OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MP & SEZ
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सत्यमेव जयते

A	**File No.**	**GEN/ADJ/ADC/837/2025-Adjn-O/o Pr Commr-Cus-Mundra**
B	**OIO No.**	**MCH/ADC/ZDC/714/2025-26**
C	**Passed by**	**Sh. Dipak Zala, Additional Commissioner of Customs (Import Assessment), Custom House, Mundra**
D	**Date of order**	**.03.2026**
E	**Date of Issue**	**.03.2026**
F	**SCN F. No. & Date**	**CUS/APR/BE/79/2025-Gr 2-O/o Pr Commr-Cus-Mundra & 25.03.2025**
G	**Noticee / Party/ Importer**	**M/s. NAVKAR IMPEX, 23, GROUND FLOOR, AKASH KUNJ, APPTT. SECTOR-9, ROHINI**
H	**DIN**	**20260371MO000000CB0B**

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

सीमा शुल्क आयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,
नवरंगपुरा, अहमदाबाद-380 009
THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009

3. उक्त अपील यह आदेश भेजने की दिनांक से 3 माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं॰-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम,1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

Brief Facts of Case

M/s. NAVKAR IMPEX, 23, GROUND FLOOR, AKASH KUNJ, APPTT. SECTOR-9, ROHINI (hereinafter referred to as "the importer" for the sake of brevity) filed various Bills of Entry at Mundra Port for clearance of "Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron", "Stock lot of plastic packaging material in mix size and gsm", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm", etc., classifying the same under different CTH 39201099,

39202090, 39206919 & 39207119 of the First Schedule of the Customs Tariff Act, 1975.

2. Whereas, during the course of Post Clearance Audit of the Bills of Entry filed by the importer for the period from 2020 to 2023, it has been noticed that the importer had mis-classified the goods under different CTH 39201099, 39202090, 39206919 & 39207119 and paid duty @ **30.980%** (BCD @ 10% + SWS @ 10% + IGST @ 18%) instead of the correct classification under CTH 39209999, which attracts a duty @ **37.470%** (BCD @ 15% + SWS @ 10% + IGST @ 18%).

The Heading 3920 of Customs Tariff is reproduced below:

HS Code		*Item Description*	*BCD*	*SWS (10% of BCD)*	*IGST*
3920		*Other plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials*			
392010	-	*Of polymers of ethylene*			
39201099	-	*Other*	*10%*	*1*	*18%*
392020	-	*Of polymers of propylene*			
39202090	-	*Others*	*10%*	*1*	*18%*
392069	-	*Of other polyesters*			
39206919	-	*Others*	*10%*	*1*	*18%*
392071	-	*Of regenerated cellulose*			

39207119	*-*	*Others*	*10%*	*1*	*18%*
392099	*-*	*Of other plastics:*			
39209999	***--***	***Other***	***15%***	***1.5***	***18%***

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

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

> *3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*
>
> *(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

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

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical

order among those which equally merit consideration.

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

5. Whereas, in the instant case, the description of goods is excessively generic in nature and cannot be classified under any specific heading as declared by the importer. Consequently, the goods can only be classified under the last relevant CTH, i.e., 39209999, pertaining to 'other' plastic materials, as they do not fit within any specific heading.

6. Thus, the importer had wrongly classified the goods under CTH 39201099, 39202090, 39206919, and 39207119, resulting in the underpayment of Basic Customs Duty (BCD) at 10% instead of the applicable rate of 15%. This misclassification appears to have been made deliberately in an attempt to evade payment of the differential BCD of 5% and SWS & IGST thereon. Therefore, the importer is liable for payment of

an additional duty of Rs. 392,080/, as detailed in Annexure-A of the SCN.

7. RELEVANT LEGAL PROVISIONS

Provisions of Customs Act, 1962

i. *In terms of section 28(1) of the Customs Act, 1962, where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part- paid or erroneously refunded, for any reason of collusions or any wilful mis-statement or suppression of facts,-*

(a). the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-pad or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

PROVIDED that before issuing notice, the proper officer shall hold pre- notice consultation with the person chargeable with duty or interest in such manner as may be prescribed.

