the SCN seeks to impose penalty u/s 114A of the Customs Act, 1962. It is submitted that section 114A provides for imposition of penalty equal to

the duty short-paid / not paid by reason of collusion, wilful statement etc. Relevant portion of section 114A is reproduced below:-

> ***"114A. Penalty for short-levy or non-levy of duty in certain 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, 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*
> *……."*

- That from the above provisions, it is clear that penalty u/s 114A is only imposable when:

  (a) the duty is not levied / short-levied or not paid / short-paid; and

  (b) by reason of collusion, wilful statement or suppression of facts.

- That in the present case, the noticee refers to the detailed submissions made hereinabove as per which, the noticee was entitled to avail the benefit of 5% BCD under Sl. No. 273 of exemption notification and therefore the noticee has not short-paid any customs duty on the imported goods. Hence, no duty has been short-paid by the noticee and consequently condition (a) as stated above for imposition of penalty u/s 114A is not attracted.

- That further, as per condition (b) above, the duty should be short-paid / not paid by reason of collusion, wilful statement or suppression of facts on the part of the importer. The ingredients of penalty imposable u/s 114A are identical to the ingredients for invoking extended period of limitation. As already submitted above, the ingredients for invoking extended period are not applicable, it is submitted that no penalty can be imposed under the provision of section 114A of the Act.

- That in the case of **Daxen Agritech India Pvt. Ltd. vs. Principal Commr. of Customs (Import) reported at (2024) 20 Centax 467 (Tri.-Del.)**, the Tribunal while dealing with imposition penalty u/s 114A of the Customs Act, held that the ingredients required to impose penalty u/s 114A of the Customs Act are identical to the ingredients of invoking extended period u/s

28(4) and in the absence of any wilful misstatement, collusion etc., penalty u/s 114A could not be imposed.

- In view of the above submissions, the noticee submits that none of the conditions inviting penalty u/s 114A are satisfied in the present case. Hence the imposition of penalty u/s 114A is not warranted.

11.2. In view of the foregoing submissions, the noticee prayed for dropping the entire proceedings initiated vide the impugned SCN.

RECORD OF PERSONAL HEARING

12. Following the principles of natural justice, opportunities for personal hearings were granted to the noticee on 04.08.2025, 02.09.2025 and 17.09.2025. However, at the request of the importer, the hearings were further re-scheduled on 19.12.2025 and 29.12.2025. Accordingly, the personal hearing was finally held on 29.12.2025. Shri S. C. Kamra, Advocate and authorised representative of the noticee, attended the PH in virtual mode. During the personal hearing he reiterated the written submissions filed by the noticee on 07.02.2025.

DISCUSSIONS AND FINDINGS

13. Having gone through the impugned SCN, defence submission of the noticee and the personal hearing, I find that following main issues are involved in this case, which are required to be decided at the stage of adjudication: -

1. Whether concessional rate of BCD of 5% claimed by the importer under Sr. No. 273 of Notification No. 50/2017-Cus dated 30.06.20174 is liable to be denied and BCD at normal rate of 10% is required to be levied on the goods imported under impugned bill of entry?
2. Whether differential amount of duty demanded under the SCN is required to be confirmed under Section 28(4) along with interest under Section 28AA of the Customs Act, 1962 or otherwise?

3. Whether the goods imported under impugned bill of entry are liable for confiscation under Section 111(m) of the Customs Act, 1962 or otherwise?
4. Whether penalty under Section 114A of the Customs Act, 1962 is required to be imposed upon the importer?

14. I have carefully examined the facts and evidences on record, noticee's written submission dated 04.02.2025 and legal provisions applicable to the present case. I, now, proceed to address each issue one by one.

