



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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DIN: 20250771MN000000D603

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-50/Mehta/ICD-Sachana/O&A/HQ/2020-21
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	5644089 dated 30.09.2021
C	मूल आदेश संख्या/ Order-In-Original No.	:	77/ADC/SR/O&A/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	09.07.2025
E	जारी करनेकी तारीख/ Date of Issue	:	09.07.2025
F	द्वारापारित/ Passed By	:	SHRAVAN RAM, ADDITIONAL COMMISSIONER, CUSTOMS AHMEDABAD.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/S. MEHTA ENTERPRISES 6/9, NAVJIVA SOCIETY, LAMINGTON ROAD, MUMBAI – 400002
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

M/S. MEHTA ENTERPRISES (IEC No. 0313019762), situated at Flat No. 35, 4th Floor, Ghaswala Building, Opp. Bane Compound, Sane Guruji Marg, Tardeo, Mumbai and having Office address at 6/9, Navjivan Society, Lamington Road, Mumbai-400002 (hereinafter referred to as 'M/s. Mehta Enterprises' or 'the importer' or 'the noticee') through their Custom House Broker M/s. Shivam Logistics (CHA License No. AEBPD9820QCH002) ('CHA') had filed a Bill of Entry for import of "**3 Ply Mask**" and "**Birthday Foil balloon assorted colors and design**" classifying them under CTH

63079090 and CTH 95059090 respectively at ICD Sachana. The details of the Bill of Entry is as per Table-1 below:

Table-1

BoE No. & date	Description of goods	Quantity (Kg)	Bill of Landing and Date	Assessable value (Rs) (Fig. in actual)	Customs Duty Rs. (Fig in actual)	SWS	IGST INR	Total duty paid INR
5644089 dated 30.09.2021	3 Ply Mask	663	NBTA011107 dated 26.08.2021	96906	9690	969	5378.3	16038
	Birthday Foil balloon assorted colors and design	23897		3911461	782292	78229	858956	1719478
Total duty paid (including SWS, IGST & Others)								1735516

2. An email dated 04.10.2021 was received from the ADG, NCTC wherein it was conveyed that Importer viz. M/s. Mehta Enterprises (IEC: 0313019762) having address at Flat No. 35, 4th Floor, Ghaswala Building, Opp. Bane Compound 493, Sane Guruji Marg, Mumbai-400 034 has imported goods declared as “3 ply mask for COVID-19” (663 Kgs) and “Birthday foil balloons assorted colors and design” (23897 Kgs) at ICD Sachana. It was also conveyed that the birthday foil balloons have been misclassified under CTH 9505 9090, as Balloons are rightly classifiable under CTH 9503 0090. The applicable BCD is 60% and IGST 18%. Further, with effect from 1st September, 2020, BIS certification is also mandatory for import of Toys including balloons.

3. It was also observed that Risk Management System ('RMS') has also prescribed 100% examination for the said Bill of Entry for checking undeclared cargo and mis-declaration of quantity, value and IPR violation. Accordingly, it was requested that a thorough and detailed examination of this consignment and necessary investigation may be carried out.

4. In view of the above, examination of the said goods imported under Bill of Entry No. 5644089 dated 30.09.2021 was carried out by the officers posted at ICD, Sachana along with officers of Customs (Preventive), Ahmedabad in the presence of the CHA, on 05.10.2021. The goods were imported from China against the Performa invoice bearing no. PI2107330 dated 10.08.2021, Commercial Invoice, Packing List No. BR2107330 dated 26.08.2021 all issued by Sin Land Import & Export Co. Ltd, China in favor of M/s Mehta Enterprise, C/35, GhaswalaBldg, 493, Sane Guruji Marg, RTO Lane, Tardeo, Mumbai. On examination, it was found that the goods imported under the above referred Bill of Entry were “3 ply mask for COVID-19” (663 Kgs) and “Birthday foil balloons assorted colors and design” (23897 Kgs). Further, it is observed that Birthday foil balloons assorted colors and design is classified under CTH 9505 9090 attracting BCD @ 20%, SWS @10% of BCD and IGST @ 18%. In view of the NCTC alerts, a query memo dated 05.10.2021 was raised to the importer M/s Mehta Enterprise. The content of the query memo is reproduced as below:

“As per examination report, Goods are found Led Balloons along with general latex Balloons. In common parlance, Balloons should be classified under category of toys and should be classified under CTH 95030090,

please justify why the imported goods should not be classified under CTH 95030090.”

5. In response of this query memo, importer M/s. Mehta Enterprises vide letter dated 12.10.2021 submitted that:

- they have classified “Birthday foil balloons assorted colors and design” under CTH 95059090, which would be sold in the market as a decorative item/Balloon and would be used in Birthday party/marriage party for decoration purpose;
- that the imported goods i.e. “Birthday foil balloons assorted colors and design” should be rightly classifiable under CTH 95059090, as the same are going to sell for use as a decorative purpose in parties;
- that CTH 95059090 covers the products falling under the category of “Festive, Carnival or Other Entertainment Articles, Including Conjuring Tricks and Novelty” and therefore considering the imported goods i.e. Birthday foil balloons assorted colors and design as festive decorative objects/balloon, the classification of the goods was opted under CTH 95059090.

6. As per Notification No. 50/2017-Customs dated 30.06.2017 – Sr. No. 284 as amended by Notification No. 02/2021-Customs dated 01.02.2021 – Sr. No. 29 Toy Balloons are appropriately classifiable under CTH 9503 0090 (attracting BCD @ 60%, SWS @10% of BCD and IGST @ 5%). The relevant portion i.e. Sr. No. 29 of the Notification 02/2021 dated 01.02.2021 is reproduced as under:

(29) Against S. No. 284, in column (3), after item (iii), the following explanation shall be inserted, namely: -

*“Explanation. - For the removal of doubts, this entry does not include toy balloons made of natural rubber latex (**toy balloons are classified under Customs tariff heading 9503**).”*

HSN Note (D) (vii) of Chapter Heading 9503 reads as under:

“95.03- Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds. This heading covers:

(A) Wheeled toys.....

(B) Dolls' carriages (e.g., strollers), including folding types.....

(C) Dolls.....

(D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). However, toys which, on account of their design, shape or constituent material, are identifiable as intended exclusively for animals, e.g. pets, do not fall in this heading, but are classified in their own appropriate heading. This group includes:

All toys not included in (A) to (C). Many of the toys are mechanically or electrically operated.

These include:

- (i) to (vi)*
- (vii) **Toy balloons** and toy kites."*

Further, the CTH 9505 pertains to "FESTIVE, CARNIVAL OR OTHER ENTERTAINMENT ARTICLES, INCLUDING CONJURING TRICKS AND NOVELTY JOKES". The sub tariff heads of CTH 9505 are produced below:

95051000 – ARTICLES FOR CHRISTMAS FESTIVITIES

950590 – OTHER

95059010 – MAGICAL EQUIPMENTS

95059090 – OTHER

In view of above, the impugned goods should be classified under category of toys and the imported goods viz., "*Birthday foil balloons assorted colors and design*" as toy balloon under CTH 95030090 instead of 95059090 as classified by the importer.

7. As such, the importer has classified the impugned goods under CTH 95059090 attracting BCD @20%, SWS @10% of BCD and IGST @ 18%, total duty amounting to Rs. 17,19,478/-, while as per the correct CTH classification, i.e. 95030090, attracting BCD @60%, SWS @10% of BCD and IGST @5%, the total Customs duty arrives at Rs. 29,06,216/-. Hence, the importer has intentionally classified the goods under CTH 95059090 for evading Customs duty amounting to Rs. 11,86,737/-. Therefore, the goods imported under Bill of Entry No. 5644089 dated 30.09.2021 were seized on 25.10.2021 under Panchnama proceedings under Section 110 of the Customs Act, 1962 on the reasonable belief that the goods are liable for confiscation.

