



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
“सीमा शुल्क भवन”, पहली मंजिल, पुराने हाई कोर्ट के सामने, नवरंगपुरा,
अहमदाबाद – 380 009.

E-mail : icd-ankleshwar@gov.in

DIN: 20251071MN00005075CA

PREAMBLE

A	फ़ाइल संख्या / File No.	:	GEN/ADJ/ADC/633/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस संख्या - तारीख / Show Cause Notice No. and Date	:	GEN/ADJ/ADC/633/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD dated 27.04.2025
C	मूल आदेश संख्या / Order-In-Original No.	:	02/ADC/SRV/ICD Ankleshwar/2025-26
D	आदेश तिथि / Date of Order-In-Original	:	07.10.2025
E	जारी करने की तारीख / Date of Issue	:	07.10.2025
F	द्वारा पारित / Passed By	:	SHREE RAM VISHNOI, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Noticee	:	1. M/s. Siddharth Filaments Pvt.Ltd., 702, Trividh Chambers, Ring Road, Surat-395002. 2. Shri Sudarshan Shyamsukha, Director of M/s. Siddharth Filaments Pvt. Ltd.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें 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 ड्यूटी 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. Siddharth Filaments Pvt.Ltd., 702, Trividh Chambers, Ring Road, Surat-395002 [hereinafter referred to as "M/s Siddharth" or "the Importer" or "the noticee no. 1"], holding IEC Code No. 5298000011 is a manufacturer engaged in importing of Nylon Yarn for the manufacture of Hook & Loop tapes for further use in the manufacture of Footwear/Orthopedic Instruments/ Sports Equipments/Garments etc.

2. The Importer had filed 02 Bills of Entry through their CHA, M/s. Chinubhai Kalidas & Brothers (CKB), for the clearance of imported goods viz. "NYLON 6 HIGH TENACITY YARN 280D/14F BRIGHT RAW WHITE UNDYED FOR HOOK AND LOOP FASTENER TAPE" imported from M/s. Formosa Chemicals and Fibre Corporation, 201, Tung HWA N. Rd., Taipei, Taiwan, R.O.C. The Goods were sought to be classified under Customs Tariff heading 54021990 of the Customs Tariff Act, 1975. The details thereof are as under:

Sr. No.	Bill of Entry No. & Date	Invoice No.	Bill of Lading No.	Assessable Value (Rs.)	Customs Duty paid (Rs.)
1	2286732 dt. 18.08.15	45V57271K dated 21.07.15	0975A43371 dated 21.07.15	12,38,204/-	3,27,236/-
2	3170338 dt. 05.11.15	45V5A148K dated 13.10.2015	HLCUTPE1 51012500 dated 13.10.15	11,77,608/-	3,11,221/-

3. During examination of the consignment, it appeared that the goods viz. NYLON 6 HIGH TENACITY YARN 280D/14F BRIGHT RAW WHITE UNDYED FOR HOOK AND LOOP FASTENER TAPE (excluding all high Tenacity Yarn) falls under Chapter 54 attract Anti- Dumping-Duty (ADD) @ \$ 0.54 per KG, as mentioned at Sr. No. 8 of the Notification No.03/2012-Customs (ADD) dt.13.01.2012, if the same is "Not High Tenacity Yarn". It appeared that that the declared goods in question were having the characteristics of High Tenacity Yarn or otherwise was required to be ascertained for levy of ADD and therefore, samples were drawn and forwarded to the Chemical Examiner, CRCL, Vadodara for seeking opinion as to whether the said sample was High Tenacity Yarn or otherwise. The Bill of Entry wise details are as under:

3.1 BE No. 2286732 dated 18.08.2015:

(i) M/s Siddharth filed BE No. 2286732 dated 18.08.2015 for the import of "**Nylon 6 High Tenacity Yarn 280D/14F Bright Raw White un-dyed for Hook and Loop Faster Tape**" classifying the goods under CTH 54021990. On going through the Test Certificate of the supplier exporter, denier of the yarn was 281 (average), Tenacity of the imported yarn certified to be average 7.12(G/D) and elongation at break was 41.85 (average). The *Synthetic filament yarn of nylon or other polyamides, excluding all high tenacity yarn of nylon and fishnet yarn of nylon* manufactured in Chinese Taipei when imported into India attracts ADD. Therefore, to ascertain the exact characteristics of the goods so imported vide BOE No. 2286732/18.08.2015, samples were

drawn for testing and BOE was provisionally assessed in terms of Section 18 of Customs Act, 1962. The importer had furnished **PD Bond No. 2000893813** dated 20.08.2015 binding themselves to pay an amount of Rs.3,27,236/- and the difference between the duty finally assessed under sub section (2) of Section 18 of Customs Act,1962 read with Customs Provisional Duty Assessment Regulation, 1963 and the duty provisionally assessed in respect of the said goods under sub section (1) of Section 18 of Customs Act,1962 mentioned in the Schedule in the said Bond. It was undertaken by the importer that they will follow the provisions under sub section (3), (4) and (5) of Section 18 of Customs Act,1962. The said Bond has been accepted by the proper officer of the Customs. The goods were given out of charge on the basis of the provisional assessment, submission of Bond and undertaking.

(ii) Samples drawn under Test Memo No. 147/2015 dated 20.08.2015 were sent to CRCL Vadodara for ascertaining as to whether the goods description given is correct or otherwise. CRCL vide their Test Report No. RCL/SU/IMP/596 dated 07.09.2015 forwarded the test results as under:

"The sample is in the form of cut pieces of Bright Yarn. It is composed of Nylon. Denier 280"

Since, CRCL had not answered as to whether the goods are "High Tenacity Yarn" or otherwise, therefore, a letter dated 09.11.2015 was addressed to them for the said answer. CRCL Vadodara vide their letter dated 30.11.2015 has informed that they were not equipped to answer the said query.

Meanwhile, the importer filed another BE No. 3170338 dated 05.11.2015 for identical goods from the same foreign supplier (exporter) and from same country of origin.

3.2 BE No. 3170338 dated 05.11.2015:

(i) M/s Siddharth filed BE No. 3170338 dated 05.11.2015 for the import of **"Nylon 6 High Tenacity Yarn 280D/14F Bright Raw White un-dyed for Hook and Loop Faster Tape"** classifying the goods under CTH 54021990. On going through the Test Certificate of the supplier exporter, denier of the yarn was 281 (average), Tenacity of the imported yarn certified to be average 7.19(G/D) and elongation at break was 40.67 (average). It appears that a similar consignment of the similar goods were imported by the importer vide BOE No.2286732 dated 18.08.2015. It is noticed that the declaration by the importer was identical/similar and the details of foreign supplier (exporter), Customs Tariff Heading, Test certificates were also similar. Therefore, goods imported vide BE No. 2286732 dated 18.08.2015 and in BE No. 3170338 dated 05.11.2015 were found to be similar/identical in nature. Further, a query was raised to the Importer in ICES as to why the ADD shall not be attracted on the goods imported by them vide above referred two Bills of Entry, in terms of Notification No. 3/2012- Customs (ADD) Dated 13.01.2012. The said query was replied by the importer wherein

they have informed that Nylon yarn of high Tenacity from any country are exempted from ADD for whatever use it has been brought; that they have imported high tenacity yarn as per test certificates; that yarn of 6.7 GPD or above are considered as high tenacity yarn.

(ii) Above reply of the importer appeared to be not convincing and therefore, on similar line of assessment of BE No. 2286732 dated 18.08.2015, samples were drawn for testing and BOE was provisionally assessed in terms of Section 18 of Customs Act, 1962 on furnishing of **PD Bond No. 2000955426** dated 08.12.2015 wherein the importer has bound themselves to pay an amount of Rs. 3,50,000/- and the difference between the duty finally assessed under sub section (2) of Section 18 of Customs Act, 1962 read with Customs Provisional Duty Assessment Regulation 1963 and the duty provisionally assessed in respect of the said goods under sub section (1) of Section 18 of Customs Act, 1962 mentioned in the Schedule in the said Bond. It was undertaken by the importer that they will follow the provisions under sub section (3), (4) and (5) of Section 18 of Customs Act, 1962. Accordingly, the goods were assessed provisionally on furnishing of Security in the form of **Bank Guarantee No. 2000IGFIN000715** dated 11.12.2015 equal to the amount of Anti-Dumping Duty of Rs.2,15,000/- in addition to Bond. The said Bond and Bank Guarantee were accepted by the proper officer of Customs. The goods were given out of charge on the basis of Provisional assessment and submission of Bond and undertaking backed by security by way of BG.

