OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT -370421
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सत्यमेव जयते

A	**File No.**	**GEN/ADJ/ADC/365/2025-Adjn-O/o Pr Commr-Cus-Mundra**
B	**OIO No.**	**MCH/ADC/ZDC/572/2025-26**
C	**Passed by**	**Sh. Dipak Zala, Additional Commissioner of Customs (Import Assessment), Custom House, Mundra**
D	**Date of order**	**.01.2026**
E	**Date of Issue**	**.01.2026**
F	**SCN F. No. & Date**	**CUS/APR/BE/79/2025-Gr 2-O/o Pr Commr-Cus-Mundra dated 28.01.2025**
G	**Noticee / Party/ Importer**	**M/s. TIRUPATI BALAJI ENTERPRISES (IEC-513026711), B-109 GALI NO.1, RADHEYSHYAM PARK EXTN., DELHI, SHAHDARA, DELHI, 110051**
H	**DIN**	20260171MO000000C95C

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

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

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

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

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

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

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

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

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

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

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

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

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

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

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

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

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

BRIEF FACTS OF THE CASE

M/s. TIRUPATI BALAJI ENTERPRISES (IEC-513026711), B-109 GALI NO.1, RADHEYSHYAM PARK EXTN., DELHI, SHAHDARA, DELHI, 110051 (hereinafter referred to as "the importer" for the sake of brevity) filed various Bills of Entry at Mundra Port for clearance of "Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron", "Stock lot of plastic packaging material in mix size and gsm", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm", etc., classifying the same under different CTH 39201099, 39202090, 39206919

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

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

The Heading 3920 of Customs Tariff is reproduced below:

HS Code		*Item Description*	*BCD*	*SWS (10% of BCD)*	*IGST*
3920		*Other plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials*			
392010	-	*Of polymers of ethylene*			
39201099	-	*Other*	*10%*	*1*	*18%*
392020	-	*Of polymers of propylene*			
39202090	-	*Others*	*10%*	*1*	*18%*
392069	-	*Of other polyesters*			
39206919	-	*Others*	*10%*	*1*	*18%*
392071	-	*Of regenerated cellulose*			
39207119	-	*Others*	*10%*	*1*	*18%*
392099	-	*Of other plastics:*			
39209999	--	***Other***	***15%***	***1.5***	***18%***

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

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

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component

which gives them their essential character, in so far as this criterion is applicable.

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

order among those which equally merit consideration.

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

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

6. Thus, the importer had wrongly classified the goods under CTH 39201099, 39202090, 39206919, and 39207119, resulting in the underpayment of Basic Customs Duty (BCD) at 10% instead of the applicable rate of 15%. This misclassification appears to have been made deliberately in an attempt to evade payment of the differential BCD of 5% and SWS & IGST thereon. Therefore, the importer is liable for payment of an additional duty of Rs. 1,34,404/, as detailed in Annexure-A of the SCN.

7. RELEVANT LEGAL PROVISIONS

Provisions of Customs Act, 1962

i. *In terms of section 28(1) of the Customs Act, 1962, where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest payable has*

not been paid, part- paid or erroneously refunded, for any reason of collusions or any wilful mis-statement or suppression of facts,-

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

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

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

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

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

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

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

a. *collusion; or*
b. *any wilful mis-statement; or*
c. *suppression of facts,*

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

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

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

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

as to the truth of the contents of such bill of entry and shall, in

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

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

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

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

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

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

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

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

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

Any person, -

a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
b. *who acquires possession of or is in any way concerned in carrying,*

removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable to penalty…

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

…

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

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

…..

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

9. Accordingly, **M/s. TIRUPATI BALAJI ENTERPRISES (IEC-**

513026711), B-109 GALI NO.1, RADHEYSHYAM PARK EXTN., DELHI, SHAHDARA, DELHI, 110051, were called upon to show cause to **the Additional Commissioner of Customs (Import Assessment), Custom House, Mundra**, having office at 5B, First Floor, PUB Building, Adani Port, Mundra, as to why:

i. The assessment in respect of Bills of Entry as mentioned in Annexure-A should not be rejected and the same should not be re-assessed under CTH 39209999;
ii. The short payment of Basic Customs Duty amounting to **Rs. 1,34,404/-** (Rupees One Lakh Thirty Four Thousand Four Hundred and Four only) by wrongly classifying the imported goods under CTH 39201099, 39202090, 39206919 & 39207119 instead of 39209999 and paid less BCD and SWS/IGST thereon should not be charged and recovered from them under Section 28(4) of the Customs Act, 1962;
iii. Interest should not be recovered from them under Section 28AA of the Customs Act, 1962;
iv. The impugned goods should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of wilful mis-statement and suppression of facts;
v. Penalty should not be imposed upon them under the provisions of Section 112 or 114A of the Customs Act, 1962, for rendering imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962;

