



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: 20250971MN0000809851

PREAMBLE

A	फ़ाइल संख्या / File No.	:	GEN/ADT/CERA/AP/48/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस संख्या – तारीख / Show Cause Notice No. and Date	:	GEN/ADT/CERA/AP/48/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD dated 12.12.2024
C	मूल आदेश संख्या / Order-In-Original No.	:	01/ADC/SRV/ICD Ankleshwar/2025-26
D	आदेश तिथि / Date of Order-In-Original	:	29.09.2025
E	जारी करने की तारीख / Date of Issue	:	29.09.2025
F	द्वारा पारित / Passed By	:	SHREE RAM VISHNOI , Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Noticee	:	M/s. Lanxess India Pvt Ltd, Plot No. 748/2/A, 748/3 & 748/4B, Jhagadia Industrial Estate, GIDC Jhagadia, Bharuch, Gujarat-393110
(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 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. Lanxess India Pvt Ltd, Plot No. 748/2/A, 748/3 & 748/4B, Jhagadia Industrial Estate, GIDC Jhagadia, Bharuch, Gujarat-393110 (hereinafter referred as the importer), holding Import Export Code No. 0504023039 imported "DUTRAL CO 054-ETHYLENE PROPYLENE POLYMER" vide 28 Bills of Entry by classifying the same under **CTH 39019000** on payment of **BCD @7.5%, SWS@10% and IGST at 18%**. The said import consignment was cleared under RMS without examination.

2. During the course of document audit by the Comptroller and Auditor General of India, an objection was raised that the importer, vide BOE (**details at below mentioned Table A**), had misclassified the imported goods under **CTH 39019000** of the Customs Tariff Act, 1975, and availed the benefit of Notification No. 01/2017-IGST Sl. No.100 of Schedule III, under which Basic Custom Duty is BCD @7.5%, SWS@10% and IGST at 18%.

TABLE A

S.No.	Bill of Entry No.	Bill of Entry date	Item Description
1	5291635	30.03.2023	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
2	3289294	14.11.2022	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
3	3172609	05.11.2024	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
4	2410488	13.09.2022	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
5	2164155	26.08.2022	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
6	2042588	17.08.2022	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
7	9203417	21.06.2022	DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
8	6220750	24.12.2019	DUTRAL-CO-054-ETHYLENE PROPYLENE-POLYMER
9	8293525	27.07.2020	DUTRAL-CO-054-ETHYLENE PROPYLENE-POLYMER
10	8144582	12.07.2020	DUTRAL-CO-054-ETHYLENE PROPYLENE-POLYMER
11	7502922	22.04.2020	DUTRAL-CO-054-ETHYLENE PROPYLENE-POLYMER
12	7102994	04.03.2020	DUTRAL-CO-054-ETHYLENE PROPYLENE-POLYMER
13	6856472	12.02.2020	DUTRAL-CO-054-ETHYLENE PROPYLENE-POLYMER
14	6523020	18.01.2020	DUTRAL-CO-054-ETHYLENE PROPYLENE-POLYMER
15	5345809	03.04.2023	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
16	5600342	20.04.2023	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
17	6662467	01.07.2023	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
18	7363041	16.08.2023	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
19	7495979	24.08.2023	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
20	9034331	02.12.2023	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
21	9034333	02.12.2023	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
22	9217301	14.12.2023	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
23	9522110	04.01.2024	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
24	9945308	02.02.2023	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
25	3617707	23.05.2024	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
26	3710198	28.05.2024	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
27	4243900	29.06.2024	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER
28	4606127	20.07.2024	EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER

3. DUTRAL CO 054- ETHYLENE PROPYLENE POLYMER was classified under rubber by company and explained as elastomers which were characterized by excellent aging and weathering resistance, good endurance to both high and low temperature. These properties confer to the vulcanized products outstanding, durable mechanical and elastic properties as well as a good resistance to a large variety of chemicals. Because of their structure, Dutral® K elastomers are typically used in a broad range of applications encompassing automotive whether strips, cables, hoses, polymers and oil viscosity modifiers. This is as per technical data sheet available in Source

company profile (link as below):

([https://Ivelastomers.com/eng/products/epdm.html#:~:text=EP\(D\)M%20elastomers, and%20oil%20viscosity%20modifiers.](https://Ivelastomers.com/eng/products/epdm.html#:~:text=EP(D)M%20elastomers, and%20oil%20viscosity%20modifiers.))