(iii) The Samples, drawn under Test Memo No. 169/2015 dated 08.12.2015 in BE No. 3170338 dated 05.11.2015 were sent to Textile Committee, Mumbai for testing. The Textile Committee, Mumbai vide their two Test Report Nos. 0153021516-9142 and 0153021516-9143 both dated 21.12.2015 forwarded the test results as under:

		0153021516-9142	0153021516-9143
1	Count of Yarn (Denier/Decitex)	Denier- 284.4 Decitex- 316	Denier- 282 Decitex- 313.3
2	No. of filament yarn	14	14
3	Identification of Fibre: Yarn	Polyamide	Polyamide
4	Fibre Blend Composition (%); Polyamide	100	100
5	Whether Nylon 6,6.6,6.10,6.12	Nylon 6	Nylon 6
6	Whether Unbleached/Bleached/Dyed/Printed/ Yarn of different Colour (In house)	Un dyed	Un dyed
7	Whether Semidull/Bright/Cationic:	Bright	Bright
	Cationic	Cannot be ascertained	Cannot be ascertained
8	Whether made of High tenacity yarn* (In house)	*	*
Remarks: * Received yarn sample is in entangled form & sufficient length of yarn is not available to carry out the test for tenacity.			

(iv) Since, the Textile Committee did not confirm as to whether the goods are “High Tenacity Yarn” or otherwise, a letter dated

01.03.2016 was issued to them forwarding the sample yarn of sufficient length to ascertain the tenacity of the yarn. The Textile Committee vide Test Report No. 0153021617-46 dated 07.04.2016 forwarded the test results as under:

1	Count of Yarn (Denier/ Decitex)	Denier- 274.2 Decitex- 304.7
2	Whether made of High tenacity yarn (In house)	Not a High Tenacity Yarn
3	Tenacity of Yarn (cN/tex)	47.8

4. In view of the above test results from the **Textile Committee** confirming that the imported yarn was “**Not high Tenacity yarn**” and accordingly, attracted anti-dumping duty in terms of Notification No. 3/2012-Customs (ADD) Dated 13.01.2012. Therefore, it appeared that the importer has mis- declared the goods as High Tenacity Yarn with an intent to evade payment of leviable Anti- Dumping Duty (ADD) @ \$ 0.54 per KG, as per the entry at Sr. No.8 of the Notification No. 03/2012-Customs (ADD) dt.13.01.2012. It further appeared that the importer has failed to follow the conditions of Section 46(4) of the Customs Act, 1962 as they have not made truthful declaration while presenting the Bill of entry. Thus, these goods became liable for confiscation under the provisions of Section 111 (m) of the Customs Act 1962, and also rendered themselves liable for the penal action under the provisions of the Customs Act, 1962. Therefore, investigation was initiated by issuance of summons dated 22.06.2016 and 08.07.2016 for recording of their statement u/s 108 of Customs Act, 1962.

5. Shri Sudarshan Shyamsukha, Director of M/s Siddharth appeared on 19.07.2016 and his statement u/s 108 of Customs Act, 1962 was recorded wherein he inter alia stated that M/s.Siddharth Filaments Pvt.Ltd., engaged in manufacturing of Hook & Loop tapes for use in the manufacture of footwear/Orthopedic Instruments/ Sports Equipments/ Garments etc.; that he perused Bill of Entry No. (1)7903927 dated 05.01.2015 (2)2286732 dtd.18.08.2015 and (3)3170338 dt.05.11.2015 filed through CHA, M/s.CKB wherein they have declared imported cargo as “*Nylon 6 High Tenacity Yarns 280d/ 14F Bright Raw White Undyed for Hook and Loop Tape*” falling under RITC 54021990 and also perused the documents like Country of Origin, Analysis Report, Invoice, Bill of Lading, Packing list, Test Bond; that they have imported the said goods for manufacture of hook and Loop Tapes (IS code 8156); that all the three consignments were imported in same Qty. i.e. 6048 Kgs. each, from same supplier M/s. Formosa Chemical and Fibre Corporation, Taipei, Taiwan; that he perused Test Memo No.147/2015 dated 20.08.2015 wherein sample of declared cargo as “*Nylon 6 High Tenacity Yarns 280d/ 14F Bright Raw White Undyed for Hook and Loop*” under Bill of Entry No. 2286732 dated 18.08.2015 was drawn and sent for Testing and the Test report received vide letter No. RCL/SU/IMP/596 dated 07.09.2015 from CRCL, Vadodara wherein it was reported that the sample is in the form of cut piece of bright yarn. It is composed of Nylon, Denier – 280”; that he perused the detailed Report of

Testing of Samples of declared cargo “Nylon 6 High Tenacity Yarns 280d/14F Bright Raw White Undyed for Hook and Loop” received from Quality Assurance Officer, the Textile Committee, Ministry of Textile, Textile Laboratory & Research Centre, Mumbai vide Test Report No.0153021617-46 dated 07.04.2016 against T.M.No.169 dt.01.3.16 wherein it was specifically reported that Sample is “**not a High Tenacity Yarn**”; that after verifying he accepted the said test report; that they have placed the order for High Tenacity Nylon 6 280/14 denier yarn for hook and loop tapes for manufacturing purpose but he had found that material is not high tenacity yarn; that he accepted the fact that goods viz. Nylon 6 Tenacity Yarns 280d/14F Bright Raw White Undyed for Hook and Loop (excluding all high Tenacity Yarn) classifiable under RITC 54021990 attract Anti-Dumping Duty (ADD) as per the entry at Sr.No.8 of the Notification No.03/2012-Cus.(ADD) dt.13.01.2012 @ \$ 0.54 per KG.; that they have placed the order for high Tenacity yarns but the test reports thereof cannot ascertain the same; that they have not mis-declared the goods as invoice No.45V57271K dt.21.7.15 and Invoice No.45V5A148K dt.13.10.15 itself showing the description of goods viz. Nylon 6 High Tenacity Yarns 280d/14F Bright Raw White Undyed for Hook and Loop; that they have already executed the bank Guarantee of Rs.2,15,000/- issued by Bank of Baroda, Parle Point Surat against the Bill of Entry No.3170338 dt.05.11.2015 and thereby got the cargo released; that he agreed to pay the Anti-Dumping Duty (ADD) under Notification No.03/2012-Cus.(ADD) dt.13.01.2012 Sr.No.8 @ \$ 0.54 per KG. in respect of import of Nylon 6 Tenacity Yarns 280d/14F Bright Raw White Undyed for Hook and Loop (excluding all high Tenacity Yarn) under RITC 54021990 along with applicable interest thereon.

6. It appeared from the statement dated 19.07.2016 of Shri Sudarshan Shyamsukha, Director of M/s.Siddharth Filaments Pvt.Ltd. that they had agreed with the results of the Test Report in respect of the goods imported by them vide Bill of Entry No. 2286732 dtd.18.08.2015 and 3170338 dt.05.11.2015 filed through CHA, M/s. CKB wherein they have declared imported cargo as Nylon 6 High Tenacity Yarns 280d/14F Bright Raw White Undyed for Hook and Loop Tape falling under RITC 54021990 wherein they have imported same goods from same supplier in same quantity. They had also agreed that the imported goods are declared as Nylon 6 High Tenacity Yarns 280d/14F Bright Raw White Undyed for Hook and Loop Tape but in fact the same were not a High Tenacity Yarn. They had also agreed that the said goods were liable for imposition of the Anti-Dumping Duty (ADD) under Notification No.03/2012-Cus.(ADD) dt. 13.01.2012 Sr.No.8 @ \$ 0.54 per KG alongwith the applicable interest.