8. Further, since the impugned goods correctly fall under CTH 95030090, certificate mentioning that the goods are conforming to the standards prescribed by BIS is required in view of the DGFT vide Notification No. 26/2015-20 dated 01.09.2017 as amended vide Notification No. 33/2015-20 dated 01.12.2019 revised the Policy Condition No. 2 of Chapter 95 of ITC (HS) for import of Toys in India. Further, Ministry of Commerce and Industry has issued Toys (Quality Control) Order, 2020 instructing the mandatory requirement of the certificates mentioning that the goods are conforming to the standards prescribed by BIS in this regard.

9. Statement of Shri Rathod Laxmanbhai Pitamberbhai, G-Card holder, M/s Shivam Logistics and authorized by the Importer M/s Mehta Enterprise, Mumbai was recorded on 25.10.2021 under Section 108 of the Customs Act, 1962, wherein he interalia stated that:

- they have classified i.e. Birthday foil balloons assorted colors and design under CTH 95059090 as per the advice of Shri Sandeep Mehta son of Shri Uttam Chand Mehta, Proprietor of M/s Mehta Enterprises;
- that Shri Sandeep Mehta informed them that the imported goods Birthday foil balloons assorted colors and design would be sold in the market as a decorative

item/Balloon and would be used in Birthday party/marriage party for decoration purpose;

- that the imported goods i.e. Birthday foil balloons assorted colors and design should be rightly classifiable under CTH 95059090, as the same are going to sell for use as a decorative purpose in parties;
- that CTH 95059090 covers the products falling under the category of “Festive, Carnival or Other Entertainment Articles, Including Conjuring Tricks and Novelty” and therefore considering the imported goods i.e. Birthday foil balloons assorted colors and design as festive decorative objects/balloon, the classification of the goods was opted under CTH 95059090;
- that during the course of recording statement Notification No. 50/2017-Customs dated 30.06.2017 – Sr. No. 284 as amended by Notification No. 02/2021-Customs dated 01.02.2021 – Sr. No. 29 was shown to Shri Laxman Bhai Rathod and after perusing the same and after going through the same, he agreed that the goods imported i.e. Birthday foil balloons assorted colors and design imported under Bill of Entry No. 5644089 dated 30.09.2021 are rightly classifiable under CTH 9503;
- that the importer has not provided the BIS certificate for the imported goods i.e. Birthday foil balloons assorted colors and design;
- that the imported goods being decorative balloons classifiable under CTH 95059090 and for the clearance of the same, BIS is not required;
- that though, he is not totally agreeing with the classification of the goods under CTH 95030090, they would clear the goods under the said Notification by paying the applicable higher Customs duty under protest in order to avoid the detention/demurrage charges and to sale the goods in the coming festive season.

10. Further, a letter dated 26.10.2021 from Importer M/s Mehta Enterprises, Mumbai was received requesting waiver of show cause notice for Bill of Entry no. 5644089 dated 30.09.2021 and release the goods as the subject goods are sensitive to heat and likely get damaged since made of natural latex rubber. It was also requested that the subject goods are perishable in nature and they have to meet the business commitments of giving delivery in time frame and the festival is ahead, failing which, the order would be cancelled resulting in heavy financial loss. They also requested that they will pay any differential duty, fine, penalty arising under protest and they will also abide by the statement or submissions given by Shri Laxmanbhai Pitamberbhai Rathod.

11. RELEVANT LEGAL PROVISIONS

11.1 SECTION 28 OF THE CUSTOMS ACT, 1962:

“Section 28. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. -

“...

(4) Where any duty has not been ¹⁰[levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been ¹¹[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.

...

....

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

...

...

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

...

...”

11.2 SECTION 28AA OF THE CUSTOMS ACT, 1962:

“Section 28AA. Interest on delayed payment of duty. -

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to 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.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms

of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment."

11.3 SECTION 111 OF THE CUSTOMS ACT, 1962:

"Section 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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;

...

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

..."

11.4 SECTION 112 OF THE CUSTOMS ACT, 1962:

"SECTION 112. 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

....

shall be liable, -

...

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

..."

11.5 SECTION 114A OF THE CUSTOMS ACT, 1962:

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

shall be liable to a penalty not exceeding five times the value of goods.”

11.6 SECTION 118 OF THE CUSTOMS ACT, 1962:

“Section 118. Confiscation of packages and their contents. -

(a) Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation.

..."

12. It appeared that the importer had mis-classified their goods to evade Customs duty and thus the imported goods appeared liable to confiscation under Section 111 of the Customs Act, 1962. Further, since the importer was engaged in said act of violation, they appeared liable to penalty under Section 112(a) and 114A of Customs Act, 1962.

13. DEFENCE REPLY AND PERSONAL HEARING AT ORIGINAL ADJUDICATION PHASE

13.1 Since the importer requested for waiver of the Show Cause Notice, they vide their letter dated 12.10.2021, 25.10.2021 and 26.10.2021 have made the following submissions:

- The subject goods are sensitive to heat and likely get damaged since made of natural latex rubber and there is probability of melting due to heat.
- That their personal requests for release of goods have been ignored so far and the impugned goods have not been provisionally released as provided in the Customs Act, 1962 and as per the guidelines laid down by Board vide Circular No. 35/2017-Customs dated 16.08.2017 stipulating that the goods be released provisionally if owner makes a request and is ready to submit Bond with security.
- The impugned goods have been examined by officers and they had replied to the dock's queries.
- That the goods are not prohibited under Section 2(33) of the Customs Act, 1962 and therefore the subject goods can be released.
- That they are ready to submit Bond and Bank Guarantee for provisional release of goods.
- They have relied upon the following case laws:
 1. M/s Indian Oil Corporation (2004 (165) ELT 257 (SC)
 2. Collector vs. Dhiren Chemicals Industries – 2002 (143) ELT 19 (SC)
 3. The Commissioner of C. Ex., Bolpur Vs Ratan Melting & Wire Industries – 2008 (231) ELT 22 (SC)
 4. The Commissioner of Central Excise, Nagpur Vs. Simplex Mills Co. Ltd. – 2005 (181) ELT 0345(SC)
 5. Vicco Laboratories -2005 (179) ELT 17 (SC)
 6. Belmaks Pvt. Ltd. Vs. The Commissioner of Central Excise, Delhi – 2003 (158) ELT 295 (Tri. Del.)
 7. Mauri Yeast India Pvt. Ltd. Vs. State of U.P. – 2008 (225) ELT 321 (SC)
 8. Commissioner of Central Excise Vs. Wockhardt Life Science Ltd. – 2012 (277) ELT 299 (SC)
 9. CCE, Rajkot Vs. Plastic Industries – 2007 (210) ELT 534 (Tri-Ahmd) and affirmed by the Hon'ble Supreme Court – 2011 (270) ELT A157 (SC)
 10. The Commissioner of Central Excise, Chennai –IV Vs. Hindustan Lever Ltd. – 2015 (323) ELT 209 (SC)
 11. H.P.L Chemical Ltd. Vs. Commissioner of C. Ex., Chandigarh 0 2006 (197) ELT 324 (SC)
 12. Collector of Customs, Calcutta Vs. Hindalco Industries Ltd. 2007 (217) ELT 324 (Cal.)
 13. Puma Ayurvedic Herbal (p) Ltd. Vs. The Commissioner of C. Ex., Nagpur 2006 (196)ELT 3 (SC)
 14. S. Rajiv Vs. The Commissioner of Customs (CSI Airport), Mumbai – 2014 (302) ELT 412 (Tri. Mumbai)

15. Komal Trading Company Vs. The Commissioner of Customs (Import), Mumbai – 2014 (301) ELT 506 (Tri. Mumbai)

16. C. Natvarlal & Co. Vs. CC (Import), Mumbai under appeal no. C/1029/12-Mum., order no. A/05/13/CSTB/C-I dated 20.12.2012 (Tri. Mumbai)

17. M/s Surbhit Impex Pvt. Ltd. Vs. The Commissioner of Customs (EP), Mumbai – 2012 (283) ELT 556 (Tri. Mumbai)

18. MT Ltd. Vs. The Commissioner – 2007 (214) ELT 10(SC)

19. Rajiv & Co. Vs the Commissioner – 2014 (302)ELT 412 (Tribunal)

- That the goods may be assessed, cleared and allowed for home consumption in terms of CBIC Circular 22/2004-CUS dated 03.03.2004.
- That they are ready to pay any differential duty, fine, penalty arising under protest and that they will abide by the statement or submissions given by Mr. Rathod Laxmanbhai Pitamberbhai on their behalf.