(b). the person chargeable with the duty or interest, may pay, before service of notice under clause (a) on the basis of,-

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid:

PROVIDED that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

ii. *In terms of section 28(4) of the Customs Act, 1962, where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

a. *collusion; or*

b. *any wilful mis-statement; or*

c. *suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

iii. *In terms of section 28(5) of the Customs Act, 1962, where the duty has not been levied or not paid or has been short-levied or short-paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person thereon under section 28AA and the penalty equal to fifteen percent of the duty specified in the notice or the duty so*

accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

iv. *In terms of section 28AA(1) of the Customs Act, 1962, notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

v. *In terms of section 46(4) of the Customs Act, 1962, the importer while presenting a bill of entry shall make and subscribe to a declaration*

as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

vi. *In terms of section 46(4A) of the Customs Act, 1962, the importer who presents a bill of entry shall ensure the following, namely:—*

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

vii. *In terms of section 111 of the Customs Act, 1962- Confiscation of improperly imported goods, etc.-*

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

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

viii. *In terms of section 112 of the Customs Act, 1962: - Penalty for improper importation of goods, etc.-*

Any person, -

a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
b. *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

shall be liable to penalty…

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

…

ix. *In terms of section 114 of the Customs Act, 1962:*

where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis- statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 3 [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

.....

8. In view of the discussions made in the foregoing paras, it appears that the importer had wrongly classified the imported goods under various CTH 39201099, 39202090, 39206919 & 39207119 and paid Customs duty at a lower rate of 30.980% (BCD @ 10% + SWS @ 10% + IGST @ 18%), instead of the applicable rate of 37.470% (BCD @ 15% + SWS @ 10% + IGST @ 18%) as per the correct classification under CTH 39209999. This misclassification appears to be a deliberate attempt by the importer to pay Customs duty at a lower rate.

9. Accordingly, **M/s. NAVKAR IMPEX, 23, GROUND FLOOR, AKASH KUNJ, APPTT. SECTOR-9, ROHINI**, were called upon to show cause to **the Additional Commissioner of Customs (Import Assessment), Custom House, Mundra**, Custom House, Mundra having office at 5B, First Floor, PUB Building, Adani Port, Mundra, as to why:

i. The assessment in respect of Bills of Entry as mentioned in Annexure-A should not be rejected and the same should not be re-assessed under CTH 39209999;
ii. The short payment of Basic Customs Duty amounting to **Rs. 392,080/-** (Rupees Three Lakh Ninety Two Thousand

Eighty only) by wrongly classifying the imported goods under CTH 39201099, 39202090, 39206919 & 39207119 instead of 39209999 and paid less BCD and SWS/IGST thereon should not be charged and recovered from them under Section 28(4) of the Customs Act, 1962;

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

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

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

10. DEFENCE SUBMISSION & PERSONAL HEARING:

The importer was granted sufficient opportunities of personal hearing on 04.08.2025 and 02.09.2025. On 02.09.2025, importer's Authorized representative, submitted that the allegations of wilful mis-statement, suppression of facts and deliberate evasion made in Show Cause Notice No. 20250371M000000D9A5 dated 25.03.2025 are denied in toto. The Show Cause Notice has been issued solely on the basis of an after-thought audit objection raised several years after the goods were physically examined 100% by the proper officers and cleared under Section 17(2) of the Customs Act, 1962. No fresh evidence or laboratory test report has been placed on record.

They submitted that the Directorate General of Foreign Trade, through Trade Notice No. 37/2019-20 dated 22.10.2019 and Trade Notice No. 46/2019-20 dated 17.01.2020, has directed importers to declare specific 8-digit HS codes wherever known and has expressly discouraged the use of the residual "Others" category. The classification under the specific polymer sub-headings 39201099, 39202090, 39206919 and 39207119 was therefore

adopted in strict compliance with the aforesaid policy of the Government of India, whereas the Show Cause Notice insists upon the residual heading 39209999, which is contrary to the said Trade Notices.

Out of the ten Bills of Entry, nine were assessed and cleared only after 100% physical examination. The description, composition, value and declared CTH were verified by the proper officers and Out of Charge was granted without any objection. The goods were released long ago and are no longer available for re-examination. Consequently, the classification cannot now be re-opened by the Department on mere audit presumption after final assessment and clearance.