7. In view of the above, as per serial no 8 of Notification No.03/2012-Cus. (ADD) dt. 13.01.2012, the Anti-Dumping duty leviable on the import of Yarns vide the above referred Bills of Entry was as under:

Sr. No.	Bill of Entry No. & Date	Qty. Imported (kgs)	ADD Rate per Kgs.	Total amount in \$	Exchange rate per \$	ADD leviable (Rs.)
1	2286732/18.08.2015	6048	\$ 0.54	3265.92	64.35	210162/-
2	3170338/05.11.2015	6048	\$ 0.54	3265.92	65.35	213428/-
	Total	12096		6531.84		423590/-

8. Further, the importer submitted a letter dated 16.08.2016 informing that since, the goods imported vide BE No. 2286732 dated 18.08.2015 and BE No. 3170338 dated 05.11.2015 did not meet the description as stated in invoice and other relevant documents with test reports, therefore, they are ready to pay the ADD leviable thereon at the prescribed rate alongwith the applicable interest and also fine/penalty whatever is imposed on them by the competent authority. They had further requested for taking a lenient view as they had claimed to have not mis-declared the goods and requested to not to issue SCN and also not grant Personal Hearing and decide the matter on merit.

9. In view of importer's letter dated 16.08.2016, a letter dated 18.10.2016 was issued to the importer for submission of payment details of ADD and interest. The importer submitted a letter dated 21.10.2016 informing that to encash ADD amount vide Bank Guarantee of Rs. 215000/-.

9.1 Further the importer submitted another letter dated 21.10.2016 wherein they have requested not to consider their letter dated 16.08.2016 as the same was submitted under pressure at ICD Baroda. They further informed that some facts in the said letter are misleading and confusing and to ignore their letter dated 16.08.2016. The said letter was submitted after passing of more than 02 months with allegations that it was submitted by them under pressure at ICD Baroda. This contention of the importer appears not correct as they alleged to submit the letter at ICD Vadodara which is not the case as it appears submitted at ICD Ankleshwar. Further, in case it was obtained under pressure or forcefully, it should have not taken 02 months period to refute the contention/submission in the said letter dated 16.08.2016, therefore, same appears an afterthought with an intention to avoid payment of Customs duty. Further, said facts were also accepted by the importer in his statement dated 19.07.2016. Therefore, the letter dated 21.10.2016 requesting for non-consideration of letter dated 16.08.2016 cannot be entertained as it appears an afterthought with unfounded allegations.

10. Further, a letter dated 27.10.2016 was issued to the Bank for encashing of BG of Rs.2,15,000/-. The Bank of Baroda vide their letter dated 02.11.2016 forwarded a DD of Rs.2,15,000/- against encashment of the said BG. The said DD was deposited in Government account vide TR 6 Challan No. 13/03.11.2016. The importer submitted a letter dated 14.12.2016 informing that they have paid interest of Rs.41,565/- leviable on ADD of Rs.

2,15,000/- vide TR 6 Challan No. 73/16-17 dated 05.11.2016.

11. Further, a letter was received on 20.07.2017 from the importer requesting for sharing of test results in BE No. 2286732 dated 18.08.2015. It appeared that matter of test results was settled on acceptance of the importer in his statement dated 19.07.2016 and letter dated 16.08.2016 being test results of subsequent BE No. 3170338 dated 05.11.2015 are applicable to BE No. 2286732 dated 18.08.2015 wherein they have stated that the goods imported vide both BE No. 2286732 dated 18.08.2015 and BE No. 3170338 dated 05.11.2015 does not meet the description as stated in invoice and other relevant documents with test reports. They have shown their readiness to pay the ADD leviable thereon alongwith applicable interest and also fine/penalty and requested for lenient view. Therefore, said request of sharing of test results in BE No. 2286732 dated 18.08.2015 appears made to divert the investigation and to avoid payment of Customs duty. Thus, their request, which appears to have been made without appreciating the facts on records in form of test results already accepted by them and acceptance of the facts lies in the statement and subsequent letter, was not entertained. Therefore, it appeared that the test results communicated by the Textile Committee has to be taken in to consideration in view of acceptance by the importer in his statement and letters, identical goods imported from same source/supplier and goods of both BEs are identical/similar in technicalities as the goods proved to be "Not High Tenacity Yarn" without any doubt.

11.1 It appeared that test reports received and discussed herein above were made available to the importer, however, the importer had not opted for retesting of samples/remnant samples for which the test report received Confirmed the nature of the goods imported as "**not a High Tenacity Yarn**". Whereas, on the basis of reports received, the Bills of entry Nos. 2286732 dated 18.08.2015 and 3170338 dated 05.11.2015 were proposed to be finally assessed. Whereas, PD bonds submitted by the importer at the relevant time has to be taken into consideration for demanding differential duty of Customs. **Whereas it appears, that the proper officer has allowed the said 02 BEs to be finally assessed as per the Test report received and relevant data/record in EDI systems at ICD@INAKV6. Whereas as per data in EDI systems @INAKV6, both BE Nos. 2286732 dated 18.08.2015 and 3170338 dated 05.11.2015 were finally assessed on 18.08.2020.**

12. Whereas, from the above facts it appears that by adopting modus operandi of mis-declaration of nature of the imported goods, the said importer attempted to clear the subject consignments. They deliberately suppressed the same from the Customs Authorities and thereby they have contravened the provisions of Section 46 (4) of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & 14 of the Foreign Trade (Regulation) Rules, 1993, in as much as they had intentionally mis-declared the true quality & nature of the imported goods by suppressing the correct and true facts while filing the

declaration seeking clearance at the time of the importation of the goods and they have failed to declare as to the truth of the contents while presenting Bills of Entry before the proper officer of Customs. Thus, the importer appears to have mis-declared the correct facts regarding quality of the subject goods by suppressing the facts thereby contravening the provisions of Section 46(4) of the Customs Act, 1962 while filing the declaration in Bill of Entry at the time of seeking clearance and at the time of the importation of goods. The mis-declaration of the quality of the goods by willful mis-statement and suppression of facts by the above said importer is in contravention of the provisions of the Customs Act, 1962 and Rules made there under as discussed herein above, with an intent to evade payment of anti-dumping Customs duty.

12.1 In view of the facts discussed in foregoing Paras and material evidence available on record, it appears, the import of subject goods by the subject Importer by resort to mis-declaration and suppression of true facts before the designated authority of Customs falls under the category of “illegal Imports” as per Section 11A (a) of the Customs Act, 1962 and the said act on their part constitutes “smuggling” as defined in Section 2(39) of the Customs Act, 1962. Further, all these acts on the part of the subject Importer have rendered the total smuggled goods viz. 12096 Kgs. of “Nylon 6 High Tenacity Yarn 280D/14F Bright Raw White un-dyed for Hook and Loop Faster Tape” proved to be “Not High Tenacity Yarn” valued at Rs. 24,15,812/- liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962, however the goods are not physically available for confiscation, fine in lieu of the confiscation is liable to be imposed under Section 125 of the Customs Act, 1962. It appears that the importer had deliberately and willfully mis-declared the actual quality of the goods imported by willful mis-statement and suppression of facts, in contravention to the various provisions of the Customs Act and Rules made there under as discussed above with an intent to evade payment of Customs duty.

13. Further, consequent upon amendments to the section 17 of the Customs Act, 1962 vide finance Act, 2011, self-assessment has been introduced in Customs Clearance with effect from 08.04.2011. Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported goods by the importer himself by filling a bill of entry electronically to the proper officer. Section 46 of the Customs Act, 1962 make it compulsory for the importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any in respect of the imported goods while presenting bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17 since, 08.04.2011, it is the added and enhanced responsibilities of the importer more specifically in RMS facilitated bill of entry, to declare the correct description, Value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect

of imported goods. In other words, **the onus is on the importer to give correct declaration and make correct classification of goods being imported in the Bill of Entry and also to prove that they have declared and classified the goods correctly by giving the complete and correct description of the goods.** Incomplete description of the goods declared, mis-classification of goods being imported, availing wrong benefit of notification availed, if any is nothing but suppression of information with an intent to evade payment of Customs Duty and get financial benefit by the said act of omission and commission. In the instant case, the importer had imported the cargo vide Bill of Entry No. 2286732 dt.18.8.2015 and 3170338 dt.05.11.2015 by declaring the same to be **“Nylon 6 High Tenacity Yarn 280D/14F Bright Raw White un-dyed for Hook and Loop Faster Tape”** which have been proved to be “not a High Tenacity Yarn” during the testing by the Textile Committee, Mumbai. Therefore, it appears that the same was wilfully mis-declared as High Tenacity Yarn with an intent to evade the payment of Anti-Dumping Duty (ADD) @ 0.54 \$ per KG as per the entry at Sr. No. 8 of the Notification No. 03/2012-Cus. (ADD) dt. 13.01.2012, thereby violated the provisions of self-assessment.