13.2 Shri Uttam Chand Mehta, proprietor of M/s Mehta Enterprises and Shri Sandip Jain, Manager appeared for the Personal Hearing virtually through video conference on 26.10.2021 at 05:30 PM. They stated that the balloons are not for the purpose of using as toys and they are solely for decorative purposes. They reiterated the submissions already made in their written submission dated 12.10.2021, 21.10.2021 and 26.10.2021. They further affirmed and agreed to the statement given by their CHA in this matter. They further stated that the CTH classification adopted by them is to the best of their understanding based on the end use purpose of the items imported and they firmly stick to their stand taken. They stated that they have nothing more to add and requested to drop proceedings initiated against them and release the consignment at the earliest since they have urgent orders to fulfill during the coming festive season.

14. ORIGINAL ADJUDICATION ORDER (OIO), APPEAL AGAINST THE OIO AND ORDER-IN-APPEAL:

14.1 The adjudicating authority vide Order-in-Original (OIO) No. 67/ADC/AKS/O&A/2021-22 dated 28.10.2021 passed the following order:-

- Rejected the classification of goods, i.e. " Birthday foil balloons assorted colors and design" under CTH 95059090 imported under Bill of Entry No. 5644089 dated 30.09.2021 and ordered to reclassify the same under CTH 95030090;
- Ordered to reassess the Bill of Entry No. 5644089 dated 30.09.2021 by reclassifying the impugned goods, i.e. "Birthday foil balloons assorted colors and design", under CTH 95030090 and accordingly re-determine the total Customs Duty payable at Rs. 29,06,216/- (Rupees Twenty-Nine Lakhs Six Thousand Two Hundred and Sixteen only) with respect to the said impugned goods having assessable value of Rs. 39,11,461/- (Rupees Thirty-Nine Lakhs Eleven Thousand Four Hundred and Sixty-One only) under Section 28(8) of the Customs Act, 1962;

iii. Ordered to recover the re-determined customs duty payable amounting to Rs.29,06,216/- (Rupees Twenty-Nine Lakhs Six Thousand Two Hundred and Sixteen only) at Sl. No. ii above under section 28(10) read with Section 28(4) and 28(8) along with interest under section 28AA of the customs Act, 1962.

iv. Ordered to appropriate the Customs duty amounting to Rs. 17,19,478/- (Rupees seventeen Lakhs Nineteen Thousand Four Hundred and Seventy Eight only) already paid by the importer with respect to the impugned imported goods against the re-determined Customs duty liability of Rs. 29,06,216/- mentioned at Sl. No. iii above;

v. Ordered to confiscate the seized goods imported under Bill of Entry No. 5644089 dated 30.09.2021, under Sections 111(m), 111(o) and 118 (a) of the Customs Act, 1962 and gave an option to the importer to redeem the goods on payment of Redemption fine of Rs. 15,00,000/- (Rupees Fifteen lakhs only) under Section 125 of the Customs Act, L962;

vi. Imposed a penalty of Rs. 11,86,737/- (Rupees Eleven Lakhs Eighty Six Thousand seven Hundred and Thirty seven only) on the importer under Section 114A of the Customs Act, 1962;

vii. Refrained from imposing penalty on the importer under Section 112 as penalty is imposed under Section 114A of the Customs Act, 1962.

14.2 Being aggrieved by the above said order, M/s. Mehta Enterprises filed appeals before the Commissioner of Customs (Appeals), Ahmedabad against the said OIO, which vide its Order-in-Appeal (OIA) No. AHM-CUSTM-000-APP-443-23-24 dated 15.02.2024, remanded the matter back to adjudicating authority for passing fresh adjudication order after examining the available facts, documents and submissions made by the noticee.

15. SUBMISSION AND PERSONAL HEARING BEFORE THE DENOVO ADJUDICATION AUTHORITY:

15.1 Shri Paritosh Gupta, Advocate on behalf of the noticee submitted a written reply on 09.05.2025 wherein he submitted that:

- The Noticee was at the relevant point of time engaged in business of dealing in different kinds of goods including decorative and celebratory items. It had purchased 23,897 Kgs of 'Foil Balloons' from a foreign supplier along with 663 Kgs of 3 ply masks. The Company had filed Bill of Entry No. 5644089 dt. 30.09.2021 for clearance of imported goods and the same was therefore, classified under CTH 9505 9090 and 6307 9090 of the First Schedule of the Customs Tariff Act, 1975 respectively.

- However, a query dt. 05.10.2021 was issued to the Noticee stating that in common parlance, balloons should be classified under the category of toys and should be classified under CTH 9503 0090 instead of CTH 9505 9090 as declared by the Noticee. The Noticee responded to the queries raised by submitting written submissions to the Department by stating that the intended purpose of the imported balloons was for decorative purposes such as birthday/marriage party and the same are not suited for the purpose of being used as toys. The Noticee further contended that if the imported goods are not classifiable under the Chapter Heading 9505, then the alternative classification of the imported goods is under CTH 4016, under the category of natural rubber latex made balloons.
- Despite the extensive written submissions submitted by the Noticee, the Adjudicating Authority passed an order rejecting the classification of the goods under CTH 9505 9090 and ordered the same to be re-classified under CTH 9503 0090. Customs Duty was re-determined as INR 29,06,216/- along with interest under Section 28(8) of Customs Act, 1962 ("Act" hereinafter) out of which Rs, 17,19,478/- already paid by the Noticee was set off against the liability of Rs. 29,06,216/-. INR 11,86,737/- under Section 114A of the Act. Redemption fine of INR 15 lakhs was imposed in lieu of confiscation under Section 125 of the Act.
- Against the said Order, the Noticee preferred an Appeal before the Commissioner (Appeals), wherein the Appellate Authority passed OIA dated 15.02.2024 thereby remanding the case back to the Adjudicating Authority. Reference may be made to Paragraph 6.2 of the order wherein it is observed that the finding of the adjudicating authority that '*since balloons (made of natural rubber latex) are generally identified as toys in common parlance, the heading which provides most specific description is 9503 and subheading 950300 (other toys) with tariff item description 'Other (95030090)' are not consistent with the description narrated in the above referred Board Circular and Notification, as amended. In the said paragraph, it is also observed that last explanation inserted against Entry No. 284 pertaining to CTH 40169590 and CTH 40169990 is sufficient to explain that the balloons made of natural rubber latex are classifiable under two Chapter Headings 4016 and 9503, as per the use of the article as normal balloon or toy balloon. In furtherance thereof, at paragraph 6.3, the Commissioner (Appeals) has held that in view of the argument of the appellant that intended use of the goods is for being used for decorative purposes such as birthday/marriage party and are unsuitable for being used as toy, the observation of the adjudicating authority that '*Balloons (made of natural rubber latex) of any description – toy balloon, party balloon, foil balloon etc. do not fall under heading 9505*' also needs reconsideration in light of the HSN Explanatory Notes pertaining to Chapter Heading 95.05, reproduced at Para 14 of the impugned order, as*

the heading excludes articles that contain a festive design, decoration, emblem or motif and have alternative utilitarian functions.