Grade Name	Mooney Viscosity ML (1+4)@		Polymer composition %wt			Extension Oil Content		Main Applications	TDS
	100C	125C	Ethylene	Propylene	ENB	%wt	phr		
DUTRAL K CO 054	44	-	59	41	-	-	-	Automotive, cables, mechanical goods, building, bitumen modification, polymer modification, appliances	PDF
DUTRAL K CO 059	-	79	59	41	-	-	-	Polymer modification, mechanical goods, building	PDF

4. As per Sub heading note of CTH 39 "Within any one heading of this Chapter, polymers (including copolymers) and chemically modified polymers are to be classified according to the following provisions:

(a) where there is a sub-heading named-Other in the same series: (1) the designation in a sub-heading of a polymer by the prefix -poly (for example polyethylene and polyamide -6,6) means that the constituent monomer unit or monomer units of the named polymer taken together must contribute 95% or more by weight of the total polymer content". Propylene content is approx. 41% by weight as per sample analysis report available in system hence these items should not merit classification under CTH 39019000.

5. As per the Customs Tariff Act, 1965,

<i>Tariff Item</i>	<i>Description of goods</i>	<i>Unit</i>	<i>Rate of duty</i>
.			
.			
.			
3901	<i>POLYMERS OF ETHYLENE, IN PRIMARY FORMS;</i>	<i>Kg</i>	
.			
.			
39019000	<i>Other</i>	<i>Kg</i>	7.5%
.			
.			
4002	<i>SYNTHETIC RUBBER AND FACTICE DERIVED FORM OILS, IN PRIMARY FORMS OR IN PLATES, SHEETS OR STRIP; MIXTURES OF ANY PRODUCT OF</i>	<i>Kg</i>	

	<i>HEADING 4001 WITH ANY PRODUCT OF THIS HEADING, IN PRIMARY FORMS OR IN PLATES, SHEETS OR STRIP</i>		
.			
.			
40027000	<i>Ethylene-propylene-non-conjugated diene rubber (EPDM)</i>	<i>Kg</i>	<i>10%</i>
.			
.			
.			

6. Therefore, the imported goods should be classified under CTH 40027000 and duty is to be levied at the rate of **BCD 10% SWS 10% and IGST 18%**. Thus, incorrect classification of goods resulted in short payment of duty by ₹32,24,731/- . Accordingly, it appeared that the importer has not paid the Basic Customs Duty by misclassifying the imported goods under CTH 39019000 instead of CTH 40027000.

7. Consequently, letters vide F.No. VIII/48-15/ICD-ANK/Audit/CERA/2023-24 dated 30/05/2024 and GEN/ADT/CERA/67/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD dated 19/11/2024 were issued to M/s. Lanxess India Pvt Ltd., regarding incorrect classification of goods resulting in the short payment of Basic Customs Duty amounting to ₹32,24,731/- on the goods imported under Bills of Entry numbers as mentioned in Table A above.

8. This misclassification resulted in short levy of duty of ₹32,24,731/- as below:

Total no of Bills of Entry	Duty as per CTH 39019000, declared in 28 BOE (Rs.)	Duty as per the correct CTH 40027000 (Rs.)	Differential duty to be paid (Rs.)
28	2,75,61,763/-	3,07,86,494/-	₹32,24,731/-

9. From the above, it appeared that the importer imported DUTRAL CO 054- ETHYLENE PROPYLENE POLYMER vides 28 Bill of Entry as detailed in Table A above, filed at ICD, Ankleshwar. However, despite the fact, their description of goods appears to match the goods as described under CTH 40027000 attracting Basic Customs duty at the rate @10%, the importer imported the said goods under CTH 39019000 (attracting Basic Customs duty at the rate @ 7.5%). Thereby, the said importer appears to have short paid the Basic Customs duty amounting to ₹32,24,731/-.

10. 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 filing 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, it is responsibility of the importer more so in RMS facilitated era, to enter in the Bill of entry the true description, Value, applicable Notification, etc., in order to determine and pay the duties 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 and enter applicable Notification for the goods being

imported in the Bill of Entry. Incomplete description of the goods declared, mis-classification of goods being imported, availing wrong benefit of Notification, not entering the applicable Notifications in the Bill of entry, if any, is nothing but suppression of facts with an intent to evade payment of applicable Duty and get financial benefit by the said act of omission and commission.

11. From the above facts, it appeared that the importer, contravened the provisions of Section 46 (4) of the Customs Act, 1962, in as much as they appeared to have intentionally mis-declared by suppressing the correct and true facts while filing the declaration seeking clearance at the time of the importation of the goods and they appeared to have failed to declare as to the truth of the contents while presenting Bills of Entry before the proper officer of Customs. This mis-declaration by willful mis-statement and suppression of facts by the above said importer appeared to have contravened the provisions of the Customs Act, 1962 and Rules made there under with an intent to evade payment of Basic Customs duty amounting to ₹32,24,731/-.