10. DEFENCE SUBMISSION & PERSONAL HEARING:

The importer was granted sufficient opportunities of personal hearing on 04.08.2025 and 02.09.2025. Shri Chandra Shekhar appeared before Additional Commissioner (Import Assessment), Custom House, Mundra on 02.09.2025 at 12:30 PM & requested to consider their reply dated 02.09.2025 to conclude the SCN. Reply of importer dated 02.09.2025 is reproduced as below:

"The allegation levelled in the show cause notice is vehemently denied as false and incorrect. There was no misclassification of goods with intention to pay lesser duty. The detailed reply is as under: -

1. That at the time of import goods the we had filed proper Bills of Entry for each consignment as per law and the assessment was done and goods were examined by the Customs department. When it was found in order and duty was paid, thereafter goods were cleared by the department. On perusal of section 46 of Customs Act it would be seen that after import of goods, a Bill of entry is required to be filed under section 46 which reads as under: -

"46. Entry of goods on importation:

1) *The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting { electronically on the Customs automated system} to the proper officer a Bill of entry for home consumption or warehousing in such form and manner as may be prescribed, provided that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on Customs automated system], allow an entry to be presented in any other manner:*
Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of Customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

2) *Save as otherwise permitted by the proper officer, a Bill of Entry shall include all the goods mentioned in the Bill of Lading or other receipt given by the carrier to the consignor.*

3) *The importer shall present the Bill of entry under sub section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a Customs station at which such goods are to be cleared for home consumption or warehousing:*
Provided that a Bill of Entry may be presented (at any time not exceeding thirty days prior to) the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.
Provide further that where the Bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the Bill of Entry as may be prescribed.

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

(4A) the importer who presents a Bill of entry shall ensure the following namely:

(a) The accuracy and completeness of the information given therein.

(b) The authenticity and validity of any document supporting it, and

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

5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a Bill of Entry for home consumption or for warehousing or vice versa.

1.1 In view of the above provisions the we filed Bill of Entry in respect of each and every consignment imported by them and after examining goods imported as well as covering documents the department assessed customs duty leviable on the same and after payment of duty the department permitted clearance of the same. In these circumstances it is not understood as to how the we misclassified goods in the Bill Of entry when the departmental officers themselves physically examined the goods and at no point of time objected to the declared classification of goods. Therefore, the allegation of misclassification of goods is baseless and unfounded on evidence.

2. After assessment was made, the goods were allowed clearance under section 47 of Customs Act , 1962, section 47 read as under: -

1. Where the proper officer is satisfied that nay goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

Provided further that the Central Government may, bey notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

2. ***The importer shall pay the import duty-***

(a) On the date of presentation of the Bill of Entry in the case of self-assessment or:

(b) Within one day (excluding holidays) from the date on which the Bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment: or

(c) In the case of deferred payment under the proviso to sub section (1) from such due date as may be specified by riles made in this behalf.

3 **After order of assessment of duty, no show cause notice can be issued for recovery of differential duty as it becomes a case of res judicata and only appeal can be filed against the assessment order.** It is settled law as above that once an assessment order was passed U/S 17 of Customs Act, any further proceedings can be initiated by review of the order and filling appeal against the same. It is not open to the department to issue show cause notice and revive the proceedings. Since the department did not do so, this show cause notice is illegal and any proceedings emanated therefrom will also be illegal. Furthermore, in another identical case of **Paro Food Products Vs. Commissioner of Central Excise Hyderabad (2005(184) ELT 50 (Tri-Bang),** Hon'ble Tribunal vide its final order no 145/2005 dated 25.01.2005 held as under-

Demand-Res Judicata-second proceeding for same period and amount invoking longer period is barred on principle of res judicata when first proceeding was dropped and neither any new material/documents had come to light nor department filed any appeal against same and there was no suppression of facts-Section 11A of Central Excise Act, 1944 [para 5].

Demand Proliferation of proceedings-All grounds possible should be taken by department in initiating one proceeding only-after conclusion of a proceeding, for same period department cannot issue show cause notice on another ground, as then there would then be no end to proceedings against a party, which would be against public policy-Section 11A of Central Excise Act, 1944 [para 5].