Classification under the Customs Tariff is governed by the General Rules for Interpretation and must be carried out sequentially. Rule 3(a) provides that the heading which gives the most specific description shall be preferred. The specific sub-headings were correctly applied on the basis of the predominant polymer indicated in the supplier specifications for each shipment. Rule 3(c) (last numerical heading) has been wrongly invoked by the Department without ruling out Rule 3(a) and Rule 3(b). When the goods possess a predominant polymer, even in stock-lot form, the specific heading prevails over the residual heading.

A mere difference of opinion on classification constitutes a pure question of law and does not amount to wilful mis-statement or suppression of facts. The extended period of limitation under Section 28(4) of the Customs Act, 1962 is therefore not invocable. The goods were self-assessed, 100% examined and cleared after verification with no variation in description, value or quantity. No element of mens rea, collusion or suppression exists. Consequently, neither confiscation under Section 111(m) nor penalty under Section 114A is sustainable. The Noticee had acted with bona fide belief based on supplier specifications and consistent past practice at various ports. Such bona fide belief provides a complete defence against any penalty. They submitted that Since no suppression or wilful mis-statement has been established, the Show Cause Notice issued under the extended period is time-barred. Even on merits, the classification adopted at the time of import is correct.

11. DISCUSSION AND FINDINGS:

11.1. I have gone through the Show Cause Notice, audit observations, and case records. Despite being given sufficient opportunities of hearing, the noticee has not availed the same. Therefore, I find that in the instant case, adequate opportunities have been provided to the importer to respond to the impugned demand notice. However, the importer has failed to file any defense, despite a considerable amount of time having been passed. I find that the importer failed to avail themselves of the opportunities for personal hearings provided to defend their case. Neither the noticee nor the authorized representative appeared for the personal hearing on any of the three dates given to present their case, nor have they submitted any reply to the allegations mentioned in the impugned Show Cause Notice (SCN). Thus, I find that sufficient time and opportunity have been given to the noticee, and therefore, the principles of natural justice have been complied with. I am of the considered opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

11.2. Before proceeding further, it is submitted that the Hon'ble Supreme Court, various Hon'ble High Courts, and Tribunals have consistently held that an ex-parte decision does not violate the principles of natural justice when sufficient opportunities—such as issuance of a show cause notice (SCN), opportunity to file a reply, and personal hearing—have been provided to the party concerned, but such opportunities were not availed or responded to.

11.2.1 The Hon'ble Supreme Court in *Jethmal v. Union of India* [1999 (110) E.L.T. 379 (S.C.)] has authoritatively observed that where the party is given the opportunity to submit a written reply and to indicate if they wish to be heard in person or through a representative, but fails to respond or intimate their desire for a personal hearing, the authority is justified in proceeding ex-parte on the available material without issuing further

notices. The Court emphasized that the rigid application of *audi alteram partem* does not apply in such cases, as compelling appearance or additional formal notices would amount to an idle formality.

11.2.2 Similarly, the Hon'ble High Court of Jharkhand in *Rajeev Kumar v. The Principal Commissioner of Central Goods and Service Tax & Ors.* [W.P. (T) No. 1617 of 2023, decided on 12.09.2023] held that no error was committed by the adjudicating authority in passing the impugned Order-in-Original, as sufficient opportunities were provided by issuing the SCN and fixing personal hearing dates multiple times, yet the petitioner neither responded nor appeared. The Court rejected the contention of violation of natural justice principles and dismissed the writ petition as not maintainable, noting the availability of efficacious alternative remedies under the Act.

11.2.3 The aforesaid binding precedents, along with several other decisions of Hon'ble High Courts and CESTAT affirm that where adequate and fair opportunities are afforded but not utilized by the noticee, proceeding ex-parte does not infringe upon the principles of natural justice.

11.2.4 Thus, in the present case, as sufficient opportunities were duly provided but not availed, the ex-parte adjudication does not suffer from any violation of natural justice principles.

11.3 Hence, I proceed with the ex-parte finalization of the adjudication proceedings, based on the facts and evidence available on record.