12. As per Section 17 of Custom Act- Assessment of duty:

"An Importer entering any Imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods",

13. Pursuant to the introduction of self-assessment in Customs since April, 2011, it is the duty of importer to correctly declare the CTH, assessable value, Notification No. etc.

14. From the above, it appeared that in the instance case, the subject goods appeared to be covered under CTH 40027000 instead of CTH 39019000 and BCD 10% is leviable thereon. It appeared that it is not the case where importer was not aware of the nature and appropriate classification of goods. However, the importer had wilfully mis-classified the goods to evade payment of Customs duty. The importer had been regularly importing these goods and thus they were very well aware about the nature and condition of the said goods. Therefore, the importer appeared to have suppressed these vital facts from the department and cleared these goods by self-assessing the same under CTH 39019000; paying 7.5% BCD, thereby it appeared causing loss to revenue, as the said goods appeared to be classifiable under CTH 40027000. The importer appeared to have violated the provisions of Section 46 of the Customs Act, 1962. The duty not paid on all the goods cleared by the Importer under self-assessment appeared liable to be demanded and recovered from the importer in terms of Section 28(4) of the Customs Act, 1962.

15. In view of the above discussed facts, a Show Cause Notice was issued vide F. No. GEN/ADT/CERA/AP/48/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD on dated 12.12.2024, to the Noticee, asking them as to why:

- (i) The classification of "EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE -POLYMER / DUTRAL-K-CO-054-ETHYLENE PROPYLENE -POLYMER" imported vide 28 Bills of Entry (as per table A) and classified by importer, under CTH 39019000 should not be rejected and re-determined under CTH 40027000;
- (ii) Differential Customs duty amounting to ₹ 32,24,731/- (Rupees Thirty two lakhs twenty four thousand seven hundred and thirty one only) under the CTH 40027000 should not be recovered from them under proviso to Section 28(4) of the Customs Act, 1962, as the importer has willfully mis-declared the goods/ suppressed vital facts to evade the

Customs duty;

- (iii) Interest should not be recovered from them on the differential Customs duty as at above under Section 28AA of the Customs Act, 1962;
- (iv) The goods valued at Rs.9,93,75,386/- (Rupees Nine crore Ninety three Laths seventy five thousand three hundred and eighty six rupees only) covered under 28 Bills of Entry (as per table A) should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962;
- (v) Penalty should not be imposed on M/s. Lanxess India Pvt Ltd., under Section 112(a) and under Section 114A of Customs Act, 1962;

PERSONAL HEARING & DEFENCE REPLY: -

16. Personal hearing in the matter was fixed on dated 01.08.2025, 13.08.2025 and 27.08.2025 which were not attended by the importer. However, on the request of the importer another PH was fixed on 16.09.2025, which was attended by the authorized person Shri Prashant Patankar (Legal Consultant) in virtual mode.

17. During the PH, Shri Prashant Patankar, *inter-alia* submitted that the subject goods are correctly classified under chapter heading 3901 as "diene" is absent from the subject goods and that the onus to establish the alternate classification was on the department and the same has not been discharged.

18. Furthermore, vide their letter dated 15.09.2025, the importer *inter alia* submitted that;

- (i) the instant SCN is not sustainable, being based on erroneous facts and law.
- (ii) Subject imported goods NOT classifiable under CTH 4002: The SCN has proposed classification of the subject goods without appreciating the scope of the heading 4002 read with Note to the Chapter.

The heading 4002 reads as under:

4002 Synthetic rubber, and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading No. 4001 with any product of this heading, in primary forms or in plates, sheets or strip

4002 7000- Ethylene-propylene-non-conjugated diene rubber (EPDM) The expression "rubber" has been defined in Note I to Chapter 40 and the expression "synthetic rubber" has been defined in Note 4 to Chapter 40 of the Customs Tariff & HSN Explanatory Notes

The relevant notes read as under:

Notes:

1. Except where the context otherwise requires, throughout this Schedule the expression 'rubber' means the following products, whether or not vulcanised or hard: natural rubber, halata, gatta-percha, guayule, chicle and similar natural gums, synthetic rubber, factice derived from oils, and such substances reclaimed.

4. In Note I to this Chapter and in heading 4002, the expression 'synthetic rubber' applies to:

(a) unsaturated synthetic substances which can be irreversibly transformed by vulcanisation with sulphur into non-thermoplastic substances which at a temperature between 180C and 290C will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of five minutes, to a length not greater than one and a half times their original length. For the purposes of this text, substances necessary for the cross-linking, such as vulcanizing activators or accelerators, may be added; the presence of substances provided for by Note 5B (ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticisers and fillers is not permitted

(b) thioplasts (TM); and

(c) natural rubber modified by grafting or mixing with plastics, depolymerised natural rubber, mixtures of unsaturated synthetic substances with saturated synthetic high polymers provided that all the above-mentioned products comply with the requirements concerning vulcanisation, elongation and recovery in (a) above.