- At the sake of repetition, the Noticee reiterates that the product ordered and supplied under the Bills of Entry in question has been Birthday Foil Balloons (Assorted Colours & Designs) which are made out of Natural Latex Rubber and is intended only for decorative purposes and not as toys. It is therefore, submitted that the said goods clearly fall under the HSN Explanatory Notes pertaining to Chapter Heading 95.05, as the heading excludes articles that contain a festive design, decoration, emblem or motif and have alternative utilitarian functions. It is reiterated that due to the fragile nature of the foil balloons and its actual use, the goods cannot be used by children as a toy.
- That it is pertinent to submit that the intended use of the imported goods as decorative party items has never been disputed or questioned by the Department at any stage of the proceedings. In fact, the consistent stand of the Noticee, that the subject foil balloons were meant solely for decorative use at events such as birthday and marriage parties, has remained uncontested. The entire basis for the reclassification proposed by the Department rests solely on the sweeping proposition that all balloons— irrespective of their intended use, whether decorative or as toys— are classifiable under CTH 9503 0090. This approach is fundamentally flawed as it fails to appreciate that the HSN Explanatory Notes, as well as CBIC's own circulars and jurisprudence, clearly differentiate between toy balloons and decorative balloons based on use, design, and function.
- Without prejudice to the foregoing, it is respectfully submitted that the burden to establish the correctness of the proposed reclassification rests squarely on the Department. It is a settled principle of law that when an assessee has made a declaration regarding the nature and classification of goods, the onus is on the Revenue to rebut the same with cogent evidence. In the present case, the Noticee has consistently declared the intended use of the imported goods as decorative foil balloons under CTH 9505 9090 and has supported the same with relevant submissions and legal precedents. However, the Department has failed to bring on record any material evidence to demonstrate that the goods were in fact intended to be used as toys or otherwise merit classification under CTH 9503 0090. In the absence of any contrary evidence or factual rebuttal, the classification declared by the Noticee ought to be accepted. The attempt to displace the Noticee's classification merely on the basis of generalised assumptions about balloons, without addressing their specific end use or characteristics, is legally unsustainable.

- Reliance is also placed on the Judgment of the CESTAT, Kolkata in *Commissioner of Customs v. Ess Enn Impex, (2023) 11 Centax 59 (Tri. – Cal)*, wherein the Hon'ble CESTAT had relied upon a clarification from the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India vide F.No.14031/47/2020-CI dated 24.02.2022. According to that clarification, Indian Standard (IS) Registration is required only for products meant for children under 14 years of age that are used as toys. This includes toy balloons that may pose safety risks like choking from broken latex or balloon mouthpieces. It was held that the impugned goods i.e. foil balloons, imported by the Respondent under HSN 39269099/95059090 are not covered under Toy Control Order, 2020. Thus, from the perusal of above cited order of CESTAT, Kolkata it is clear that subject goods "Foil Balloons" cannot be considered as toys and no BIS Registration is required to import the same. It is submitted that the Hon'ble CESTAT, in *Ess Enn Impex v. Commissioner of Customs (Port), Kolkata, reported in (2025) 28 Centax 389 (Tri.-Cal)*, relied upon the above mentioned judgment involving the same party. In that case, the Hon'ble Tribunal rejected the Department's classification of '*inflatable party items*' under CTH 9503 00 90. The said decision of the Hon'ble CESTAT was subsequently affirmed on merits by the Hon'ble Supreme Court in *Commissioner of Customs (Port) v. Ess Enn Impex, reported in (2025) 28 Centax 390 (S.C.)*.
- That the HSN Explanatory Notes read with the tariff heading 9505 makes it very clear that festive, carnival or other entertainment articles get classified under heading 9505. The Explanatory Note also clarifies that decorations used to decorate rooms such as garlands, lanterns etc., and decorative articles for Christmas trees such as coloured balls, animals and other figures are classifiable under heading 9505. The goods in question viz., foil balloons are also of the category of goods mentioned in the heading 9505 and as explained in the HSN Explanatory Notes.
- It is further highlighted that the if the composition of the goods in question are considered, the same are made of "natural rubber latex" and therefore, normally classifiable under the CTH 40169090 where the duty structure under the said CTH as regards the Customs Component was the same as CTH 95059090 and the component of IGST was 5% instead of 18% as applicable to goods covered under CTH 9505909. However, in view of the decorative function the goods serves and for which it is imported; to the best of appellant's understanding and knowledge, the subject decorative/party balloons were more appropriately classifiable under the CTH/HSN 95059090 where the ultimate rate of duty was more than that of goods covered under CTH 40169090.

- Without prejudice to the aforesaid submissions, it is further submitted that even if the goods are considered to be covered under both the tariff entries, the nature of the goods clearly required the same to be appropriately classified under CTH 9505 9090 rather than toy balloon as adopted in the impugned order. In this regard, reference may also be made to Rule 3 (a) of the Rules of Interpretation wherein it has been clarified that where the goods are, *prima facie* classifiable under two or more headings, classification shall be effected in the heading which provides the most specific description as against headings providing a more general description. Perusal of CTH 9505 9090 shows that the goods in question i.e., decorative balloons, were more specifically covered under CTH 9505 9090 and hence, classification of the said goods under general category of toys was wholly uncalled for and legally unsustainable.
- In light of the foregoing, it is submitted that the Noticee has rightfully classified the goods in question under CTH 9505 9090. Accordingly, it is humbly requested that the goods in question shall be allowed to be classified under CTH 9505 9090. If there are any further details/documents that may be required, we may be informed of the same so that the same can be submitted with your office for your kind consideration.

15.2 Shri Paritosh Gupta, Advocate on behalf of the noticee attended the Personal Hearing in virtual mode on 10.06.2025 and reiterates their written submission dated 09.05.2025 and the case laws submitted vide email dated 28.04.2025. He further submitted that the imported goods 'Birthday Foil balloons' are rightly classifiable in 9505 and not 9503 as decided by the Hon'ble CESTAT Kolkata and upheld by the Hon'ble SC as the same cannot be used for enhancing aesthetics and not for playing.

DISCUSSION & FINDINGS:

16. I have carefully gone through the facts of the case, defense submissions made by the noticees, oral submission made during Personal hearing, Order-in-Appeal and evidence available on the records.

16.1 I find that the Commissioner of Customs (Appeals) vide its Order-in-Appeal (OIA) No. AHM-CUSTM-000-APP-443-23-24 dated 15.02.2024, remanded the matter back to adjudicating authority for passing fresh adjudication order after examining the available facts, documents and submissions made by the noticee. I find that the observations of the Commissioner of Customs Appeals are recorded in para 6.2, 6.3, 6.6, 6.7 and 6.8 of the said OIA as per Image-1 and 2 below:

Image-1

6.2 On harmonious reading of the above referred circular and notifications, I am of the considered view that the Balloons made of natural rubber latex are classifiable under Chapter heading 4016. However, the toy balloons made of natural rubber latex are classifiable under Chapter heading 9503. Therefore, the observations of the adjudicating authority that '*Since Balloons (made of natural rubber latex) are generally identified as toys in common parlance the heading which provides most specific description is 9503 and sub-heading 950300 (other toys) with tariff item description 'Other (95030090)'*' are not consistent with the description narrated in the above referred Board Circular and Notification, as amended. The last explanation inserted against Entry No. 284 pertaining to CTH 4016 95 90 and CTH 4016 99 90 is sufficient to explain that the balloons made of natural rubber latex are classifiable under two Chapter Headings 4016 and 9503, as per the use of the article as normal balloon or toy balloon.