13.1 Therefore, it appeared that, in the instance case, the importer has mis- declared the imported goods with an intent to evade payment of Anti-Dumping Duty in order to get financial benefits. The importer has suppressed the facts by mis-declaring the impugned goods leading to short payment of Anti-Dumping Duty. As there is suppression of facts, extended period of five years can be invoked in the present case for demand of duty under Section 28 of the Customs Act, 1962.

14. From the above, it appeared that the importer had imported the cargo vide Bill of Entry No. 2286732 dt.18.8.2015 and 3170338 dt.05.11.2015 and declared as “Nylon 6 High Tenacity Yarn 280D/14F Bright Raw White un-dyed for Hook and Loop Faster Tape” which proved to be “not a High Tenacity Yarn”. It appears that the same was wilfully mis-declared as High Tenacity Yarn with an intent to evade the payment of Anti-Dumping Duty (ADD) @ 0.54 \$ per KG vide entry at Sr. No. 8 of the Notification No. 03/2012-Cus. (ADD) dt. 13.01.2012. The assessable value in both BEs declared by the importer was **Rs.24,15,812/-**. The importer had accepted this fact that the imported goods viz. Nylon 6 High Tenacity Yarns 280d/14F Bright Raw White Undyed for Hook and Loop flexi (excluding High Tenacity Yarn) imported by them attract ADD. The importer had never disclosed the goods being ‘Not High Tenacity Yarn’ in nature to the department and this can only be ascertained from the test results received from the Textile Committee, Textile Laboratory & Research Centre, Mumbai. Had the test of the imported goods have not done, the importer would have defrauded the Government from its legitimate revenue. Thus, they have suppressed the fact that the declared cargo were not in the nature of ‘High Tenacity Yarn’, with an intent to evade the Customs duty including Anti-dumping Duty. In this way the importer had mis-declared and

suppressed the facts from the Department. Thus, by above acts of mis-declaration and suppression of facts from the department, the importer evaded payment of Customs duty i.e. Anti-Dumping duty amounting to Rs.4,23,590/- as calculated and detailed in attached Annexure-A attached to the SCN. In the circumstances, it revealed that the importer deliberately for taking undue benefits mislead the department by mis- declaring and suppressing the facts regarding correct nature of imported goods with an intent to evade Customs duty i.E. Anti- Dumping duty amounting to Rs.4,23,590/- . Further, the importer has suppressed the true facts regarding nature of imported goods with an intent to evade the Customs duty. Accordingly, extended period of 5 years required to be invoked for levy and recovery of Customs duty under Section 28(4) of Customs Act, 1962. The above act of suppression and mis-declaration renders the said imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 although the same are not physically available for confiscation. Further, the Customs duty i.e. Anti-Dumping duty amounting to Rs.4,23,590/- as detailed in attached Annexure-A in respect of the imported goods stands recoverable from M/s. Siddharth Filaments under Section 28(4) of the Customs Act, 1962 by invoking the extended period alongwith the interest at the rate prescribed in terms of Section 28 AA of the Customs Act, 1962 for the reasons as discussed above. Out of the above said Customs duty i.e. Anti-Dumping duty amounting to Rs.4,23,590/-, an amount of Rs.2,15,000/- was recovered by encashment of Bank Guarantee along-with interest amounting to Rs.41,565/-. The said payment of Customs duty of Rs.2,15,000/- and interest of Rs.41,565/- is required to be appropriated against the demand and recovery of Customs duty amounting to Rs.4,23,590/- and interest leviable thereon. The above act of suppression and mis-declaration by the importer, M/s. Siddharth Filaments makes the goods liable for confiscation and also constitute offence of the nature as described under Section 112 (a) and Section 114A of the Customs Act, 1962 and thus, rendered themselves liable to penalty under Section 112 (a) and Section 114A of the Customs Act, 1962. Further, PD Bond No. 2000893813 dated 20.08.2015 in respect of BE No. 2286732 dt.18.8.2015 & PD Bond No. 2000955426 dated 08.12.2015 in respect of BE No. 3170338 dt.05.11.2015 are also required to be enforced for recovery of Customs duty, interest, fine, penalties or any other dues from the importer.

15. It appeared that Shri Sudarshan Shyamsukha, Director of M/s. Siddharth Filaments Pvt. Ltd., Surat was well aware of the nature of the imported goods which he admitted in his statement that the goods imported can be found as “Not High Tenacity Yarn’ which attract ADD, and resulted in non-levy of the appropriate Anti-Dumping Duty. This act of Shri Sudarshan Shyamsukha, Director of M/s. Siddharth Filaments Pvt. Ltd., renders himself liable for penalty under Section 114AA of the Customs Act, 1962.

16. In view of the above discussed facts, a Show Cause Notice vide F. No. GEN/ADJ/ADC/633/2024-ICD-AKWR-CUS-

COMMRTE-AHMEDABAD dated 27.04.2025 was issued to:

(1) M/s. Siddharth Filaments Pvt.Ltd., 702, Trividh Chambers, Ring Road, Surat-395002 asking them, as to why:

(a) the Customs duty i.e. Anti-Dumping duty amounting to Rs.4,23,590/- as detailed in Annexure-A attached of this Show Cause Notice short paid by them, should not be recovered from them in terms of Section 28(4) of the Customs Act, 1962. Since, an amount of Rs.2,15,000/- towards anti-dumping Customs duty has already been recovered from them by way of encashment of Bank Guarantee, the same should not be appropriated;

(b) Interest at the applicable rate should not be recovered from them on the Customs duty mentioned at (a) above under Section 28AA of Customs Act, 1962. Since, an amount of Rs. 41,565/- towards Interest on partly recovered anti-dumping Customs duty was recovered from them, the same should not be appropriated in Government account;

(c) The imported goods declared as "Nylon 6 High Tenacity Yarns 280d/14F Bright Raw White Undyed for Hook and Loop Fastner Tape" valued at Rs.24,15,812/- should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962;

(d) Penalty should not be imposed on M/s. Siddharth Filaments Pvt. Ltd., 702, Trividh Chambers, Ring Road, Surat under Section 112(a) and 114A of the Customs Act. 1962; and

(e) The Provisional Duty Bond No. 2000893813 dated 20.08.2015 in respect of BE No. 2286732 dt.18.8.2015 & PD Bond No. 2000955426 dated 08.12.2015 in respect of BE No. 3170338 dt. 05.11.2015 furnished by them should not be enforced for recovery of the Customs duty, interest, fine, penalty etc.

(2) Shri Sudarshan Shyamsukha, Director of M/s.Siddharth Filaments Pvt. Ltd., Surat asking him as to:

why penalty should not be imposed upon him under Section 114AA of the Customs Act, 1962.

PERSONAL HEARING & DEFENCE REPLY: -

17. Personal hearing in the matter was fixed on dated 01.08.2025 and 09.09.2025 which were not attended by the importer. However, on the request of the importer another PH was fixed on 29.09.2025, which was attended by the authorized person Shri Pankaj Kannaujiya, CMA (Legal Consultant) in virtual mode.

18. During the PH, Shri Prashant Patankar requested that the present SCN may be dropped, as an earlier SCN issued in 2020 on the same matter had already been withdrawn by the department in 2023.

19. Vide letter dated 31.07.2025 (sent via email dated 31.07.2025), M/s. Siddharth Filaments Pvt. Ltd. have made their written submission wherein they have contended as detailed under:

19.1 “A SCN has already been served earlier on the same matter and proceeding was dropped.