ELEGIBILTY OF THE EXEMPTION UNDER SR. NO. 273 OF THE NOTIFICATION NO. 50/2017-Cus DATED 30.06.2017:

15.1. Having gone through the impugned SCN, I find that the SCN states that the noticee i.e. M/s SUCHITRAA SILK PRIVATE LIMITED imported the goods with description, "NYLON 6, NATURAL PELLETS" classifying under customs tariff item (CTI) 39081019 through Bill of entry No. 8837781 dated 26.05.2022, and paid BCD at the rate of 5% claiming benefit of serial number 273 of Notification 50/2017. The SCN further states that Sr. No. 273 of the said Notification is applicable on "NYLON CHIPS". However, the imported goods, don't qualify as Nylon chips, so they fall under Customs Tariff Heading (CTH) 39081019. This classification attracts a 10% Basic Customs Duty (BCD). As per sr. no 273 of exemption notification 50/2017, only 'Nylon chips' are eligible for a concessionary rate. I find that the SCN proposes that the impugned goods did not meet the conditions of the said Sr. No. 273, and, that the importer wrongly claimed the exemption. Therefore, the SCN proposes denial of the exemption and demands BCD at the standard tariff rate of 10%.

15.2. However, the noticee have contested the proposal in the SCN, stating that in trade parlance the terms "chips" and "pellets" are used interchangeably. In support of this submission, the noticee have relied upon the case of **M/s Superfil Products Ltd. Vs. Commissioner of Customs, Chennai reported in 2014 (304) ELT 138 (Tri-Chennai)** to substantiate their claim for eligibility to the exemption under dispute.

15.3. To address the issue, I firstly peruse the impugned Bill of Entry No. 8837781 dated 26.05.2022. I note that, vide the impugned bill of entry, the noticee, described the imported goods namely, "**NYLON 6, NATURAL PELLETS"** and classified the same under customs tariff item (CTI) **39081019** in Schedule-I of the Customs Tariff Act, 1975. I also peruse supporting import documents uploaded by the importer on e-Sanchit at the time of filing of the impugned bill of entry, which indisputably confirm that the imported goods were indeed "Nylon 6, Natural Pellets". Thus, I find that the description in the bill of entry and the documentary evidence are fully consistent and leave no ambiguity regarding the description of the imported goods. Further, I examine the duty components recorded in the impugned bill of entry and find that the importer has indeed availed concessional rate of BCD @ 5% under Sr. No. 273 of Notification No. 50/2017-Cus dated 30.06.2017.

15.4. To proceed further, it is imperative to examine the applicable entries of the Exemption Notification No. 50/2017-Cus dated 30.06.2017 in conjunction with the heading 3908 of the customs tariff.

15.5. I have gone through the Sr. No. 273 of the Exemption Notification No. 50/2017-Cus dated 30.06.2017 and its subsequent amendment by Notification No. 02/2021-Cus dated 01.02.2021. For the sake of ready reference, the same are reproduced hereunder:

Notification No. 50/2017-Cus. Dated 30.06.2017 (*w.e.f. 01.07.2017*)

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	IGST	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
273	3908	Nylon chips	7.5%	-	-

Notification No. 50/2017-Cus. Dated 30.06.2017 (*w.e.f. 02.02.2021*)

(*After amendment vide Notification No. 02/2021-Cus dated 01.02.2021*)

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	IGST	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)

273	3908	Nylon chips	5%	-	-

15.6. I have also gone through the customs tariff heading 3908 of Chapter 39 of Schedule-I to the Customs Tariff Act, 1975. I find that the said heading is dedicated to "POLYAMIDES IN PRIMARY FORMS". **The relevant extract of the said heading prior to 01.08.2019, read as under**:

Heading/ Sub-heading/ Tariff item	**Description of goods**	**Unit**	**Rate of duty**	
			Standard	**Prefer-ential**
(1)	**(2)**		**(3)**	**(4)** (5)
3908	**POLYAMIDES IN PRIMARY FORMS**			
3908 10	- Polyamide- 6, -11, -12, 6, -6, 9, -6, 10 or -6, 12:			
3908 1010	--- Nylon moulding powder	Kg.	10%	-
3908 1090	--- other	Kg.	10%	-