6.3 Further, in view of the argument of the appellant that intended use of the goods is for being used for decorative purposes such as birthday / marriage party and are unsuitable for being used as toy, the observation of the adjudicating authority that '*Balloons (made of natural rubber latex) of any description – toy balloon, party balloon, foil balloon etc., do not fall under heading 9505*', also needs reconsideration in light of the HSN Explanatory Notes pertaining to Chapter Heading 95.05, reproduced at Para 14 of the impugned order, as the heading excludes articles that contain a festive design, decoration, emblem or motif and have alternative utilitarian functions.

Image-2

6.6 I am of the considered view that the Led Balloons cannot be classified under Chapter Heading 4016 or 9505, but the same is rightly classifiable under Chapter Heading 9503 as Toy Balloons in terms of HSN explanatory notes, as reproduced in Para 14 of the impugned order, as the same specifically includes Mechanically or electrically operated toys such as Toy Balloons. Further, if the balloons made of natural rubber latex are used as parts or attachments of the Led Balloons the same will also be classified under Chapter Heading 9503.

6.7 In view of the above, I am of the considered view that the issue needs reconsideration on factual as well as legal aspect as discussed in above paras.

6.8 Further, it is observed that the appellant had waived the notice, but they had raised various contentions vide letter dated 12.10.2021, 25.10.2021 and 26.10.2021 on the classification of the goods. However, the adjudicating authority has not dealt with any of the contentions raised by the appellant vide above letters, except on the end use of the imported goods. Hence, the impugned order is non speaking order as the same has been passed without dealing with the arguments of the appellant on core issue / root cause of the present proceedings. Therefore, I am of the considered view that the impugned order also suffers from legal infirmity on this count and is liable to set aside by way of remand to the adjudicating authority, to reconsider the submissions of the appellant on the issues raised by them relying upon the Chapter Notes and technical literature submitted by them. Further, in the present appeal, apart from the classification, they have raised various contentions on confiscation of good and impositions of redemption fine, penalty etc. As the appellant had waived the Show Cause Notice, these contentions raised in the appeal memorandum have been raised for the first time before the appellate authority and the adjudicating authority had no occasion to consider the same. Moreover, the appeals were sent to the adjudicating authority for his comments on the grounds raised in the appeal, but there has been no response.

16.1 I find that the Commissioner of Customs (Appeals) has observed that the classification of the Balloons imported through the said Bill of Entry has to be reconsidered in view of factual as well as legal aspects. Therefore, the issues to be decided, before me, are as under:

- (a) Whether the declared classification under Customs Tariff Item 95059090 of the imported goods “Birthday Foil balloon assorted colors and design” under the Bill of Entry listed in Table-1 is liable to be rejected and should be reassessed under CTI 4016 or 9503 0090?
- (b) Whether M/s. Mehta Enterprises are liable to pay the differential amount of Customs Duty, under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962?
- (c) Whether the imported goods imported by M/s. Mehta Enterprises should be held liable to confiscation under Section 111 (m), 111(o) and 118(a) of the Customs Act, 1962?
- (d) Whether M/s. Mehta Enterprises are liable to penalty under the provisions of Section 112(a)(ii) and 114A of the Customs Act, 1962?

16.2 I first proceed to decide whether the declared classification under Customs Tariff Item 95059090 of the imported goods “Birthday Foil balloon assorted colors and design” under the Bill of Entry listed in Table-1 is liable to be rejected and should be reassessed under CTI 4016 or 9503 0090.

16.2.1 I find that the importer M/s Mehta Enterprises imported the goods i.e., Birthday foil balloons assorted colors and design and filed the Bill of Entry No. 5644089 dated 30.09.2021 and classified the same under CTH 95059090. As per the specific input based on risk analysis received by the Customs, the said imported goods were examined by the officers of Customs and on examination and preliminary verification, it was observed that imported goods i.e., “*Birthday foil Balloons of assorted colors and design*” and was found that they are Toy balloons and classifiable under 99030090.

16.2.2 I find that a query was given to the importer for clarifying on the classification, on which the importer replied vide letter dated 12.10.2021 that the Balloons imported by them would be sold as “Decorative Items” and should be classified under 95059090 as per their intended use. I also find that the importer vide its letters dated 21.10.2021 and 26.10.2021 contended that the balloons are made of Natural Rubber Latex and perishable in nature. They also reiterated that the imported balloons should be classified under decorative items under CTH 95059090.

16.2.3 Therefore, First I go through the relevant Chapter headings in Customs Tariff Act, 1975. I find that CTI 9503 to 9505 is given as under:-

	ALLKINDS				
9503 00	- <i>Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds:</i>				
9503 00 10	--- Of wood	u	60%	-	
9503 00 20	--- Of metal	u	60%	-	
9503 00 30	--- Of plastics	u	60%	-	
9503 00 90	--- Other	u	60%	-	
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
9504	VIDEO GAME CONSOLES AND MACHINBES, ARTICALS OF FUNFAIR, TABLE OR PARLOUR GAMES, INCLUDING PINTABLES, BILLIARDS, SPECIAL TABLES FOR CASINO GAMES AND AUTOMATIC BOWLING ALLEY EQUIPMENT				
9504 20 00	- Articles and accessories for billiards of all kinds	u	20%	-	
9504 30 00	- Other games, operated by coins, banknotes, bank cards, tokens or by any other means of payment, other than automatic bowling alley equipment	u	20%	-	
9504 40 00	- Playing cards	u	20%	-	
9504 50 00	- Video game consoles and machines, other than those of sub-heading 9504 30	u	20%	-	
9504 90	- <i>Other :</i>				
9504 90 10	--- Chess set, all types	u	20%	-	
9504 90 20	--- Carrom board, with or without coins and strikers	u	20%	-	
9504 90 90	--- Other	u	20%	-	
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
9505	FESTIVE, CARNIVAL OR OTHER ENTERTAINMENT ARTICLES, INCLUDING CONJURING TRICKS AND NOVELTY JOKES				
9505 10 00	- Articles for Christmas festivities	kg.	20%	-	
9505 90	- <i>Other :</i>				
9505 90 10	--- Magical equipments	kg.	20%	-	
9505 90 90	--- Other	kg.	20%	-	
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>

9506 ARTICLES AND EQUIPMENT FOR GENERAL DIVERTMENT

16.2.4 I find that Balloons are specified in none of the Customs Tariff Heading, therefore, I go through explanatory notes to HSN for finding relevant CTH. I produce the explanatory notes to HSN to Tariff Heading 9505:-

95.05 FESTIVE, CARNIVAL OR OTHER ENTERTAINMENT ARTICLES, INCLUDING CONJURING TRICKS AND NOVELTY JOKES.

9505.10 - Articles for Christmas festivities

9505.90 - Other

This heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

(1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures- etc.); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs. Father Christmases.

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche " heading 67.04), and paper hats. However, the heading excludes fancy dress of textile materials, of Chapter 61 or 62.

(4) Throw-balls of paper or cotton-wool, paper streamers (carnival tape), cardboard trumpets, " blow-outs ", confetti, carnival umbrellas, etc.

The heading excludes statuettes, statues and the like of a kind used for decorating places of worship. The heading also excludes articles that contain a festive design, decoration, emblem or motif and have a utilitarian function, e.g., tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen.

(B) Conjuring tricks and novelty jokes, e.g., packs of cards, tables, screens and containers, specially designed for the performance of conjuring tricks; novelty jokes such as sneezing powder, surprise sweets, water-jet button-holes and "Japanese flowers ".

This heading also excludes:

(a) Natural Christmas trees (Chapter 6).

(b) Candles (heading 34.06).

(c) Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example, Chapter 39 or 48).

(d) Christmas tree stands (classified according to constituent material).

(e) Textile flags or bunting of heading 63.07.