19.1.1 A SCN was already served on the same matter and the Ld. Asst. Commissioner has issued order vide 20230471MN00002732ED dt: 12.04.2023 for withdrawal of the SCN and concluded proceedings.

19.1.2 The copy of order was also served to Ld. Addl. Commissioner-Customs, at that time no Appeal u/s 128 of the Act or Revision application u/s 129DD of the Act was preferred by department. Therefore, the same order has achieved finality.

19.1.3 We also want to draw your good self's attention on a legal doctrine of res- judicata, which refers to a case in which there has been a final judgment and that is no longer subject to appeal; and the legal doctrine meant to bar (or preclude) re-litigation of a claim between the same parties.

19.1.4 As the department has not preferred appeal or revision application against the order passed by the Ld. Addl. Commissioner, the order has achieved finality. Therefore, a fresh proceeding for the matter which is already adjudicated will be contrary to settled proposition of the law.

19.1.5 We have also relied upon the judgement given by the Hon'ble High Court- Jharkhand in the case of Ambey Mining (P.) Ltd. v/s. Commissioner of State Tax in Civil Application No. 361 of 2023, whereas held -

“8. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein; it is evident that the first Appellate Order dated 16-01-2021 passed by the Joint Commissioner of State Tax (Appeal), Ranchi was accepted by the department and no further appeal was filed and thus; the same has attained finality and therefore the same issue or cause of action cannot be re-agitated in a fresh proceeding as the same is contrary to settled proposition of law.

It further transpires that section 107(16) of the JGST Act provides that every 1st appellate order passed thereunder shall be final unless subjected to Revision under section 108,

appeal to Tribunal under section 113 or appeal to High Court under section 117 or appeal to Supreme Court under section 118 of the JGST Act. In the instant case, since the 1st appellate order is not subjected to section 108, section 113, section 117, section 118; thus, by virtue of sub-section (16) of section 107, it has attained finality.

The Hon'ble Apex Court in the case of CCE v. Prince Gutkha Ltd. [2015] 15 SCC 775 has held that adjudicating authority dropping earlier demand accepting explanation of Assessee, issuance of second show cause notice on same cause of action, not permissible. Paragraph-3 of the said order is extracted herein below:

"3. Insofar as the issue of clandestine removal of goods by Respondent 1 is concerned, we find that on the statement of Respondent 5 given earlier, the adjudicating authority had dropped the proceedings accepting the explanation furnished. In view thereof, CESTAT has held that there could not have been second show-cause notice on the same cause of action. In this behalf we do not find any error in the order passed by CESTAT."

In the case of CCE v. Gujarat State Fertilisers and Chem. Ltd. 2008(229) ELT 9 (SC)/[2008] 15 SCC 46 it is held by the Hon'ble Apex Court that order of the Tribunal has attained finality due to non-filing of appeal by the department. Hence, appeal on the same issue is not maintainable which has already attained finality. Paragraph-9 of the said order is quoted herein below:

"9. On the second contention raised by the respondent, namely, that as per rule 57-B(1)(iv), the Modvat credit was available on the inputs used for generation of electricity or steam, used for manufacture of final products or for any other purpose, within the factory of production, the Tribunal decided the case in favour of the assessee relying upon a decision of the Tribunal in Raymond Ltd. v. CCE [(2000) 37 RLT447 (CEGAT)] , wherein it has been held that the Modvat credit would be available on inputs used to manufacture steam which was in turn used for manufacture of exempted or nil duty rated final product or for any other purpose. It is stated before us that no appeal has been preferred by the Revenue against the decision in the aforesaid case. The same has thus become final."

19.2. Extended time line U/s 28(4) can not be invoked:

19.2.1. Since, we have not made any collusion, wilful misstatement or suppression of facts, provisions of section 28(4) cannot be invoked. We would like to submit that notice u/s 28(4) can only be issued in case when there is wilful mis-statement, Suppression of the facts with intention to evade the payment of tax. For your ready reference, we would like to reproduce the section 28(4) of the Customs Act, 1962 as under: -

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 levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,--

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

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

Explanation 1.

--For the purposes of this section, relevant date means, --

- (a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;
- (c) in a case where duty or interest has been erroneously refunded, the date of refund;
- (d) in any other case, the date of payment of duty or interest.

19.2.2. On the basis of above, it is clear that, time of five year can only be invoked only if the importer has intended to evade duty payment by collusion, willful misstatement or suppression of facts.

19.2.3. We would like to submit that, notice for recovery of duty under section 28(4) can only be served if there is non levy, non payment, short levy, short payment or erroneous refund of duty or non payment, short payment or erroneous refund of interest by reason of collusion, willful misstatement or suppression of facts. Since, we have already produced all the details and documents and information before the Ld. Addl. Commissioner at the time of previous proceedings, there is no question that we have made any collusion, willful misstatement or suppression of the fact.

We have relied upon judgement given by CEGAT Mumbai in the case of Parenteral Drugs (I) Ltd. v. Commissioner of Customs-II, Mumbai in appeal no. APPEAL NOS. C/51/1995-C, where it was held that:

“10. On this ground we find for the appellants in appeal No.

C/51/95-C. In this appeal the appellant had pressed for relief on limitation also. We find the stand taken by the Commissioner to be peculiar. He had disregarded the end use certificate given by the jurisdictional Superintendent as not relevant or not important. We have reproduced one such certificate above which plainly refers to the existence of aseptic machinery. Therefore the assessee's claim that the department was aware at all times as to form of the machinery installed and in that situation also it permitted availment of the exemption notification must indicate the knowledge on the part of the department. The Commissioner found in not imposing penalty certifies that the assessees had no mala fides. The existence of mala fides is an essential ingredient in raising the demand for the extended period. In view of his certification of bona fides his action of sustaining the demand for the extended period does not sustain. The appellant succeeds on the point of limitation also."

19.2.4. In addition to this, as per section 28(1), notice for recovery duties not levied or not paid or short-levied or short-paid or erroneously refunded for reason other than the reasons of collusion or any wilful mis-statement or suppression of facts is required to be served within two years from the relevant date. For your ready reference, we would like to reproduce the section 28(4) of the Customs Act, 1962 as under: -

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

(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion 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-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:

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

.
.

Explanation 1.

--For the purposes of this section, relevant date means, --

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

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

- (c) *in a case where duty or interest has been erroneously refunded, the date of refund;*
- (d) *in any other case, the date of payment of duty or interest.*

19.2.5. Since our case is related to re-assessment of finally assessed duty, 2 years will be counted from the date of final assessment of Bill of Entry. Said BoE was finally assessed on 18.08.2020, and hence the SCN for recovery of duty of the said SCN can only be served up to 18.08.2022. Therefore, SCN is time barred and not maintainable under law.

19.2.6. We have relied upon following judgements for the same:

“We have also relied upon the ruling passed by the Hon’ble CESTAT, Bangalore Bench in case of Steel Authority of India Ltd. v/s Commissioner of Customs, Visakhapatnam in Appeal No. C/215/2015 wherein it is stated that, “7. The appellants have

pointed out that even though the show cause notice was dated 2.8.1991, the Corrigendum was issued after 8 years to include the Income tax also or the purpose of duty. The appellants have strongly contended that the notice is barred by limitation. Therefore, at the outset, we shall examine the question of limitation. In the case of ESPI Industries & Chemicals Vs. Commissioner of Central Excise, Hyderabad, 2000 (115) ELT 81, it has been held that Revised notice issued for enlarging the scope of first notice and taking an altogether different stand than in original show cause notice is illegal. In the case of STL Exports Ltd. Vs. Commissioner of Customs, Indore, 2004(168) ELT 272 (Tri.-Del.), it has been held that demand of transformation from Excise to Customs duty belatedly after more than two years of original notice is not permissible by issue of Corrigendum. In the case of Bhagsons Paint Industries (India) Vs. CCE, New Delhi, 1996 (88) ELT 400 (Tribunal), it has been held that Absence of statutory laid down time limit does not mean that there is no time limit at all for completion of adjudication. Accordingly, the adjudication order passed nearly nine years after the issue of show cause notice is set aside. In the present case, for inclusion of the Income tax paid by the appellants on behalf of the foreign currency, the Corrigendum to the show cause notice has been issued after eight years. Following ratio of the cases cited supra, we are of the view that the issue of this Corrigendum is bad in law.”