11.4 In the instant case, I find that the main issues that are to be decided are:

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

the Customs Tariff Act, 1975.

ii. Whether short-levied duty of ₹ 392,080/- is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

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

iv. Whether penalty is imposable upon the importer under Section 114A/112(a)(ii) of the Customs Act, 1962.

11.4. I find from available records that the importer, **M/s. NAVKAR IMPEX**, filed various Bills of Entry declaring the goods as *"Stock lot of printed/unprinted plastic packaging material/rolls in mix size and micron"*, *"Stock lot of plastic packaging material in mix size and gsm"*, *"Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm"*, etc., and classified them under Customs Tariff Headings (CTH) **39201099, 39202090, 39206919 & 39207119**. For assessment, they discharged duty @ **30.980%** (BCD 10% + SWS 10% + IGST 18%). However, on careful scrutiny, I find that these headings are specific to polymers of ethylene, propylene, polyesters, and cellulose respectively, whereas the importer failed to provide any evidence or description matching those specifications. Instead, they merely declared generic descriptions. As per Rule 3 of the General Rules for Interpretation of Import Tariff, where goods cannot be specifically classified, they are to be classified under the last applicable heading. Hence, the goods are correctly classifiable under **CTH 39209999 – Other plastics**. Their declaration was factually incorrect and legally impermissible. By mis-declaring the classification, they misled the Department into assessment at a lower duty rate.

11.5 I find that the importer has placed reliance on DGFT Trade Notices No. 37/2019-20 dated 22.10.2019 and No. 46/2019-20 dated 17.01.2020, which direct importers to declare specific 8-digit HS codes wherever known and discourage the residual "Others" category. However, in the present case the importer itself did not declare any specific polymer composition (e.g., "Stock lot of PP" or "Stock lot of PE") in the Bills of Entry and used only generic descriptions. Only after issuance of the SCN has the importer taken the stance that the goods fall under particular sub-headings. In the absence of specific composition mentioned in the description of goods, classification can only be ascertained by applying Rule 3 of the General Rules of Interpretation. Further, they emphasised 100% physical examination of 9 out of 10 Bills of Entry. Examination of goods is generally carried out visually by Docks Officers; testing is done in very few cases. Most consignments are cleared on visual appearance and on the general belief that the importer has correctly classified the goods. The fact that the importer was not caught at the material time does not grant lifetime impunity against misclassification. The importer cannot hide behind the garb that examination was carried out by Docks Officers.

11.6 I find that the importer has submitted that classification must be done sequentially and Rule 3(a) (specific description preferred) was correctly applied. However, the importer itself gave a generic description instead of a specific one. Classification can only be ascertained by applying Rule 3 of the General Rules of Interpretation. As per Rule 3, where goods cannot be specifically classified by reference to Rule 3(a) or 3(b), they are to be classified under the last applicable heading. Hence, the goods are correctly classifiable under CTH 39209999 – Other plastics. The declaration was factually incorrect and legally impermissible. The importer has contended that classification dispute is a pure question of law and does not amount to wilful mis-statement or suppression. However, the goods are generic "stock lot packaging plastic materials" which do not conform to the specific headings under 3920. The tariff wording is unambiguous and such generic materials are clearly covered under the residual heading 39209999. The

importer was fully aware of the ineligibility but still claimed undue benefit by declaring them under concessional headings. Such conduct clearly amounts to wilful misstatement and suppression of facts, squarely attracting the extended period of limitation under Section 28(4).

11.7 I find that the importer has claimed bona fide belief based on supplier specifications. However, the importer neither furnished laboratory reports nor any documentary evidence to substantiate the claimed classification under 392010, 392020, 392069 or 392071. In the absence of specific description, goods fall under the residual entry. The burden to prove correctness of classification is on the importer and classification provisions are subject to strict interpretation (Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Co. [2018 (332) ELT 14 (SC)] – Constitutional Bench).