5(A) Headings 4001 and 4002 do not apply to any rubber or mixture of rubbers which has been compounded, before or after coagulation, with

(i) vulcanising agents, accelerators, retarders or activators (other than those added for the preparation of pre-vulcanised rubber latex)

(ii) pigments or other colouring matter, other than those added solely for the purpose of identification,

(iii) plasticisers or extenders (except mineral oil in the case of oil-extended rubber), fillers, reinforcing agents, organic solvents or any other substances, except those permitted under (b):

5(B) the presence of the following substances in any rubber or mixture of rubbers shall not affect its classification in heading 4001 or 4002, as the case may be, provided that such rubber or mixture of rubbers retains its essential character as a raw material

(i) emulsifiers or anti-tack agents,

(ii) small amounts of breakdown products of emulsifiers,

(iii) very small amounts of the following heat-sensitive agents (generally for obtaining thermosensitive rubber latexes), cationic surface active agents (generally for obtaining electro-positive rubber latexes), (anti-oxidants, coagulants, crumbling agents, freeze-resisting agents, peptisers preservatives, stabilisers viscosity-control agents, or similar special-purpose additives.

(iii) Imported goods do not qualify as Synthetic Rubber in terms of Note 4(a) to Chapter 40

The SCN under reference has failed to establish that the imported goods are in the nature of Synthetic Rubber within the meaning under Note 4(a) to Chapter 40 so as to be described as "Ethylene-propylene-non-conjugated diene rubber (EPDM)".

The importer had always placed on record the certificate of analysis and the Technical Data Sheet (TDS) of the subject goods on record at the time of clearance of the subject consignments. However, the SCN has failed to take note of the fact that the 'diene' is absent in the subject goods (the copolymers of only ethylene and propylene monomers).

Therefore, the subject goods do not qualify as 'synthetic rubber, particularly under clause (a) of Note 4 above.

In absence of 'diene', the subject goods do not fit the description Ethylene-propylene-non-conjugated diene rubber (EPDM) which is covered under the Tariff Item 4002 7000, proposed in the Advisor letter.

The relevant entry of the heading 4002 reads as under:

4002 Synthetic rubber, and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading No. 4001 with any product of this heading, in primary forms or in plates, sheets or strip

4002 7000 Ethylene-propylene-non-conjugated diene rubber (EPDM) It is relevant to note that the Heading 4002 is based on the presence of (D) or diene.

(iv) without confirmation that the subject goods qualify as "synthetic rubber" based on the test specified in Note 4(a) to Chapter 40 of the Customs Tariff above, the proposal to classify the subject goods under Tariff Item 4002 7000 is not sustainable.

(v) the onus of establishing that the subject goods fell within the Heading 4002 was upon the Revenue. However, the Revenue has led no evidence to that effect.

(vi) Subject imported goods correctly classifiable under CTH 3901

(vii) Extended period not invokable, No Willful mis-statement, Interest not payable, Subject goods not liable for confiscation under section 111(m), irrespective of the decision on classification, Penalty under Section 114A not imposable.

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

DISCUSSION AND FINDING

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

20. The main issue to be decided by me in the present case is the classification of imported goods viz. "EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER / DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER" imported vide 28 Bills of Entry (as per table A) and whether the same should be classified under CTH 39019000 or under CTH 40027000.

21. I find that M/s. Lanxess India Pvt Ltd, Jhagadiya, Bharuch, had imported "DUTRAL CO 054-ETHYLENE PROPYLENE POLYMER" *vide* 28 Bills of Entry by classifying the same under **CTH 39019000** on payment of **BCD @7.5%, SWS@10% and IGST at 18%**. The said import consignment was cleared under RMS without examination.

22. I find that during the course of document audit by the Comptroller and Auditor General of India, an objection was raised that the importer had misclassified the imported goods under **CTH 39019000** of the Customs Tariff Act, 1975, and availed the benefit of Notification No. 01/2017-IGST, Sl. No.100 of Schedule III, under which Basic Custom Duty is BCD @7.5%, SWS@10% and IGST at 18%.

23. I further find that as per the SCN issued to the importer, the reliance has been placed on Sub-heading note of CTH 39 which reads as under : -
"Within any one heading of this Chapter, polymers (including copolymers) and chemically modified polymers are to be classified according to the following provisions: (a) where there is a sub-heading named-Other in the same series: (1) the designation in a sub-heading of a polymer by the prefix -poly (for example polyethylene and polyamide -6,6) means that the constituent monomer unit or monomer units of the named polymer taken together must contribute 95% or more by weight of the total polymer content".