The importer further requested to drop the proceedings initiated by the department under the subject SCN.

DISCUSSION AND FINDING

20. I have carefully gone through the Show Cause Notice, written submissions and records available in the file.

21. The main issue to be decided by me in the present case is that whether the description of goods i.e. “Nylon 6 High Tenacity Yarn 280D/14F Bright Raw White un-dyed for Hook and Loop Faster Tape” declared by the importer while filing Bill of Entry No. 2286732 dated 18.08.2015 & Bill of Entry No. 3170338 dated 05.11.2015 is correct or otherwise and whether Anti Dumping Duty (ADD) is leviable on the impugned goods or otherwise.

22. I find that M/s. Siddharth Filaments Pvt. Ltd., Surat, had imported “Nylon 6 High Tenacity Yarn 280D/14F Bright Raw White un-dyed for Hook and Loop Faster Tape” *vide* 2 Bills of Entry by classifying the same under Customs Tariff heading 54021990.

23. I find that in the SCN, it is alleged that the subject import product does not have the characteristics of High Tenacity Yarn as confirmed in the test reports. Hence, it is alleged that these items attract anti-dumping duty as per the entry at Sr. No. 8 of the Notification No. 3/2012–Customs (ADD) dated 13.01.2012.

24. I find that in order to ascertain whether the declared goods in question were having the characteristics of High Tenacity Yarn or otherwise so as to ascertain for levy of ADD, samples were drawn by the department and testing was carried out at the designated laboratories. I find that it is proved from the test reports that the goods i.e. the imported yarn declared by the importer confirming was “Not high Tenacity yarn” and accordingly attracts anti-dumping duty as per the entry at Sr. No. 8 of the Notification No. 3/2012–Customs (ADD) dated 13.01.2012. The defence has submitted that at the time of import, the company, on the basis of the certificate provided by supplier had declared that goods were High Tenacity Yarn. The importer, at no time, have contended the test reports and had already paid ADD of Rs. 2,15,000/- alongwith interest amounting Rs. 41,565/-. Thus, I find that the importer has not contended the allegations raised in the SCN as much as the demand of duty & interest has been proposed.

25. I further note that the Noticee has contended that SCN has already been served earlier on the same matter and proceeding was dropped and the Ld. Asst. Commissioner has issued order vide 20230471MN00002732ED dt: 12.04.2023 for withdrawal of the SCN and concluded proceedings. They have made argument that copy of order was also served to Ld. Addl. Commissioner-Customs, at that time no Appeal u/s 128 of the Act or Revision application u/s 129DD of the Act was preferred by department and therefore, the same order has achieved finality. The Noticee has relied upon the judgement given by the Hon’ble High Court- Jharkhand in the case of ***Ambey Mining (P.) Ltd. v/s. Commissioner of State Tax in Civil Application No. 361 of 2023***, in support of their argument.

25.1 I find that in the present case, Deputy Commissioner of Customs, ICD Ankleshwar has issued a Show Cause Notice vide F. No. VIII/48-12/ICD-Ank/Siddharth/2020-21 dated 18.08.2020 proposing the following:

“15. Now, therefore, M/s.Siddharth Filaments Pvt.Ltd., 702, Trividh Chambers, Ring Road, Surat is hereby called upon to show cause to the Deputy/ Assistant Commissioner of Customs, having her/his office at 2nd Floor, Custom ICD, Ankleshwar Dist. Bharuch, Gujarat, as to why:

(a) The Customs duty including Anti-Dumping duty amounting to Rs.4,23,590/-as detailed in Annexure-A attached of this Show Cause Notice short paid by them, should not be recovered from them in terms of Section 28(4) of the Customs Act, 1962. Since, an amount of Rs. 2,15,000/- towards anti-dumping Customs duty was recovered from them by encashment of Bank Guarantee, the same should not be appropriated in Government account;

(b) Interest at the applicable rate should not be recovered from them on the Customs duty mentioned at (a) above under Section 28AA of Customs Act, 1962. Since, an amount of Rs.41,565/-towards Interest on anti-dumping Customs duty was recovered from them, the same should not be appropriated in Government account;

(c) The imported goods declared as "Nylon 6 High Tenacity Yarns 280d/14F Bright Raw White Undyed for Hook and Loop(excluding all high Tenacity Yarn valued at Rs.24,15,812/- should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962;

(d) Penalty should not be imposed on M/s. Siddharth Filaments Pvt.Ltd., 702, Trividh Chambers, Ring Road, Surat under Section 112(a) and 114A of the Customs Act. 1962; and

(e) The Provisional Duty Bond No. 2000893813 dated 20.08.2015 in respect of BE No. 2286732 dt.18.8.2015 & PD Bond No. 2000955426 dated 08.12.2015 in respect of BE No. 3170338 dt. 05.11.2015 furnished by them should not be enforced for recovery of Customs duty, interest, fine, penalty etc.

16. Now therefore, Shri Sudarshan Shyamsukha, Director of M/s.Siddharth Filaments Pvt. Ltd., Surat is hereby called upon to show cause to the Deputy/Assistant Commissioner of Customs, having her/his office at 2nd Floor, Custom ICD, Ankleshwar Dist. Bharuch, Gujarat, as to why penalty should not be imposed upon him under Section 114AA of the Customs Act, 1962."

25.2 I find that a Corrigendum to the SCN issued under F.No. VIII/48-12/ICD-ANK/Siddharth/2020-21 dated 18.08.2020 vide F. No. VIII/48-12/ICD-ANK/Siddharth/2020-21 on 26.04.2022 was issued by the Additional Commissioner, Surat making the SCN answerable to Additional Commissioner of Customs, Surat as under:

"The para no. 15 and 16 may be corrected and read as under:

15. Now, therefore, M/s. Siddharth Filaments Pvt. Ltd., 702, Trividh Chambers, Ring Road, Surat is hereby called upon to show cause to the Additional Commissioner of Customs, having his office at 5th Floor, Customs Division, Althan Bhimrad Road, Near SMC Ward Office, Althan, Surat-395 007 as to why;

16. Now, therefore, Shri Sudarshan Shyamsukha, Director of M/s. Siddharth Filaments Pvt. Ltd., 702, Trividh Chambers, Ring Road, Surat is hereby called upon to show cause to the Additional Commissioner of Customs, having his office at 5th Floor, Customs Division, Althan Bhimrad Road, Near SMC Ward Office, Althan, Surat-395 007 as to why penalty should not be imposed upon him under Section 114AA of Customs Act, 1962."

25.3 I find that subsequently the SCN was transferred to Additional Commissioner of Customs (In charge of ICD Ankleshwar) for adjudication and the same was communicated to noticee(s) vide letter F. No. VIII/ICD-

AKV/48-12/Siddharth/2020-21 dated 23.12.2022.

25.4 I find that it was found that the value of goods to be confiscated in the instant case was Rs.24,15,812/- which was beyond the competency of Deputy/Assistant Commissioner and therefore vide F. No. VIII/48-12/ICD-Ank/Siddharth/2020-21 dated 12.04.2023, Assistant Commissioner of Customs, ICD Ankleshwar had withdrawn the Show Cause Notice dated 18.08.2020 issued by them and the corrigendum dated 26.04.2022 issued by the Additional Commissioner of Customs, Surat with the approval of the competent authority, however the case was not decided on merit of the case.