11.8. I observe that classification under the Customs Tariff Act must be done strictly based on description and composition of the goods. In this case, the importer neither furnished laboratory reports nor documentary evidence to substantiate the claimed classification under 392010, 392020, 392069, or 392071. Therefore, the reliance on these headings was incorrect. As per the settled law, where specific description is absent, goods fall under the residual entry. Accordingly, the correct classification is under **CTH 39209999**, attracting **BCD @ 15%**, SWS @ 10% of BCD, and IGST @ 18%, i.e., total effective duty of **37.470%**, instead of 30.980% wrongly applied.

11.9. I find that the importer, by adopting incorrect classification, discharged duty at the effective rate of **30.980%** instead of the correct **37.470%**. This deliberate misstatement has resulted in short levy of Customs Duty amounting to **₹ 392,080/-** on an assessable value of the imported goods as detailed in Annexure A to the SCN. The computation of differential duty, as brought out in the SCN, has been verified and found correct.

11.10. I observe that Section 17 of the Customs Act, 1962, governs self-assessment and casts a statutory obligation on the importer to correctly assess and discharge customs duty. This responsibility is not contingent upon departmental intervention. In addition, Section 46(4) of the Act specifically mandates that an importer, while presenting a Bill of Entry, shall make and subscribe to a declaration as to the truth of the contents. Therefore, any misrepresentation or suppression in the declaration, especially with regard to classification, directly attracts penal consequences under the Act. In the present case, the importer, by misclassifying the goods under incorrect headings, failed in their legal responsibility.

11.11. I observe that *'Ignorantia Juris Non Excusat'* is an important principle in law, which dictates that the legal system assumes that laws are publicly accessible, and individuals have a duty to exercise due diligence in understanding and complying with the law. Thus, it is a responsibility of individuals to know and follow the law, regardless of whether they were aware of the law or not. In other words, a person cannot avoid liability by claiming that they did not know the law.

11.12. In this connection, I observe that the burden to prove the correctness of classification is on the importer; and that classification and exemption provisions are subject to strict interpretation. I place reliance upon the following relevant legal pronouncements:

- **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai** [2009 (234) ELT 389 (SC)] – burden was on the appellant to prove that the appellant satisfied the terms and conditions of the claimed classification/exemption.
- **Krishi Upaj Mandi Samiti v. CCE** [2022 (58) GSTL 129 (SC)] – interpretation of taxing statute must follow plain language and strict interpretation.
- **Uttam Industries Vs. CCE** [2011 (265) ELT 14 (SC)] – exemption notifications and tariff headings must be strictly construed, literally

applied.

- **Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Co.** [2018 (3327 SC)] – Constitutional Bench held that benefit of ambiguity in exemption/interpretation cannot go to the assessee; it must be interpreted in favour of Revenue.

Relevant para of Dilip Kumar judgment reads:
"41. … every taxing statute including charging, computation and exemption clauses should be interpreted strictly. Further, in case of ambiguity in a charging provision, the benefit must necessarily go in favour of the subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State."

11.13. Hence, from the above discussions, I find that the claim of classification made by the importer cannot be brushed aside as an inadvertent error. The goods in question are undisputedly generic "stock lot packaging plastic materials," which do not conform to the specific headings under 3920. The wording of the tariff was unambiguous and such generic materials were clearly covered under the residual heading 39209999. Therefore, it is evident that the importer was fully aware of the ineligibility but still went ahead and claimed undue benefit by declaring them under more concessional headings. Such conduct clearly amounts to willful misstatement and suppression of facts, squarely attracting the extended period of limitation under Section 28(4) of the Customs Act, 1962.

11.14. In view of the foregoing, I hold that the importer is liable to pay the differential duty of **₹ 3,92,080/-** under Section 28(4) of the Customs Act, 1962. In terms of Section 28AA, the importer is further liable to pay interest on the said amount from the date it became due till the date of actual payment. The statutory liability of interest is automatic and compensatory in nature, and no separate mens rea is required for such demand.