Demand Parallel proceeding on same matter at same time cannot be pursued-Section 11A of Central Excise Act,1944 [para 6].

4 In classification matters onus is on the department to determine correct classification and extended period is also not invokable: in the present case the department has raised issue of classification of goods of plastics imported by the we. After importation of the goods the we filed proper Bill of Entry U/S 46 od Customs Act,1962. After examination of goods by the Customs Officers and scrutiny of Bill Of Entry including rate of Customs duty applied, the department after being satisfied, allowed clearance the same. In these circumstances how can the department allege that he goods had been misclassified. Onus lies on the department to determine the correct classification of the goods. The importer is not supposed to be well versed in customs Law. It is the department who has to ascertain the correct classification of imported goods. Nothing prevents the department from extending investigation so as to determine correct classification. After clearance of goods the department cannot pretend that it was misclassified by the importer. The department can ascertain its nomenclature, characteristics, quality, use etc. before accepting classification claimed by the importer. It is settled law that in classification matters extended period is not invokable, hence demand is time barred. In this context the notice would refer to and rely upon following case laws: -

i. **Hindustan Ferodo Ltd. Vs. Collector of Central Excise, Bombay (1997 (89)elt 16 (s.c)** Held- Classification of goods- Onus of establishing that goods are classifiable under a particular tariff entry lays upon the Revenue-Onus not discharged by department-Evidence adducted by assesse even if rejected still appeal of the assesse to be allowed. Section 35C of the Central Excise Act 1944-rule 173 B of Central Excise Rules, 1944.

ii. **Commissioner of Central Excise, Nagpur Vs. Vicco Laboratories (2005 (179) ELT 17 (S.C.).** Held- Classification of goods- Common parlance test- Burden of Proof that a product is classifiable under a particular tariff head is on revenue and must be discharged by providing that it is so understood by consumers of product or in common parlance.

iii. **Puma Ayurvedic Herbal (P) Ltd. Vs. Commissioner of C.Ex, Nagpur (2006(1960 ELT 3 (SC).** Held- classification of goods- Burden of showing correct classification lies on revenue.

4.1 That rule 3 of Interpretation Rules is not applicable in the present case: The department has issued this show cause notice on the basis of audit observation that as per

rule 3 of interpretation rule, the goods meriting classification in two or more than heading and sub headings should be classified under that heading which occurs at the last. The department has not pointed out the possible headings/sub headings under which the goods imported can be classified so that the rule of last occurring heading could be applied. CTH 39209999 is a residuary sub heading under which only such goods are classified which cannot be classified elsewhere. Thus, the observation of audit being vague and ambiguous is not relevant at all. Therefore, the goods imported being of different sizes and lots having different compositions, cannot be classified under residuary sub heading 39209999 at all.

5. Demand is not sustainable in view of provisions of Customs Tariff: On perusal of Customs Tariff it would be seen that as per notification No 57/2017- Cus Dated 30.06.20217 as amended the goods covered under CTH 39209999 were leviable to Basic Customs Duty @ 10% ADV. Against SI.NO 10(effective rate). This entry no 10 was subsequently omitted vide notification No 03/2021- Cus Dated 01.02.2021 with effect from 02.02.2021 and the rate of 15% Adv was restored. Thus, prior to 02.02.2021, the goods imported were assessable to Basic Customs Duty @ 10%. Therefore, no demand of differential duty can be raised in respect of Bills of Entry filed before 02.02.2021 even in respect of goods meriting classification under CTH 39209999.

5.1 In the departmental clarification letter DOF No…….. Dated…….. it has been clarified as under: -

"(5) SI No. 10 of Notification No 57/2017- CUST is being omitted. This entry provided effective BCD rate 10% on items of plastic falling under tariff item 39209999" except specific parts of cellular mobile phone like back cover, battery cover etc. the specified parts of mobile under the said tariff item were attracting 15% BCD by tariff. Consequently, with this omission, these goods will now attract 15% BCD) S.No. (viii) of the notification No 03/2021)- Customs Dated 01.02.2021 refers).

5.2 From the above legal position it is very clear that the demand of differential Customs Duty up to SI.No 151 of Annexure A to the show cause notice, cannot be raised as it would be contrary to law, hence not tenable.