(f) Electric garlands of all kinds (heading 94.05).

16.2.5 Now, I produce the explanatory notes to HSN to Tariff Heading 9503:-

"This group covers toys intended essentially for the amusement of persons (children or adults). However, toys which, on account of their design, shape or constituent material, are identifiable as intended exclusively for animals,

e.g. pets, do not fall in this heading, but are classified in their own appropriate heading. This group includes:

(A) All toys not included in

(6) **Toy balloons and toy kites.**

....."

16.2.6 I further find that as per Notification No. 50/2017-Customs dated 30.06.2017 – Sr. No. 284 as amended by Notification No. 02/2021-Customs dated 01.02.2021 – Sr. No. 29 Toy Balloons are appropriately classifiable under CTH 9503 0090. I reproduce Sl. No. 284 of the Notification No.50/2017-Customs dated 30.06.2017 as under:

284.	4016 95 90, 4016 99 90, 9503 00 90, 9505 10 00, 9505 90 90	All goods, other than natural rubber latex made balloons	10%	-	-
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The above Sr. No. of the notification was amended vide Notification No. 06/2018-Customs dated 02.02.2018 as under:

(9) for S.No. 284 and the entries relating thereto, the following S.No. and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)	(6)
"284.	4016 95 90, 4016 99 90	All goods, other than- (i) Natural rubber latex made balloons; (ii) Microphone Rubber Case for cellular mobile phones; or (iii) Sensor Rubber Case / Sealing Gasket including sealing gaskets / cases from Rubbers like SBR, EPDM, CR, CS, Silicone and all other individual rubbers or combination / combination of rubbers for cellular mobile phones.	10%	-	-";

The said notification was amended by Notification No. 02/2021-Customs dated 01.02.2021 and its Sl. No. 29, which is as under:

"(29) Against S. No. 284, in column (3), after item (iii), the following explanation shall be inserted, namely: -

"Explanation. -For the removal of doubts, this entry does not include toy balloons made of natural rubber latex (toy balloons are classified under Customs tariff heading 9503).""

In view of the above, I find that the Toy Balloons have been specified in 9503 under "Other toys" category.

16.2.7 I find that the importer has contended in their letters dated 12.10.2025, 21.10.2025, 26.10.2025 and 09.05.2025 that “*the intended purpose of the imported balloons was for decorative purposes such as birthday/marriage party and the same are not suited for the purpose of being used as toys*”. In this connection, I find that the General Rules for Interpretation provides that:

“*Classification of goods in the Nomenclature shall be governed by the following principles:*

1. *The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

2. (a) *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.*

(b) *Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.”*

On-going through the above, it appears that the emphasis of the rule is on the heading which provides the most specific description. The goods are to be classified as per their description and the general description should not be preferred before the specific description. I find that the noticee has emphasized on the intended use of the impugned goods as “decorative party items” for classification, which is not correct. In this connection, I rely on **COMMISSIONER OF C. EX., COCHIN VERSUS MANNAMPALAKKAL RUBBER LATEX WORKS 2007 (217) E.L.T. 161 (S.C.)** wherein, it was held that:

“...

6. *Reading Note 5(b), it becomes clear that the test to distinguish rubber based adhesives and non-rubber based adhesives or other adhesives is the test of composition and not the test of end-user. Generally, in matters of classification “composition test” is an important test and “end-user test” would apply only if the entry say so. Applying Note 5(b) and keeping in mind the distinction between rubber adhesive and other*

adhesives, we are of the view that tariff heading '40.01' is applicable to the facts of the present case. Applying the composition test, we also find that the rubber content in the product in question is above 90 per cent.

I hold that the contention of the importer that the imported balloons, i.e. "Birthday foil balloons assorted colors and design", are for decorative purposes and therefore classifiable under CTH 95059090 is **not correct** as the Classification of the goods is not based on end use and primarily on their composition, followed by explanatory notes. **I hold that the impugned goods cannot be classified for their intended purpose under decorative items under 9505.**

16.2.8 I find that the importer has contended in their letters dated 12.10.2025, 21.10.2025, 26.10.2025 and 09.05.2025 that made of natural latex Rubber and alternatively can be classified under 4016. As per Customs Tariff Act, 1975, the Products of Natural Latex Rubber can be classified under Chapter 40 – “Rubber and articles thereof”. From the Bill of Entry and related details, I find that the impugned goods i.e. the Balloons have been described as “Birthday Foil Balloons” in the invoice by the supplier and in the Bill of Entry filed by the importer, while the same has been contradicted by the importer in their submissions as they have submitted that the balloons are made of “Natural Latex Rubber”. The Bill of Entry and invoice are reproduced as per image-3 and 4:-

Image-3

Importer Details :0313019762 PAN : AACPM4237DFT001 AD Code : 0180133
 MEHTA ENTERPRISES
 Inv No & Dt. : BR2107330 26/08/2021 SIN LAND IMPORT AND EXPORT CO. LIMIT
 Item Details

slno	RTIC	Description				RSP	Load	PROV			
Qty		Unit	Price	CTH	C.Nottn	C.NSNO	Cus	Dty	Rt	BCD	amt(Rs.)
Unit		Ass	Val	CETH	E.Nottn	E.NSNO	Exc	Dty	Rt	CVD	amt(Rs.)
2	95059090	BIRTHDAY FOIL BALLOONS ASSORTED COLOURS & DESIGNS									
	23897.00	2.200000	95059090				20.00	%		782292.20	

Image-4

16.2.9 As per Public Domain Information, I find that **“Latex balloons and foil balloons differ significantly in their durability, lifespan, and suitability for various events. Foil balloons, made of metalized nylon, are more durable and can float for weeks, while latex balloons, made of rubber, deflate faster, typically within a day or two”.**

Natural Latex Rubber: Natural latex rubber is a milky fluid extracted from rubber trees, primarily *Hevea brasiliensis*, and is a precursor to vulcanized rubber. It's a natural polymer composed mainly of cis-1, 4-polyisoprene, with other components like proteins, resins, and sugars. This substance is harvested by tapping the bark of the rubber tree and then processed to create various rubber products. It can be heated and molded into hard rubber products like tires, or it can be dipped to make softer products like balloons or medical examination gloves.

“Decorative foil balloons are not made of latex. They are typically made from Mylar (a type of nylon) coated with a thin layer of aluminum. This gives them their characteristic shiny, metallic appearance and makes them more durable than latex balloons”.

“Mylar is made from polyethylene terephthalate (PET), a type of plastic film, mylar balloons are known for their durability and ability to hold helium for extended periods.”

The detailed difference can be seen in Table below:-

Feature	Latex Balloons	Foil Balloons
Material	Natural rubber (biodegradable)	Metallic-coated nylon (Mylar)
Durability	Less durable, deflate faster	More durable, retain helium longer
Lifespan (Helium Filled)	12-24 hours (shorter with environmental factors)	Up to 2 weeks (or longer)
Environmental Impact	Biodegradable, but decomposition can take time	Not biodegradable, reusable
Appearance	Wide range of colors and sizes	Shiny, metallic appearance, variety of shapes and sizes
Best Use	Short-term events, budget-friendly, eco-conscious celebrations	Longer-lasting decorations, upscale events, special occasions

In view of the above, I find that the contention of the noticee that the Balloons can be classified under 4016 is not tenable as **I hold that the foil balloons cannot be classified under Chapter 4016.**

16.2.10 I also find that importer M/s Mehta Enterprises knowing it well that the impugned goods are not general articles of rubber and has classified the said goods under chapter 95 relating to toys, games and sports requisites, more specifically in 9505 pertaining to “*Festival, Carnival and other entertainment articles...*”. However I find that as per erstwhile Section Notes 1(f) to Chapter 40, “*articles of Chapter 95 (other than sports gloves, mittens and mitts and articles of headings 4011 to 4013)*” are excluded from Chapter 40.