11.15. It is alleged in the Show Cause Notice that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that Section 111 of the Customs Act, 1962, provides for confiscation of improperly imported goods. The relevant provision, inter alia, is reproduced below:

> *"111. Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:—*
>
> *...*
>
> *(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"*

11.16. In the instant case, the importer, filed various Bills of Entry declaring the goods generically as "Stock lot of printed/unprinted plastic packaging material/rolls in mix size and micron", "Stock lot of plastic packaging material in mix size and gsm", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm", etc., and classified them under specific Customs Tariff Headings (CTH) 39201099, 39202090, 39206919, and 39207119, pertaining to polymers of ethylene, propylene, polyesters, and cellulose respectively. However, as elaborated supra, no documentary evidence, such as laboratory test reports, material composition certificates, or technical specifications, was provided to substantiate that the goods matched the specific polymer requirements of these headings. The declarations were generic and did not correspond to the specific descriptions mandated by those tariff entries.

11.17. Upon scrutiny of the records and available evidence, it is established that the goods do not correspond with the entries made in the Bills of Entry in respect of classification and other material particulars. The declared headings are specific and inapplicable to the impugned generic stock lot plastic packaging materials, which correctly fall under the residual heading CTH 39209999 (Other plastics), as held earlier. This misdeclaration in classification constitutes a material particular, as it directly led to incorrect assessment and short-levy of duty. The importer's failure to furnish supporting evidence further confirms the non-correspondence.

11.18. It is settled law that misdeclaration of classification, where the declared heading does not align with the actual nature and composition of the goods and results in evasion/short-levy of duty, renders the goods liable to confiscation under Section 111(m), as the entry fails to truthfully reflect the particulars of the imported goods. Reliance is placed on precedents where similar misdeclarations attracted Section 111(m), particularly when classification errors are willful and not mere technical mistakes.

11.19. Accordingly, I find that the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.

12.1. As the impugned goods have been found liable to confiscation under Section 111(m) of the Customs Act, 1962, it becomes necessary to examine whether redemption fine under Section 125 of the said Act is imposable in lieu of confiscation. The statutory provision reads as under:

> *"Section 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."

[Provided further that such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.]

12.2 A plain reading of the above provision reveals that the imposition of redemption fine serves as an alternative to confiscation, providing the owner of the goods an opportunity to redeem them on payment of a fine, wherever their clearance for home consumption is not restricted under any policy or statutory provision.

12.3 In the instant case, the goods are dutiable plastic packaging materials but not prohibited under the Customs Tariff Act, 1975, or the Foreign Trade (Development & Regulation) Act, 1992. There exists no restriction or prohibition under any policy framework, including any compulsory certification or other regulatory requirement, which would prevent their clearance for home consumption upon payment of applicable duties and charges.

12.4 I take note of the provisions of Section 125(2) of the Customs Act, 1962 which provide that where any fine in lieu of confiscation of goods is imposed, the owner of such goods shall, in addition, be liable to duty and charges payable in respect of such goods. Thus, even where goods are not physically available, redemption fine can still be imposed.

12.5. I find the goods imported vide impugned bill of entry are not available for confiscation, however, I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"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 regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III 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 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)."

12.6 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, I find that any goods improperly imported as provided in any sub-section of Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, they cannot be given differential treatment. In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of

Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported in 2009 (248) ELT 122 (Bom.), upheld by Hon'ble Supreme Court in 2010 (255) ELT A.120 (S.C.), is squarely applicable in the present case. Accordingly, I conclude that in the present case the redemption fine in lieu of confiscation of the goods under Section 125 of the Customs Act, 1962 is required to be imposed.

13. From the above discussions, it is evident that the importer, has willfully mis-declared the classification of the impugned goods by claiming them under specific headings CTH 39201099, 39202090, 39206919, and 39207119. This misdeclaration led to discharge of duty at a lower effective rate of 30.980% instead of the correct 37.470% under residual CTH 39209999, resulting in short-levy of Customs duty.

13.1 I find that such conduct amounts to willful misstatement and suppression of facts with intent to evade payment of appropriate duty. This willful mis-statement/suppression attracted the extended period under Section 28(4), and the differential duty along with interest has been held recoverable.

13.2. In view of the above, the importer has rendered themselves liable for penal action under the provisions of Section 114A of the Customs Act, 1962, which provides for penalty equal to the duty short-levied in cases of short-levy/non-levy arising from collusion, willful mis-statement, or suppression of facts. The relevant provision reads as under:

> "*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:

[Further provisos as applicable, including adjustment for appellate reductions/increases and the fifth proviso:] Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114."