15.7. However, I find that vide **the Finance (No. 2) Act, 2019** with effect from 01.08.2019, in heading 3908 for tariff items 39081010 to 39081090 and the entries relating thereto were substituted. **The relevant substitutions are as under:**

Heading/ Sub-heading/ Tariff item	**Description of goods**	**Unit**	**Rate of duty**	
			Standard	**Prefer-ential**
(1)	**(2)**		**(3)**	**(4)** (5)
3908	**POLYAMIDES IN PRIMARY FORMS**			
3908 10	- Polyamide- 6, -11, -12, 6, -6, 9, -6, 10 or -6, 12:			
	--- Polyamide-6 (Nylon-6)			
3908 1010	---- Flake (chip)	Kg.	10%	-
3908 1090	---- Other primary form	Kg.	10%	-

15.8. A plain reading of the Exemption Notification and the Customs Tariff shows that before 01.08.2019, the exemption under Sr. No. 273 of Notification No. 50/2017-Cus was available to nylon chips, but heading 3908 did not specifically recognize nylon chips. I find that, since the term "nylon chips" was not clearly expressed, the Hon'ble Tribunal in the case of **M/s Superfil Products Ltd. (supra)** extended the exemption to other primary forms of nylon.

15.9. However, I find that with effect from 01.08.2019, the entries for tariff items in heading 3908 were revised. I find that under subheading 390810 (Nylon-6), entry for tariff item 39081010 was changed from "Nylon moulding powder" to "flake (chip)". Thus, I find that post amendment, the term "nylon chips" has a narrower meaning and the same is interchangeable only with primary form "flakes", and not with other primary forms of Nylon-6. Thus, I find that in the light of the revised entries in heading 3908, the above order of Hon'ble Tribunal cannot be applied to this case.

15.10. Further, the noticee have contended that identical goods, subsequently imported by them, were assessed with concessional BCD @ 5% under Sl. No. 273 of Notification No. 50/2017-Cus and, therefore, now, the department cannot take a different view. In this regard, I find that each import consignment is required to be assessed independently on the basis of the facts and the law applicable at the time of import. Therefore, the argument put forth by the noticee is not tenable.

15.11. Thus, I find that for the purpose of customs tariff and exemption, the term 'pellets' cannot be clubbed with 'Chips' as both are two distinct primary forms of Polymer Nylon-6. I observe that Flakes (chips) are flat and irregular in shape, whereas pellets are small, uniform and generally have cylindrical shape. The concept of "Plain reading of Notification" has been established by various judicial in their judgments. A plain reading of Notification exempts the goods "Nylon Chips" and not "Nylon Pellets". **Hence, I conclude that the benefit of concessional rate of BCD of 5% is not**

admissible to the importer in the present case, and the goods are liable to levy BCD at standard tariff rate of 10%.

DETERMINATION OF DUTY, INVOCATION OF SECTION 28(4) AND LIABILITY OF INTEREST UNDER SECTION 28AA OF THE CUSTOMS ACT, 1962:

16.1. I find that the impugned SCN proposes demand of differential duty amounting to **Rs.4,62,899/-** on an assessable value of **Rs.71,32,503/-** from the noticee under Section 28(4) of the Customs Act, 1962. It is evident from the above discussion and findings, that the noticee has wrongly claimed benefit of concessional rate of BCD under Sr. No. 273 of the Notification 50/2017-Cus dated 30.06.2017. I find that by doing so they discharged BCD at the lower rate of 5% instead of the correct rate of 10%, which has resulted into short levy and short payment of duty. I have verified the computation of differential duty, as detailed in Para 4 of the impugned SCN and found it correct. **Thus, I determine that the noticee has short levied and short paid of duty amounting to Rs.4,62,899/-** on an assessable value of **Rs.71,32,503/-.**

16.2. I find that the impugned SCN has been issued under Section 28(4) of the Customs Act, 1962, alleging that the noticee, wilfully and deliberately misclassified the goods under an entry of exemption notification to avail a lower rate of BCD. I note that Section 28(4) empowers the proper officer to issue a notice within five years from the relevant date for recovery of duty that has not been levied or not paid, or short-levied or short-paid due to collusion, wilful mis-statement, or suppression of facts by the importer/exporter or their agent.