16.2.11 I also find that the noticee has contended that the goods are rightly classifiable under CTH 95059090 in view of the Judgment of Hon’ble Tribunal, Kolkata in **COMMISSIONER OF CUSTOMS V. ESS ENN IMPEX, (2023) 11 CENTAX 59 (TRI. – CAL)**, however I find that in this judgment it was held that the impugned goods i.e. foil balloons, imported by the Respondent under HSN 39269099/95059090 are not covered under Toy Control Order, 2020. I find clearly the subject goods in that case were made of plastic and not natural latex rubber as in the present case. The noticee have reiterated that the impugned goods are made of natural latex rubber. I hold that the ratio of the said case cannot be applied squarely on the present case.

16.2.12 I also find that the Commissioner of Customs (Appeals) have opined in the said OIA at para 6.6 that LED Balloons are Toy Balloons of Heading 9503 in terms of HSN explanatory Notes.

6.6 I am of the considered view that the Led Balloons cannot be classified under Chapter Heading 4016 or 9505, but the same is rightly classifiable under Chapter Heading 9503 as Toy Balloons in terms of HSN explanatory notes, as reproduced in Para 14 of the impugned order, as the same specifically includes Mechanically or electrically operated toys such as Toy Balloons. Further, if the balloons made of natural rubber latex are used as parts or attachments of the Led Balloons the same will also be classified under Chapter Heading 9503.

However, I find that the importer has not declared LED Balloons separately in the Bill of Entry and invoice as seen in Image-3 and Image-4 above and hence it will be difficult to differentiate between other balloons and LED balloons at this stage. Further, I find as per public Domain information that,

“LED balloons are generally considered toy balloons. They are essentially standard balloons with built-in LED lights, making them a fun and decorative item for parties and celebrations. While they add a visual element with their glowing lights, they still function as balloons, typically made of latex or foil, and are often inflated with air or helium.”

Therefore, even if LED balloons are to be taken as separate item, still I hold that LED Balloons are correctly classifiable 9503.

16.2.13 In view of above discussion, it forthcoming that the Balloons imported by M/s. Mehta Enterprises cannot be classified under Chapter 4016 due to nature of the Articles and declaration by the importer. Further, the balloons cannot be classified as

per their intended use under 9505 as contended by the importer due to Rules of Interpretation read with SC judgment in **MANNAMPALAKKAL RUBBER**. I find that the proper classification of the impugned balloons can only be decided as per Explanatory Notes to HSN in Tariff Heading 9503 read with Sl. No. 29 of Notification No. 02/2021- Customs dated 01.02.2021. Therefore, I hold that the impugned goods correctly falls under CTH 95030090.

16.2.14 I also find that since the impugned goods correctly falls under CTH 95030090, certificate mentioning that the goods are conforming to the standards prescribed by BIS is required in view of the DGFT Notification No. 26/2015-20 dated 01.09.2017 as amended vide Notification No. 33/2015-20 dated 01.12.2019 which revised the Policy Condition No. 2 of Chapter 95 of ITC (HS) for import of Toys in India. Further, Ministry of Commerce and Industry has issued Toys (Quality Control) Order, 2020 instructing the mandatory requirement of certificates mentioning that the goods are conforming to the standards prescribed by BIS in this regard.

16.2.15 In view of the above, I find that the impugned imported goods "Birthday foil balloons assorted colors and design" are mis-stated/mis-declared under wrong CTH 95059090 to evade the payment of Customs duty and to circumvent the BIS requirements as per the import policy conditions. By improperly importing the impugned goods, the importer has contravened para 2.01(b) and 2.03(a) of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of Customs Act, 1962.

16.3 Now I decide whether M/s. Mehta Enterprises are liable to pay the differential amount of Customs Duty, under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.

16.3.1 I find from the foregoing paras, that the impugned goods are correctly classifiable under CTH 95030090 and liable to duty BCD@60%, SWS@10% and IGST@5%. The duty calculation is given as under:

Description of goods	Assessable value (Rs) (Fig. in actual)	Duty Paid				Duty Payable			
		Customs Duty Rs. (Fig in actual) (20%)	SWS (10%)	IGST (18%) INR	Total duty paid INR	Customs Duty Rs. (Fig in actual) (60%)	SWS (10%)	IGST (18%) INR	Total duty payable INR
3 Ply Mask	96906	9690	969	5378.3	16038	9690	969	5378.3	16037.3
Birthday Foil balloon assorted colors and design	3911461	782292	78229	858956	1719478	2346877	234687.7	324651.3	2906216
Total					1735516				
						2922253			

In view of above, the differential Customs duty amounting to **Rs. 11,86,737/- (Eleven Lakhs Eighty-Six Thousand Seven Hundred and Thirty-Seven only)** which is short paid is required to be recovered from the importer under the provisions of Section 28(4) of the Customs Act, 1962.

16.3.2 I find that importer M/s Mehta Enterprises imported the goods i.e., Birthday foil balloons assorted colors and design made of natural rubber latex. Accordingly, the importer knowing it well that the impugned goods are not general articles of rubber has classified the said goods under chapter 95 relating to toys, games and sports requisites, more specifically in 9505 pertaining to "*Festival, Carnival and other entertainment articles...*". Thus, I find that M/s. Mehta Enterprises in spite of being fully aware of the products purchased/imported, deliberately mis-declared the goods to evade the Customs Duty and requirement of BIS certification. Therefore differential duty is rightly demanded under Section 28 (4) of the Custom Act, 1962 invoking the extended period. I find that M/s. Mehta Enterprises has deliberately withheld from disclosing to the Department, the technical nature of the items imported so as to avail the ineligible benefit of lower Customs Duty and to done away with requirement of mandatory BIS certification and therefore, they have suppressed the material fact from the department and differential duty is required to be recovered by invoking the provision of Section 28 (4) of the Customs Act, 1962. Therefore, I find that proposed differential duty of Rs. 11,86,737/- (Eleven Lakhs Eighty-Six Thousand Seven Hundred and Thirty-Seven only) is required to be recovered along-with interest under Section 28AA of the Customs Act, 1962.

16.3.3 Further, to rebut the contentions of the noticee that there is no scope of invocation of extended period, I rely on the ratio of the decision of jurisdictional Hon'ble Gujarat High Court rendered in case of **M/S. COMMISSIONER OF C.EX. SURAT-I VS. NEMINATH FABRICS PVT. LTD. REPORTED IN 2010 (256) E.L.T. 369 (GUJ.)**. Though the said case is relating to Section 11A of the Central Excise Act, 1944 but Section 11A of the Central Excise Act, 1944 is pari materia with Section 28 of the Customs Act, 1962 as held by the Hon'ble Supreme Court in the case of **UNIWORTH TEXTILES LTD. VS. COMMISSIONER REPORTED IN 2013 (288) E.L.T. 161 (S.C.)**. Hon'ble Gujarat High Court in the said case, interalia has held as under:

“...

17. The proviso cannot be read to mean that because there is knowledge, the suppression which stands established disappears.

Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. *The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term “relevant date” nugatory and such an interpretation is not permissible.*

19. *The language employed in the proviso to sub-section (1) of Section 11A, is, clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.*

20. *Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of Section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of Section 11A would be applicable. However such reasoning appears to be fallacious inasmuch as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.”*

16.4 Now I decide whether the impugned goods imported by M/s. Mehta Enterprises should be held liable to confiscation under Section 111 (m), 111(o) and 118(a) of the Customs Act, 1962?

16.4.1 As discussed in the foregoing paras, it is evident that M/s. Mehta Enterprises has deliberately misclassified the impugned goods by mis-declaration with a mala-fide intention to evade payment of due customs duty. From the perusal of Section

111(m) of the Customs Act, 1962 it is clear that any goods which are imported by way of the mis-declaration, will be liable to confiscation. Further, Section 111(o) of the Customs Act, 1962 deals with the confiscation of goods improperly imported, in violation of conditions or prohibitions specified under the Act or other relevant laws.