13.3 A plain reading of Section 114A, particularly its fifth proviso, makes it clear that once penalty is levied under this section, no separate penalty can be imposed under Section 112 (including 112(a)) or Section 114. Therefore, in the present case, since the short-levy arises directly from willful mis-statement/suppression in classification declaration leading to evasion/short-payment of duty, penalty is appropriately leviable under Section 114A, and not under Section 112(a) (which applies to improper importation rendering goods liable to confiscation, subject to the overriding proviso in Section 114A). Invoking both simultaneously would contravene the statutory bar.

13.4 Accordingly, I find that the importer is liable for penalty under Section 114A of the Customs Act, 1962 and no separate penalty under Section 112(a) is imposed, as the same is statutorily precluded upon levy under Section 114A.

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

ORDER

(i). I reject the classification declared by the importer under CTH 39201099, 39202090, 39206919 & 39207119, and hold that the goods are correctly classifiable under **CTH 39209999** of the Customs Tariff Act, 1975. The goods shall be assessed at the correct rate of duty under this heading without the benefit of the wrongly claimed classification.

(ii). I order to confiscate the goods having assessable value of ₹ 60,41,294/- **(as per Annexure A of SCN)** under Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the said goods for home consumption on payment of **a redemption fine of Rs. 60,000/- (Rupees Sixty Thousand only)** under Section 125 of the Customs Act.

(iii). I order to demand and recover the short-levied duty amounting to **₹ 3,92,080/- (Rupees Three Lakh Ninety Two Thousand Eighty only)** from the importer under Section 28(4) of the Customs Act, 1962.

(iv). I order to demand and recover interest at the appropriate rate on the short-paid duty of **₹ 3,92,080/-** under Section 28AA of the Customs Act, 1962.

(v). I order to impose penalty of **₹ 3,92,080/- (Rupees Three Lakh Ninety Two Thousand Eighty only)** under Section 114A of the Customs Act, 1962. However, in case the said importer pays the duty along with interest within 30 days of the communication of the order, the amount of penalty payable shall be reduced to **25% of the penalty amount**, as per provisions of Section 114A of the Customs Act, 1962.

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

14. The Show Cause Notice issued vide CUS/APR/BE/79/2025-Gr 2-O/o

Pr Commr-Cus-Mundra & 25.03.2025 stands disposed off in above terms.

Digitally signed by Dipakbhai Zala
Date: 23-03-2026 18:57:00

Additional Commissioner of Customs

(Import Assessment), Custom House, Mundra

Mundra

Encl: Annexure-'A'

To,

M/s. NAVKAR IMPEX,

23, GROUND FLOOR, AKASH KUNJ,

APPTT. SECTOR-9, ROHINI

Copy to:-

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

Annexure-A

BE No	BE Date	Assessable Value	Revised total Duty (BCD:15%, SWS:10% & IGST:18%)(in Rs.)	Total Duty as declared (BCD:10%, SWS:10% & IGST:18%)(in Rs.)	Duty Recoverable
7809245	02-06-2020	11,54,867.56	4,32,728.87	3,57,777.97	74,950.90
9449375	04-11-2020	6,62,102.10	2,48,089.66	2,05,119.23	42,970.43
9964360	15-12-2020	5,40,529.20	2,02,536.29	1,67,455.95	35,080.35
2414944	19-01-2021	6,34,298.40	2,37,671.61	1,96,505.64	41,165.97
2415046	19-01-2021	5,62,104.00	2,10,620.37	1,74,139.82	36,480.55
2585990	01-02-2021	5,18,242.39	1,94,185.42	1,60,551.49	33,633.93
2922090	26-02-2021	5,54,518.80	2,07,778.19	1,71,789.92	35,988.27
3077244	09-03-2021	5,48,308.44	2,05,451.17	1,69,865.95	35,585.22
4314828	14-06-2021	5,95,297.50	2,23,057.97	1,84,423.17	38,634.81
4820613	26-07-2021	2,71,025.30	1,01,553.18	83,963.64	17,589.54
		60,41,293.69	**22,63,672.73**	**18,71,592.78**	**3,92,079.97**