16.3. However, the noticee, by citing certain case laws, have argued that the availment of benefit of exemption involves interpretation of entries of notification, and, therefore, there was no collusion, wilful misstatement, or suppression of facts on their part. They have asserted that the entire demand is time-barred and liable to set aside, as the extended period of five years under Section 28(4) cannot be invoked in the present case. In this regard, I observe

that Section 17 of the Customs Act, 1962, governs self-assessment and casts a statutory obligation on the importer to correctly assess and discharge customs duty. This responsibility is not contingent upon departmental intervention. In addition, Section 46(4) of the Act specifically mandates that an importer, while presenting a Bill of Entry, shall make and subscribe to a declaration as to the truth of the contents. Therefore, any misrepresentation or suppression in the declaration, especially with regard to any exemption or concession, directly attracts penal consequences under the Act. I find that in the present case, the noticee, by classifying the goods under an inapplicable entry of exemption notification, despite the clear description and conditions prescribed therein, failed in their legal responsibility.

16.4. I find that the impugned bill of entry and its supporting import documents clearly reflect that the imported goods are “Nylon Pellets”, which are not covered under Sr. No. 273 of the Notification 50/2017-Cus dated 30.06.2017 for concessional rate of Basic Customs Duty. Despite the clear and unambiguous nature of the product description and its tariff implications, the noticee knowingly and deliberately proceeded to claim the benefit of a lower rate of duty to which they were not entitled. Thus, the wrongful declaration of an inapplicable serial number under the exemption notification by the noticee is a calculated and conscious act of misrepresentation. Further, I find that the noticee, at no point in time, disclosed full, true and correct information about the appropriate rate of duty nor did they bring this material fact to the notice of the Department. The incorrect availment of the exemption came to light only after objection raised by the Department. Thus, it is clear that these vital and material information have been concealed from the department deliberately, consciously and purposefully to evade payment of proper customs duty. Therefore, the claim of the wrong serial number cannot be brushed aside as an innocent mistake. Thus, the conduct of the noticee clearly amounts to wilful misstatement and suppression of facts, squarely attracting the invocation of Section 28(4) of the Customs Act, 1962.

16.5. In view of the foregoing, I agree with the SCN and **hold that the demand for differential duty of Rs.4,62,899/- from the noticee is justified and fully**

sustainable under Section 28(4) of the Customs Act, 1962. Further, the statutory liability of interest is automatic and compensatory in nature, and no separate mens rea is required for such demand. Therefore, in terms of Section 28AA of the Act, ibid, **the noticee is further liable to pay interest on the said amount from the date it became due till the date of actual payment.**

PENALTY UNDER SECTION 114A OF THE CUSTOMS ACT, 1962:

17.1. I find that the SCN proposes penalty on the noticee under Section 114A of the Customs Act, 1962. The relevant portion of Section 114A of the Customs Act, is re-produced herein below:

> ***SECTION 114A. Penalty for short-levy or non-levy of duty in certain 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, 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:*
>
> .....

17.2. I find that a penalty under Section 114A of the Customs Act, 1962, may be imposed in cases where duty has either not been levied or has been short-

levied due to collusion, willful misstatement, or suppression of material facts. Upon careful consideration of the evidences and the foregoing discussions, I find that the noticee, in the present case, has wilfully misclassified the goods. **In light of these acts and omissions, I hold the noticee is liable for penalty under Section 114A of the Customs Act, 1962.**

CONFISCATION OF THE GOODS:

18.1. I find that the Show Cause Notice proposes confiscation of goods under the provisions of Section 111 (m) of the Customs Act, 1962.I find that the said section provides that, *"any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, or in respect of which any material particular has been mis-declared in the Bill of Entry or other document, shall be liable to confiscation".* Thus, any incorrect or false declaration of material particulars such as description, classification, or value, attracts confiscation of the goods imported under such declaration.