16.4.2 I find that in terms of Section 46 (4) of the Customs Act, 1962, M/s. Mehta Enterprises was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty but they have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have misclassified the goods imported and also avoided requirement of BIS certification for impugned goods and thereby short paid the duty with clear intent to evade payment of Customs Duty. Thus, I find that they have violated the provisions of Section 46 (4) of the Customs Act, 1962. All these acts on part of them have rendered the imported goods liable to confiscation under Section 111 (m) and 111(o) of the Customs Act, 1962.

16.4.3 I find that another goods imported under the said Bill of Entry "3 ply masks" and packages are also liable to confiscation as per Section 118 (a) of the Customs Act, 1962 which provides that

"Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation".

16.4.4 However, I find that the impugned goods are freely importable as per the import policy. These are not prohibited goods as per the ITC (HS) import policy neither these are restricted goods which requires prior authorization or license for import as per the import policy. The import of the impugned goods is free subject to fulfilling certain policy conditions; in this case the requirement of confirmation to the prescribed standards under BIS. I also find that under Rule 17 of the Foreign Trade (Regulation) Rules, 1993 made under the Foreign Trade (Development and Regulation) Act, 1992 and Section 125 of the Customs Act, 1962 the respective adjudicating authorities have the discretion to release the goods on payment of Redemption Fine in lieu of confiscation in such cases.

SECTION 17 IN THE FOREIGN TRADE (REGULATION) RULES, 1993

"17. Confiscation and redemption. - (1) [Any imported goods or materials or goods or materials for export or goods or materials connected with import or export or services or technology] in respect of which--

(a) any condition of the [license, certificate, scrip or any instrument bestowing financial or fiscal benefits] or letter of authority under which they were imported, relating to their utilisation or distribution; or

...

(c) [any condition imposed under the policy with regard to the sale, disposal, import or export of such goods or materials or goods or materials connected with services or technology;

has been, is being, or is attempted to be contravened, shall together with any package, covering or receptacle in which such goods or goods connected with services or technology are found, be liable to the confiscated be the Adjudicating Authority, and where such goods or materials or goods or materials connected with services or technology are so mixed with any other goods or materials that they cannot be readily separated, such other goods or materials shall also be liable to be so confiscated:

....

(2) The adjudicating authority may permit the redemption of the confiscated [goods or materials or goods connected with services or technology] upon payment of redemption charges equivalent to the market value of such [goods or materials or goods connected with services or technology]”

16.4.5 As the impugned goods are found liable to confiscation under Section 111 (m), 111(o) and 118(a) of the Customs Act, 1962, I use my discretion of imposing redemption fine under Section 125(1) of Customs Act, 1962 in lieu of confiscation in respect of the imported goods. The Section 125 (1) of the Customs Act, 1962 reads as under:-

“125 Option to pay fine in lieu of confiscation –

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

16.5 Now I decide whether M/s. Mehta Enterprises are liable to penalty under the provisions of Section 112(a)(ii) and 114A of the Customs Act, 1962.

16.5.1 Penalty under Section 114A of the Customs Act, 1962: The demand of differential duty of 11,86,737/- (Eleven Lakhs Eighty-Six Thousand Seven Hundred and Thirty-Seven only) has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A.

16.5.2 Penalty under Section 112(a)(ii) of the Customs Act, 1962: I find from the discussion in the foregoing paras, that the impugned goods imported by M/s. Mehta Enterprises are mis-classified with the intent to evade duties and the said goods are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962. I find that as per Section 112 (a)(ii), "*ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114 A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher*". Due to commissions and omissions on the part of them, I hold them liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

16.5.3 I find that fifth proviso to Section 114A stipulates that "*where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114*". Hence, I refrain from imposing penalty on M/s. Mehta Enterprises under Section 112a (ii) of the Customs Act, 1962 as penalty has been imposed on them under Section 114A of the Customs Act, 1962.

16.6 I also find that the ratio of case laws cited by the noticee in their submission are not squarely applicable in this case.

17. Now, I pass the following order:-

ORDER

- a) I reject the classification of the subject goods i.e. " Birthday foil balloons assorted colors and design" under CTH 95059090 imported under Bill of Entry No. 5644089 dated 30.09.2021 declared by M/s. Mehta Enterprises, and order to re-classify the same under Customs Tariff Item No. 95030090 of the First Schedule to the Customs Tariff Act, 1975 and reassess the subject Bill of Entry accordingly;
- b) I re-determine the total Customs Duty payable at **Rs. 29,06,216/- (Rupees Twenty-Nine Lakhs Six Thousand Two Hundred and Sixteen only)** with respect to the imported goods under Bill of Entry No. 5644089 dated 30.09.2021 having assessable value of Rs. 39,11,461/- (Rupees Thirty-Nine Lakhs Eleven Thousand Four Hundred and Sixty-One only) under Section 28(8) of the Customs Act, 1962. I appropriate the Customs duty amounting to Rs. 17,19,478/- (Rupees seventeen Lakhs Nineteen Thousand Four Hundred and Seventy Eight only) already paid by the importer with respect to the impugned imported goods against the re-determined Customs duty liability of Rs. 29,06,216/- . I order to recover the differential duty of **Rs. 11,86,737/- (Rupees Eleven Lakhs Eighty Six Thousand seven Hundred and Thirty seven only)** under Section 28(4) of the Customs Act, 1962 from M/s. Mehta Enterprises;

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- c) I order to charge and recover interest at the applicable rate in terms of under Section 28AA of the Customs Act, 1962 on the above confirmed demand at (b) above from M/s. Mehta Enterprises;
- d) I hold the subject goods having assessable value of **Rs. 39,11,461/- (Rupees Thirty-Nine Lakhs Eleven Thousand Four Hundred and Sixty-One only)** imported by M/s. Mehta Enterprises are liable to confiscation under Section 111(m), 111(o) and 118 (a) of the Customs Act, 1962 as discussed in foregoing paras. However, I give them the option to redeem the goods on payment of Fine of **Rs. 11,00,000/- (Rupees Eleven Lakhs only)** under Section 125 of the Customs Act, 1962 subject to fulfilment of conditions of Foreign Trade Policy with respect to submission of BIS certification for the impugned goods as per Toys (Quality Control) Order, 2020;
- e) I impose a penalty of **Rs. 11,86,737/- (Rupees Eleven Lakhs Eighty Six Thousand seven Hundred and Thirty seven only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962** on M/s. Mehta Enterprises under Section 114A of the Customs Act, 1962;
- f) I refrain from imposing penalty on M/s. Mehta Enterprises under Section 112 (a)(ii) of the Customs Act, 1962 for the reasons discussed in foregoing paras;

18. This order is issued without prejudice to any other action that may be taken against the Noticee or any other person(s) concerned with said goods under the Customs Act, 1962, or any other law for the time being in force in India.

(SHRAVAN RAM)
ADDITIONAL COMMISSIONER
Customs Ahmedabad

DIN: 20250771MN000000D603

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Date: **09.07.2025**

To,

**M/S MEHTA ENTERPRISES
6/9, NAVJIVA SOCIETY,
LAMINGTON ROAD,
MUMBAI – 400002.**

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Copy for information and necessary action to -

1. The Principal Commissioner of Customs, Ahmedabad (attn. RRA Section)
2. The Deputy Commissioner, Customs, ICD Sachana.
3. The Superintendent, System, Customs, HQ (in PDF format) for uploading the order on the website of Ahmedabad Customs Commissionerate.
4. The Assistant Commissioner, Task Force, Customs Ahmedabad.
5. Guard File