24. I find that in the SCN, it is alleged that, in the subject import product, Propylene content is approx. 41% by weight as per sample analysis report available in system. Hence, it is alleged that these items should not merit classification under CTH 39019000.

25. I find that it has also been, *inter alia*, alleged in the SCN that the product imported by the importer viz., "DUTRAL CO 054-ETHYLENE PROPYLENE POLYMER", has been erroneously classified under **CTH 39019000** on payment of BCD @7.5%, SWS@10% and IGST at 18%, whereas, the same is correctly classifiable under CTH 40027000, due to the fact that as rubber characterized by excellent aging and weathering resistance, good endurance to both high and low temperature. These

properties confer to the vulcanized products outstanding, durable mechanical and elastic properties as well as a good resistance to a large variety of chemicals. Because of their structure, Dutral® K elastomers are typically used in a broad range of applications encompassing automotive whether strips, cables, hoses, polymers and oil viscosity modifiers. While alleging so, reliance has been sought to be placed on Technical Data Sheet (TDS) available in Source company profile.

26. Accordingly, it is proposed in the SCN that the imported goods need to be re-classified and duty is to be levied at the rate of BCD 10% SWS 10% and IGST 18% on CTH 40027000 as per the Customs Tariff Act, 1965.

27. I find that the noticee in his defence mainly raised the following contentions:

(i) Subject imported goods NOT classifiable under CTH 4002, in as much as this heading is applicable only to Synthetic rubber, and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading No. 4001 with any product of this heading, in primary forms or in plates, sheets or strip, whereas their product is not a Synthetic Rubber;

(ii) Imported goods do not qualify as Synthetic Rubber in terms of Note 4(a) to Chapter 40, in as much as, due to absence of 'diene', the subject goods do not fit the description Ethylene-propylene-non-conjugated diene rubber (EPDM) which is covered under the Tariff Item 4002 7000;

(iii) Subject imported goods correctly classifiable under CTH 3901 - The SCN does not deny that the subject goods have ethylene (polymer) content of 59% and propylene (polymer) content of 41%, but 'dine is absent.

(iv) The onus to establish the classification of the subject goods under heading 4002 is on the department and the same has not been discharged.

(v) Extended period is not invokable since there is no wilful mis-statement by the importer.

28. On examination of the allegations vis-à-vis the defence arguments, I find that Ethylene-Propylene based elastomers are internationally recognised in two broad categories, namely Ethylene-Propylene Copolymer (EPM) and Ethylene-Propylene Diene Monomer (EPDM). Both exhibit elastomeric properties such as excellent resistance to heat, ozone, weathering and polar fluids, and are generally used in automotive hoses, seals, cables and viscosity modifiers. The essential difference is in their chemical composition: while **EPM** is a saturated copolymer of ethylene and propylene, **EPDM** is a terpolymer which includes a third monomer called a diene. The characteristic of both Ethylene Propylene and Ethylene Propylene Diene are tabulated below for ease of reference herein under.

Comparison table

Feature	Ethylene Propylene (EPM)	Ethylene Propylene Diene Monomer (EPDM)
Composition	A saturated copolymer of ethylene and propylene.	An unsaturated terpolymer of ethylene, propylene, and a diene monomer.
Vulcanization (Curing)	Can only be cured with peroxides, radiation, or other radical-based methods due to its saturated backbone.	Can be cured using both sulfur-based systems and peroxides because the diene provides extra double bonds for cross-linking.
Weathering and Ozone Resistance	Excellent. EPM's saturated backbone provides superior resistance to oxygen and ozone compared to EPDM.	Excellent. However, a higher diene content in the formula can slightly decrease this resistance.
Cost	Generally less expensive than EPDM.	Can be slightly more expensive due to the inclusion of the third diene monomer.
Processing	Limited to peroxide curing, which can be more expensive or less versatile for some applications.	Offers more flexible processing options, with both sulfur and peroxide curing available.
Properties	Good heat and chemical resistance, but not quite as robust as EPDM in very demanding applications.	Enhanced mechanical properties and aging resistance due to its superior cross-linking.
Oil Resistance	Poor. Both are non-polar, causing them to swell in hydrocarbon oils, fuels, and non-polar solvents.	Poor. Both swell dramatically in petroleum products.
Applications	Automotive hoses, gaskets, and impact modification for polypropylene. It is also ideal for foam products used in insulation.	Widely used for outdoor applications like weather-stripping, seals, and roofing due to superior durability. Also used for wire and cable insulation and brake system parts.