25.5 I find that in view of the above facts, a fresh Show Cause Notice on the issue was issued on 27.04.2025 vide F. No. GEN/ADJ/ADC/633/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD by Additional Commissioner, I/C ICD Ankleshwar, Ahmedabad Customs proposing the following:

“16. Now, therefore, **M/s.Siddharth Filaments Pvt.Ltd.**, 702, Trividh Chambers, Ring Road, Surat is hereby called upon to show cause to the **Additional Commissioner of Customs**, I/c ICD-Ankleshwar, having office at the Custom House, Surat, 4th floor, Near SMC Ward Office, Althan-Bhimrad Road, Althan, Surat- 395017, Gujarat, as to why:

(a) **the Customs duty** i.e. Anti-Dumping duty amounting to **Rs.4,23,590/-** as detailed in Annexure-A attached of this Show Cause Notice short paid by them, should not be recovered from them in terms of Section 28(4) of the Customs Act, 1962. Since, an amount of **Rs.2,15,000/-** towards anti-dumping Customs duty has already been recovered from them by way of encashment of Bank Guarantee, the same should not be appropriated;

(b) **Interest** at the applicable rate should not be recovered from them on the Customs duty mentioned at (a) above under Section 28AA of Customs Act, 1962. Since, an amount of **Rs.41,565/-** towards Interest on partly recovered anti-dumping Customs duty was recovered from them, the same **should not be appropriated** in Government account;

(c) The imported goods declared as “Nylon 6 High Tenacity Yarns 280d/14F Bright Raw White Undyed for Hook and Loop Fastner Tape” valued at Rs.24,15,812/- should not be held liable for **confiscation** under Section 111 (m) of the Customs Act, 1962;

(d) **Penalty** should not be imposed on M/s. Siddharth Filaments Pvt. Ltd., 702, Trividh Chambers, Ring Road, Surat under Section 112(a) and 114A of the Customs Act. 1962; and

(e) The Provisional Duty Bond No. 2000893813 dated 20.08.2015 in respect of BE No. 2286732 dt.18.8.2015 & PD Bond No. 2000955426 dated 08.12.2015 in respect of BE No. 3170338 dt. 05.11.2015 furnished by them should not be **enforced for recovery** of the Customs duty, interest, fine, penalty etc.

17. Now therefore, **Shri Sudarshan Shyamsukha**, Director of M/s.Siddharth Filaments Pvt. Ltd., Surat is hereby called upon to show cause to the **Additional Commissioner of Customs**, the Custom House, Surat, 4th floor, Near SMC Ward Office, Althan-Bhimrad Road, Althan, Surat- 395017, Gujarat as to :

why **penalty** should not be imposed upon him under Section 114AA of the Customs Act, 1962.”

25.6 On going through the said relied upon judgment cited by the Noticee, I observe that the issuance of second Show Cause Notice, where the adjudicating authority had dropped the earlier demand accepting explanation of Assessee, on same cause of action, was found not permissible. Rather, in the present case, the earlier demand was not dropped but it was withdrawn for different reason of competency of issue of Show Cause Notice. In view of the above I am inclined to hold that the facts and circumstances of the relied upon case are different from the present case in hand and therefore the ratio of the cited judgement is not squarely applicable in this case.

26. I further note that the Noticee has contended that extended period is not invocable as there is no any collusion, wilful misstatement or suppression of facts from their end. The Noticee has relied upon the judgement given by CEGAT Mumbai in the case of ***Parenteral Drugs (I) Ltd. v. Commissioner of Customs-II, Mumbai in appeal no. APPEAL NOS. C/51/1995-C*** and ruling passed by the Hon'ble CESTAT, Bangalore Bench in case of ***Steel Authority of India Ltd. v/s Commissioner of Customs, Visakhapatnam in Appeal No. C/215/2015*** in support of their argument. On going through the said relied upon judgments, I find that the facts and circumstances of both these cases are different from the present case in hand and therefore the ratio of the cited judgments is not squarely applicable in this case. In view of the above facts discussed in foregoing Paras, I find that the importer, being a private limited company with full technical expertise and product knowledge, was fully aware of the nature/characteristics of the product. By no stretch of imagination, it can be said that the Noticee was unaware of the technical specifications of the goods they were importing. I further note that despite having such knowledge, they chose to declare the goods as "High Tenacity Yarn" attracting NIL Anti-Dumping Duty (ADD), instead of correctly declaring them as "Not High Tenacity Yarn". I also note that it can not be assumed that the Noticee was not aware about the liveability of Anti-Dumping Duty (ADD) applicable on their imported goods and therefore, I find and hold that such deliberate declaration on the part of the noticee establishes wilful misstatement and suppression of material facts with their intent to evade payment of duty. Therefore, the extended period of limitation under Section 28(4) of the Customs Act, 1962 is rightly invocable in the present case and the Anti-Dumping Duty (ADD) on the impugned goods is liable to be demanded and recovered from the noticee.

27. I find that the goods imported by the importer vide Bill of Entry No. 2286732 dated 18.08.2015 & Bill of Entry No. 3170338 dated 05.11.2015 are leviable to Anti- Dumping Duty (ADD) @ \$ 0.54 per KG, as per the entry at Sr. No. 8 of the Notification No. 03/2012-Customs (ADD) dt.13.01.2012. In view of the above, I find and hold that, consequent upon the revised description of the above said goods, M/s. Siddharth Filaments Pvt. Ltd is liable to pay the Customs duty i.e. Anti- Dumping Duty (ADD) amounting to Rs.4,23,590/- (Rupees Four Lakhs Twenty Three Thousand Five Hundred Ninety Only) as detailed in Annexure-A attached of this Show Cause Notice and the same is liable to be recovered along with applicable interest.

28. I find that the importer has failed to follow the conditions of Section 46(4) of the Customs Act, 1962 as they have not made truthful declaration while presenting the Bill of entry.

29. I find that during the investigation; the importer had accepted the issue of mis-declaration of description of goods. I further note that the present Show Cause Notice also proposes for the confiscation of the imported goods valued at Rs.24,15,812/- under the provisions of Section 111(m) of the Customs Act, 1962.

29.1 As discussed in the foregoing paragraphs, it stands clearly established that M/s. Siddharth Filaments Pvt. Ltd. filed two Bills of Entry for import of “Nylon 6 High Tenacity Yarn 280D/14F Bright Raw White Undyed for Hook and Loop Fastener Tape” and mis-classified the same, having an assessable value of Rs. 24,15,812/-, under Customs Tariff Item No. 54021990, thereby attracting NIL Anti-Dumping Duty (ADD), instead of ADD @ USD 0.54 per kg, leviable under Sr. No. 8 of Notification No. 03/2012-Customs (ADD) dated 13.01.2012. This was done despite being fully aware that the imported goods did not possess the characteristics of “High Tenacity Yarn”. I have already held that the impugned goods are correctly classifiable as “Other than High Tenacity Yarn”.

The importer’s declaration, therefore, constitutes a material mis-declaration of classification, as it does not reflect the true nature of the goods. By adopting this modus operandi, the Noticee cleared goods valued at Rs. 24,15,812/- (as detailed in Annexure “A” to the Show Cause Notice) without payment of the applicable Anti-Dumping Duty. Such deliberate mis-classification and suppression of the true nature of the goods clearly establishes that M/s. Siddharth Filaments Pvt. Ltd. wilfully contravened the provisions of Section 46(4) of the Customs Act, 1962, which mandates that the importer shall make and subscribe to a true declaration in the Bill of Entry submitted for assessment of Customs Duty.

Further, Section 111(m) of the Customs Act, 1962 provides for confiscation of any imported goods which do not correspond, in respect of value, description, or in any other particular, with the entry made under the Act. In this case, the Noticee resorted to mis-classification of the goods by declaring them as “High Tenacity Yarn” instead of the appropriate description “Other than High Tenacity Yarn”, thereby evading payment of Anti-Dumping Duty legitimately leviable. Accordingly, the imported goods valued at Rs. 24,15,812/- are liable to confiscation under Section 111(m) of the Customs Act, 1962.