18.2. I find from the case records that the importer, while filing the impugned bill of entry availed the Sr. No. 273 of the exemption notification. However, exemption was not admissible and the goods were required to be levied BCD at standard tariff rate without exemption. I find that this ineligible exemption is not a bona fide mistake but an intentional mis-declaration of a material particular within the meaning of Section 111(m) of the Customs Act, 1962 which was done to avail benefit of concessional rates of duty by defrauding the government exchequer. These acts and omissions at the end of the importer has rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962.

18.3. In view of the above, **I hold that the goods, imported vide impugned bill of entry, were mis-classified under Sr. No. 273 of the exemption Notification, are liable for confiscation under Section 111(m) of the Customs Act, 1962.**

IMPOSITION OF REDEMPTION FINE:

19.1. As I have already held in previous para these goods liable for confiscation under Section 111(m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 (1) of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 (1) ibid reads as under:-

> ***"Section 125. Option to pay fine in lieu of confiscation****.—(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit."*

19.2. I note that the goods in question which are proposed to be confiscated were already cleared and the same are not available physically for confiscation. Thus, **I refrain from imposing redemption fine in respect of goods imported under the impugned bills of entry.**

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

ORDER

i. I deny benefit of concessional rate of Basic Customs Duty @ 5% under Sr. No. 273 of the Notification No. 50/2017-Cus dated 30.06.2017 availed by the noticee in BE No. 8837781 dated 26.05.2022.

ii. I order to confiscate the goods having assessable value of **Rs.71,32,503/- (Rupees Seventy One Lakh Thirty Two Thousand Five Hundred and Three Only)** under Section 111 (m) of Customs Act, 1962. I also note that the goods have already been cleared and are not available physically for confiscation; however, as noted above, since the goods are not physically available for confiscation, I do not impose any redemption fine in lieu of such confiscation.

iii. I confirm the demand of duty of **Rs.4,62,899/- (Rupees Four Lakh Sixty Two Thousand Eight Hundred and Ninety Nine Only)** under Section 28(4) and order to recover the same from the noticee along with applicable interest under Section 28AA of the Customs Act, 1962.

iv. I impose a penalty of **Rs.4,62,899/- (Rupees Four Lakh Sixty Two Thousand Eight Hundred and Ninety Nine Only)** on the noticee under Section 114A of the Customs Act, 1962. Provided that the duty as determined, and the interest payable thereon under section 28AA, is paid within 30 days from the date of the communication of this Order, the amount of penalty liable to be paid shall be 25% of the duty. Provided further that the benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of 30 days from the date of the communication of this order.

21. This order 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 in the Republic of India.

22. The Show Cause Notice bearing F. No. CUS/APR/MISC/12067/2023-Gr 2-O/o Pr Commr-Cus-Mundra dated 02.01.2025 issued to M/s. SUCHITRAA SILK PRIVATE LIMITED (IEC3202008587), stands disposed of in above terms.

Digitally signed by Dipakbhai Zala
Date: 31-12-2025 13:15:39

Dipak Zala,
Additional Commissioner of Customs,
(Import Assessment)
Customs House, Mundra

By RPAD/ By Hand Delivery/Email/Speed Post

To,
M/s. SUCHITRAA SILK PRIVATE LIMITED (IEC3202008587),
Situated at 2594-98, Anand Gali, Teliwara Sadar Bazar,
Delhi, India 110006

Copy to:

1. The Addl. Commissioner (RRA), Customs House, Mundra
2. The Deputy/Assistant Commissioner (PCA/TRC/EDI), CH, Mundra
3. Guard File