29. I further note that the Harmonised System Explanatory Notes (HSEN) to Heading 4002 specifically recognise **both EPM and EPDM as forms of synthetic rubbers**, despite their different vulcanisation methods. EPDM, being an unsaturated terpolymer incorporating a non-conjugated diene, can be vulcanised using sulphur, which facilitates cross-linking through the double bonds introduced by the diene component. In contrast, EPM is a saturated copolymer of ethylene and propylene, lacking the diene and thus requiring peroxide-based vulcanisation to achieve similar cross-linking and elastomeric properties. The HSEN emphasizes that the defining criterion for classification under Heading 4002 is not exclusively tied to sulphur vulcanisation but encompasses the overall elastomeric behaviour, including the ability to undergo irreversible transformation into non-thermoplastic substances that exhibit high elasticity, resilience, and recovery after deformation. Both EPM and EPDM demonstrate these characteristics, such as the capacity to stretch to at least three times their original length without breaking and to return to near-original dimensions, as mentioned in Note 4(a) to Chapter 40 of the Harmonized System. Consequently, I find that the imported goods, identified as ETHYLENE PROPYLENE POLYMER (specifically DUTRAL K CO 054), qualify as synthetic

rubber and are not appropriately classifiable under Chapter 39, which pertains to plastics and articles thereof. This classification aligns with the fundamental principle that substances exhibiting rubber-like properties, regardless of the specific vulcanisation agent, fall within the scope of synthetic rubbers under Chapter 40. In support of my view, I also note that international customs practices, such as those from the U.S. Customs and Border Protection, have classified similar ethylene-propylene copolymers under subheading 4002.70, affirming their status as synthetic rubbers. Furthermore, standards like ASTM D1418 designate both EPM and EPDM within the M-class rubbers, which are polymethylene-type saturated chain elastomers recognized as synthetic rubbers.

29.1 I find that the impugned goods are Ethylene–Propylene based elastomers, which unequivocally fall within the purview of synthetic rubber as defined in the Customs Tariff. The core issue for determination revolves around whether these goods merit classification under Chapter 39 as polymers of ethylene or propylene, or more accurately under Chapter 40 as synthetic rubber. I note that Chapter 39 covers plastics in primary forms, including polymers like polyethylene and polypropylene, but requires that the substances do not exhibit the elastomeric properties typical of rubbers. In contrast, Chapter 40 is dedicated to rubber and articles thereof, with Heading 4002 specifically addressing synthetic rubbers in primary forms. The imported product, being an elastomer designed for applications requiring high elasticity, weather resistance, and flexibility, such as in automotive components, seals, and hoses, aligns more closely with the functional and compositional attributes of synthetic rubbers. I also take note of legal precedents from international jurisdictions, such as U.S. CBP Ruling NY N119064 dated 07.09.2010, which reinforces my view by classifying ethylene-propylene copolymers under 4002.70 as synthetic rubbers, highlighting consistency in global tariff application.

29.2 I find that EPM (two-monomer elastomer) and EPDM (three-monomer elastomer) are both internationally recognised as synthetic rubbers under international tariff practices, and they share common applications in automotive hoses, electrical cables, seals, gaskets, and as viscosity index modifiers in lubricants due to their excellent resistance to heat, ozone, and chemicals. I have carefully gone through the Technical Data Sheet (TDS) of DUTRAL K CO 054 ETHYLENE PROPYLENE POLYMER and find that the Propylene content is approx. 41% by weight and the Ethylene content is 59%, as alleged in the SCN. This composition indicates a copolymer where neither monomer predominates to the extent required for classification as a simple polymer. Further, as per the Sub-heading Note to Chapter 39, polymers prefixed with “poly” (such as polyethylene or polypropylene) must consist of 95% or more by weight of the specified monomer unit to qualify under relevant headings like 3901 or 3902. In the instant case, ethylene constitutes only 59% by weight, and propylene 41%, with no single monomer reaching the 95% threshold. This compositional shortfall precludes classification under Chapter 39, as the goods do not meet the criteria for being designated as a polymer of ethylene or propylene in primary forms. This finding alone conclusively establishes that the importer has intentionally and wrongly classified the impugned goods under Customs Tariff Heading (CTH) 39, potentially to avail lower duty rates or exemptions inapplicable to rubbers. Accordingly, the goods necessitate reclassification under Chapter 40, specifically as synthetic rubber under Heading 4002, in line with their elastomeric nature and international standards.

29.3 It is an admitted position that Ethylene–Propylene Diene Monomer (EPDM) contains a diene component introducing unsaturation in the chain and is therefore vulcanisable with sulfur. In accordance with Note 4(a) to Chapter 40 of the Customs Tariff, unsaturated synthetic substances capable of irreversible vulcanisation with sulphur are definitively encompassed within the definition of “synthetic rubber,” as they transform into non-thermoplastic elastomers exhibiting superior stretch and recovery properties. The noticee's contention that the imported goods, lacking a diene and thus being EPM rather than EPDM, do not fall within Chapter 40 is untenable, as it overlooks the broader scope of synthetic rubbers that include saturated variants vulcanisable by alternative means. While EPDM's unsaturation facilitates sulphur vulcanisation, EPM's saturation does not preclude its recognition as synthetic rubber, given its peroxide-vulcanisable nature yielding equivalent elastomeric performance. Moreover, the HSEN clarifies that the elastomeric test in Note 4(a) applies broadly, not limiting synthetic rubbers to sulphur-vulcanisable types alone. I therefore find that EPDM, and by extension, analogous EPM products, is correctly classifiable under Heading 4002, ensuring alignment with the tariff's intent to group functionally similar materials.