Since the said goods are no longer physically available for confiscation, redemption fine is imposable in lieu thereof, in terms of settled judicial pronouncements, including the judgment of the Hon’ble High Court of Madras in M/s. Visteon Automotive Systems India Ltd. v. CC, Chennai, reported in 2018 (9) GSTL 142 (Mad), wherein it was held that redemption fine can be imposed even when goods are not available for confiscation, has observed as under:

The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other

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

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

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

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

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

30. The Show Cause Notice proposes for enforcement of PD Bond No. 2000893813 dated 20.08.2015 in respect of BE No. 2286732 dated 18.8.2015 & P D Bond No. 2000955426 dated 08.12.2015 in respect of BE No. 3170338

dated 05.11.2015 for recovery of Customs duty, interest, fine, penalties or any other dues from the importer. I find and hold that PD Bond No. 2000893813 dated 20.08.2015 in respect of BE No. 2286732 dated 18.8.2015 & P D Bond No. 2000955426 dated 08.12.2015 in respect of BE No. 3170338 dated 05.11.2015 are required to be enforced for recovery of Customs duty, interest, fine, penalties or any other dues from the importer

31. I find that penalty under the provisions of Section 114A of the Customs Act, 1962 is imposable on the Noticee. The said provision can be invoked only when the duty demanded under Section 28 of the Act is determined under sub-section (4), i.e., in cases involving wilful mis-statement, mis-declaration or suppression of facts with intent to evade payment of duty. As discussed in the foregoing paragraphs, M/s. Siddharth Filaments Pvt. Ltd. has deliberately and knowingly mis-declared the impugned goods and suppressed their correct description with the clear intention of evading payment of Customs Duty. I have already held that the differential Customs Duty, namely Anti-Dumping Duty amounting to Rs. 4,23,590/- (Rupees Four Lakhs Twenty Three Thousand Five Hundred Ninety only), is recoverable from M/s. Siddharth Filaments Pvt. Ltd. under the provisions of Section 28(4) of the Customs Act, 1962. Since the imposition of penalty under Section 114A is directly and unambiguously linked to the confirmation of duty under Section 28(4), I hold that penalty under Section 114A of the Customs Act, 1962 is squarely attracted and therefore imposed upon M/s. Siddharth Filaments Pvt. Ltd.

32. The Show Cause Notice has proposed imposition of penalty under the provisions of Section 114A of the Customs Act, 1962 upon the Noticee. It is a settled position of law that penalty under Section 114A can be imposed only when the duty demanded under Section 28 of the Act is determined under sub-section (4), i.e., in cases where wilful mis-statement, mis-declaration or suppression of facts with intent to evade payment of duty is established. As discussed in detail in the foregoing paragraphs, M/s. Siddharth Filaments Pvt. Ltd. has deliberately and knowingly mis-declared the impugned goods and suppressed their correct description with the clear intent to evade payment of Customs Duty. I have already held that the differential Customs Duty, namely Anti-Dumping Duty amounting to Rs. 4,23,590/- (Rupees Four Lakhs Twenty Three Thousand Five Hundred Ninety only), is recoverable from M/s. Siddharth Filaments Pvt. Ltd. under the provisions of Section 28(4) of the Customs Act, 1962. Since the applicability of penalty under Section 114A is intrinsically and unambiguously linked to confirmation of duty under Section 28(4), I hold that M/s. Siddharth Filaments Pvt. Ltd. is liable for penalty under Section 114A of the Customs Act, 1962 for their deliberate acts of omission and commission.

33. The Show Cause Notice proposes penalty under the provisions of Section 112(a) of the Customs Act, 1962 on the Noticee. 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.” Thus, I am inclined to hold that the penalty under Section 114A *ibid* has already been imposed upon the Noticee, simultaneously the penalty under Section 112 of the Customs Act, 1962, is not imposable in terms of the fifth proviso to Section 114A *ibid* in the instant case. Hence, I refrain from imposing penalty on the Noticee under Section 112 of the Customs Act, 1962.

34. The Show Cause Notice proposes penalty under the provisions of Section

114AA of the Customs Act, 1962 on the Noticee No. 2 Shri Sudarshan Shyamsukha, Director of M/s. Siddharth Filaments Pvt. Ltd. It is alleged in the SCN that Shri Sudarshan Shyamsukha, Director of M/s. Siddharth Filaments Pvt. Ltd., Surat was well aware of the nature of the imported goods which he admitted in his statement that the goods imported can be found as “Not High Tenacity Yarn’ which attract ADD, and resulted in non-levy of the appropriate Anti-Dumping Duty. Section 114AA of the Customs Act, 1962 reads as under:

Section 114AA. Penalty for use of false and incorrect material. -

“If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]”

34.1 I find that Shri Sudarshan Shyamsukha, Director of M/s. Siddharth Filaments Pvt. Ltd., was fully aware of the nature of the imported goods and was actively instrumental in the deliberate mis-declaration of the impugned goods, which resulted in evasion of the appropriate Anti-Dumping Duty. By knowingly engaging in such acts of mis-declaration and suppression, he has rendered himself liable for penalty under Section 114AA of the Customs Act, 1962 for his deliberate acts of omission and commission. In view of the foregoing findings, I hold that Shri Sudarshan Shyamsukha, Director of M/s. Siddharth Filaments Pvt. Ltd., is also liable for penalty under Section 114A of the Customs Act, 1962, being directly responsible for the attempted evasion of duty through mis-declaration.

35. In view of my findings in paras supra, I pass the following order:

ORDER

- (I) I confirm the demand of Customs duty i.e. Anti-Dumping duty amounting to Rs.4,23,590/- (Rupees Four Lakhs Twenty Three Thousand Five Hundred Ninty Only) as detailed in Annexure-A attached to the Show Cause Cause Notice leviable on the “imported goods” covered under Bill of Entry No. 2286732 dated 18.08.2015 & Bill of Entry No. 3170338 dated 05.11.2015 imported by M/s. Siddharth Filaments Pvt. Ltd. and order to recover the same from them in terms of Section 28(4) of the Customs Act, 1962. Since, an amount of Rs.2,15,000/- towards anti-dumping Customs duty has already been recovered from them by way of encashment of Bank Guarantee, I order to appropriate the same.
- (II) I confirm the demand of interest at the applicable rate on the Customs duty mentioned at (I) above and order to recover the same from them under Section 28AA of Customs Act, 1962. Since, an amount of Rs.41,565/- towards interest on partly recovered anti-dumping Customs duty has already been recovered from them, I order to appropriate the same.
- (III) I hold the goods imported vide the above said two bills of entry

valued at Rs.24,15,812/- liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose redemption fine of Rs. 2,00,000/- (Rupees Two Lakh Only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

- (IV) I impose a penalty of Rs.4,23,590/- (Rupees Four Lakhs Twenty Three Thousand Five Hundred Ninty Only) on M/s. Siddharth Filaments Pvt. Ltd. on the Duty demanded and confirmed at (I) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.
- (V) I refrain from imposing any penalty on M/s. Siddharth Filaments Pvt. Ltd under Section 112 of the Customs Act, 1962.
- (VI) I order to enforce Provisional Duty Bond No. 2000893813 dated 20.08.2015 in respect of BE No. 2286732 dt.18.8.2015 & PD Bond No. 2000955426 dated 08.12.2015 in respect of BE No. 3170338 dated 05.11.2015 furnished by them for recovery of the Customs duty, interest, fine, penalty etc.
- (VII) I impose a penalty of Rs.2,00,000/- (Rupees Two Lakh Only) on Shri Sudarshan Shyamsukha, Director of M/s. Siddharth Filaments Pvt. Ltd., under Section 114AA of the Customs Act, 1962.

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

37. The Show Cause Notice issued vide F. No. GEN/ADJ/ADC/633/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD dated 27.04.2025 is disposed of in above terms.

(Additional Commissioner)
I/C ICD-Ankleshwar,
Ahmedabad Customs Commissionerate
Dated: 07.10.2025

By Speed Post/ By E-mail/ By Hand Delivery/ Through Notice Board:

DIN: 20251071MN00005075CA

To,

1. M/s. Siddharth Filaments Pvt. Ltd.,
702, Trividh Chambers,
Ring Road, Surat-395002

2. Shri Sudarshan Shyamsukha,
Director of M/s. Siddharth Filaments Pvt. Ltd.,
702, Trividh Chambers,
Ring Road, Surat-395002.

Copy to:-

- (i) The Principal Commissioner, Customs Ahmedabad (Kind Attention: RRA Section).
- (ii) The Assistant Commissioner of Customs, ICD – Ankleshwar.
- (iii) The Superintendent, Customs, H.Q. (Systems), Ahmedabad, in PDF format for uploading on website of Customs Commissionerate, Ahmedabad
- (iv) The Superintendent (Task Force), Customs-Ahmedabad
- (v) Guard File.