29.4 As regards the importer's argument that the absence of a diene component precludes classification under Heading 4002, I find this contention wholly unsustainable and contrary to established tariff principles. Although tariff item 4002 7000 refers specifically to Ethylene–Propylene Non-conjugated Diene Rubber (EPDM), the overarching Heading 4002 encompasses “**Synthetic rubber, and factice derived from oils, in primary forms or in plates, sheets or strip,**” thereby providing a broad umbrella for elastomers sharing similar properties. The HSEN to Heading 4002 clarifies that EPM, despite lacking a diene and thus being saturated, is nevertheless treated as synthetic rubber due to its inherent elastomeric behaviour, such as high tensile strength, flexibility, and resilience, and its ability to be vulcanised with peroxides, resulting in properties that are functionally indistinguishable from those of traditional synthetic rubbers. This view is also consistent with international standards such as **ASTM D1418 (Standard Practice for Rubber and Rubber Latices—Nomenclature)** and **ISO 1629 (International Organization for Standardization standard titled "Rubber and latices — Nomenclature)**, which classify both EPM and EPDM under the generic family of “synthetic rubbers.” Hence, I find that the impugned goods, being Ethylene-Propylene based without diene, squarely fall under Heading 4002, rejecting any narrow interpretation that would confine classification to diene-containing variants.

29.5 Accordingly, I hold that the subject imports, although not containing a diene component, are nonetheless Ethylene–Propylene based elastomers that merit classification under Heading 4002 as synthetic rubber, given their compliance with the elastomeric criteria in Note 4 to Chapter 40 and their recognition in HSEN as EPM-type rubbers. The noticee's contention that the imported goods are merely a plastic polymer classifiable under Chapter 39 is hereby rejected, as it fails to account for the compositional thresholds in Chapter 39's notes and the goods' predominant rubber-like attributes. I also hold that the imported goods, i.e., DUTRAL K CO 054, are appropriately classifiable as synthetic rubber and merit classification under CTH 40027000, aligning with the specific subheading for ethylene-propylene rubbers, inclusive of both EPM and EPDM variants in practice. This classification ensures fidelity to the Harmonized System's objective of grouping materials by function and

composition, preventing circumvention through misdescription. In view of the above, I find and hold that, consequent upon the reclassification of the above said goods, M/s Lanxess India Pvt Ltd is liable to pay the differential duty amounting to Rs. 32,24,731/- (Rupees Thirty two lakhs twenty four thousand seven hundred and thirty one only) and the same is liable to be recovered alongwith applicable interest and penalty.

30. I further note that the Noticee's contended that extended period is not invokable as there is no willful mis-statement from their end. In this regard, I note that the importer, being a multinational chemical company with full technical expertise and product knowledge, was fully aware of the elastomeric nature 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 under CTH 39019000 as "Polymers of Ethylene" attracting lower duty structure, instead of correctly declaring them as synthetic rubber under CTH 40027000. I also note that it can not be assumed that the Noticee was not aware about the higher duty structure 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 invokable in the present case and the differential custom duty is liable to be demanded and recovered from the noticee.

31. I further note that the present Show Cause Notice also proposes for the confiscation of the imported goods valued at Rs. 9,93,75,386/- under the provisions of Section 111(m) of the Customs Act, 1962.

31.1 As discussed in paras supra, it is clearly established that M/s. Lanxess India Pvt Ltd filed 28 Bills of Entry for import of DUTRAL K CO 054 ETHYLENE PROPYLENE POLYMER and mis-classified the same, having assessable value of Rs. 9,93,75,386/-, under Customs Tariff Item No. 39019000, thereby attracting a significantly lower rate of Basic Customs Duty i.e. 7.5% of BCD instead of 10% of BCD, despite being fully aware that the goods imported were, in fact classifiable under CTH 40027000. I have already held that the impugned goods actually classifiable under CTH 40027000 as synthetic rubber, falling within Chapter 40. I further find that the importer's declaration of the goods under Chapter 39 constitutes a material mis-declaration of the classification of the goods, as it does not reflect their true nature as synthetic rubber under Chapter 40. I further find that by adopting this modus operandi, the Noticee cleared goods valued at Rs. 9,93,75,386/- (as mentioned in Annexure 'A' of the Show Cause Notice) by paying a lower rate of Customs Duty. Thus, M/s. Lanxess India Pvt Ltd has deliberately and knowingly indulged in suppression of facts in respect of their imported goods and has wilfully mis-classified the goods with an intent to evade payment of higher rate of Customs Duty and also contravened the provisions of Section 46(4) of the Customs Act, 1962. In terms of Section 46(4) of the Customs Act, 1962, the Noticee is required to make and subscribe to a declaration as to the truth of the contents of the Bills of Entry submitted for assessment of Customs Duty. Section 111 (m) of the Customs Act, 1962 provides for confiscation of any imported goods which do not correspond, in respect of value or in any other particular, with the entry made under this Act. In this case, M/s. Lanxess India Pvt Ltd has resorted to mis-classification of the goods by

wrongly classifying them under CTI 39019000 instead of appropriate Customs Tariff Item No. 40027000, in the Bills of Entry filed by them as detailed in Annexure-A to the Show Cause Notice, with intent to evade higher rate of Basic Customs Duty that would have accrued to them had the correct classification been declared. Thus, provisions of Section 111(m) of the Customs Act, 1962 would come into picture. I thus find that willful mis-declaration of classification of the impugned goods and suppression of correct classification of the impugned goods from the ICD Ankleshwar on the part of M/s. Lanxess India Pvt Ltd has rendered the said goods cleared from ICD Ankleshwar liable for confiscation under Section 111(m) of the Customs Act, 1962. I, therefore, hold the imported goods, valued at Rs. 9,93,75,386/-, liable to confiscation under the provisions of Section 111 (m) ibid. Further, since the aforementioned imported goods, having assessable value of Rs. 9,93,75,386/- are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras** has observed as under:

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).

31.2 The Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held interalia 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."

32. The Show Cause Notice proposes penalty under the provisions of Section 114A of the Customs Act, 1962 on the noticee. The Penalty under Section 114A can be imposed only if the Duty demanded under Section 28 ibid by alleging wilful mis-statement, mis-declaration or suppression of facts etc. is confirmed/ determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, M/s. Lanxess India Pvt Ltd has deliberately and knowingly mis-declared the classification of the impugned goods and suppressed the correct classification of the impugned goods with an intention to evade payment of Customs Duty. I have already held that the differential Customs Duty of **Rs.32,24,731/- (Rupees Thirty Two Lakhs, Twenty Four Thousand, Seven Hundred and Thirty One only)** is to be demanded and recovered from M/s. Lanxess India Pvt Ltd under the provisions of Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A ibid is directly linked to Section 28(4) ibid, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon M/s. Lanxess India Pvt Ltd.

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

ORDER

(I) I reject the declared classification of the subject goods viz. "EPM-DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER / DUTRAL-K-CO-054-ETHYLENE PROPYLENE-POLYMER" as

detailed in Table A of the SCN under CTH 39019000 and order to re-classify the said goods under CTH 40027000 and reassess the subject Bills of Entry accordingly;

- (II) I confirm the demand of Differential Customs Duty amounting to **Rs.32,24,731/- (Rupees Thirty Two Lakhs Twenty Four Thousand Seven Hundred and Thirty One Only)** as detailed in Annexure-A of the Show Cause Notice leviable on the “imported goods” covered under various Bills of Entry imported by M/s Lanxess India Pvt Ltd under Section 28(4) of the Customs Act, 1962 and order to recover the same alongwith applicable interest under Section 28AA of the Customs Act, 1962;
- (III) I hold the goods imported during the period under consideration valued at **Rs.9,93,75,386/- (Rupees Nine Crore Ninety Three Lakhs Seventy Five Thousand Three Hundred and Eighty Six Only)** 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.25,00,000/- (Rupees Twenty Five Lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962;
- (IV) I impose a penalty of **Rs.32,24,731/- (Rupees Thirty Two Lakhs Twenty Four Thousand Seven Hundred and Thirty One Only)** on M/s Lanxess India Pvt Ltd 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. Lanxess India Pvt Ltd under Section 112 of the Customs Act, 1962.

35. 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.

36. The Show Cause Notice GEN/ADT/CERA/AP/48/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD dated 12.12.2024 is disposed off in above terms.

(Shree Ram Vishnoi)
Additional Commissioner,
ICD-Ankleshwar.

By Speed Post/ By E-mail/ By Hand Delivery/ Through Notice Board:
DIN- 20250971MN0000809851

To,
M/s. Lanxess India Pvt Ltd,

Plot No. 748/2/A, 748/3 & 748/4B,
Jhagadia Industrial Estate,
GIDC Jhagadia, Bharuch,
Gujarat PIN – 393110

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.