6. Neither Demand is Sustainable nor Penalty is imposable: when demand is not legally tenable, imposition of penalty is also not sustainable in law, as held by Hon'ble Supreme Court in following cases-

(i) Collector of Central Excise Vs. HMM Ltd. (1995 (76) ELT 497 (SC)

(ii) Nagpur Alloy Cartings Ltd. Vs. Collector of Central Excise (2002(142) ELT 515 (SC)

1.1 It was held in the above cases that it is not in dispute that if the proviso to section 11A of the Central Excise Act (Parimateria with section 28(4) of Customs Act) cannot be called in aid, imposition of penalty cannot be justified. The order imposing penalty is thus unsustainable.

1.2 Hon'ble Supreme court in HMM case observed that- "*17. In the instant case, Since the notice invokes the extended period under Section 28(4) of the Act, it also has to specify the factors which would justify invoking that extended period. That is to say, such a notice cannot be issued without there being shown to exist collusion, wilful mis-statement or suppression of facts by the importer or his agent or employee. Such an allegation must also be spelt out. The*

importer must be clearly told on what basis the charges of suppression, collusion etc. is alleged against him. The ratio of the Supreme Court's Judgement in H.M.M Ltd. Vs. C.C.E. that where a notice invoking the extended period contained in proviso under 11A(1) of the Central Excise Act must clearly spell out the details of specifying such invocation when apply with equal force to a notice invoking a proviso under Section 28(1) of the Customs Act, 1962. The proviso on the two Acts are almost identically worded, minor difference attributed to the different circumstances, required for operation of the different acts in question. There is no such material shown to the assesse.

In the instant case, the show cause notice does not contain any allegation whatsoever of any facts constituting any collusion or mis statement or suppression of any facts against the appellants for the purposes of invoking the extended period of limitation under the proviso to Section 28 of Customs Act. In the case of collector of the Customs, H.M.M Limited, Hon'ble Supreme Court held that limitation for extended period was not invocable unless the show cause put the assesse to notice specifically as to which of the various commissions or omissions stated in the proviso to Section 11-A (1) of the Central Excise and Salt Act has been committed. The proviso to Section 11-A (1) of the CESA being perimetria with the proviso of Section 28 of the Customs Act, the ruling of the Apex Court is squarely applicable to the instant case. In the case of Kaur and Singh Vs Commissioner, the Apex Court held that statement of the ground for invoking larger period of limitation in the show cause notice was a requirement of natural justice. Therefore, in the instant case, it was not justified to invoke the larger period of limitation under section 28 the demand of duty is therefore, time barred.

18. *Whether extended period of limitation can be invoked, section 28 of the Customs act provides for demanding the duty within 5 years if any duty has not been levied/short levied or has not been short levied/short paid by reason of collusion or any wilful mis statement or suppression of facts by the importer or the agent or employer of the importer. It has not been contaverted by the Revenue that the Appellants had declared the value on Bills of Entry as per the value mentioned in the invoice. The Revenue has not adduced any material evidence to show that the appellants had colluded with the foreign supplier to show the less value of the goods. There is also no material to show that they have paid any amount in addition to the price declared in the invoices to their foreign suppliers. Thus in absence of any material to show collusion between the appellants and the foreign suppliers, the Revenue cannot claim that the Appellant had declared less value of the impugned goods imported under Bills of Entry at serial No 2 to 5 with an intent to evade payment of duty. Consequently, the extended period of limitation as provided in section 28 of the Customs Act cannot be invoked for demanding duty in respect of these Bills of Entry.*

Insofar as invocation of the provision of section 28 od the Act is concerned, the Tribunal has found, as matter of fact, that there is no suppression or wilful mis statement on part of the importer. That the licences had been procured bonafidely in the ordinary course of its were cancelled. Thus, it is business and that the importer had no knowledge that the licences were cancelled.

6.3 In the present case also the demand has been proposed U/S 28(4) of the Customs Act, 1962 invoking extended limitation. For raising demand under this section, it is necessary that circumstances such as- suppression of facts, misstatement of facts, fraud, collusion etc. must exist. In this case no such element is present nor alleged in

the show cause notice. On the other hand, the notice state that the we misclassified goods with intention to evade payment of differential customs duty. Misclassification of goods is not a ground enumerated under section 28(4), hence no demand can be raised on the notice under this section. Therefore, the notice is not sustainable and deserves to be vacated on this ground also.

7.1 When the we did not mis-declare anything to the Customs Department regarding import of the goods in question, they are not liable to any penal action under Section 112 or 114A of the Customs Act, 1962: When the goods had been imported by the we, they declared all the facts in their Bill of Entry to the Department. The department could not establish that there was any misstatement on the part pf the importer. It is surprising that the department is making allegation without any basis in sharp contract to the documentary evidences which are contrary to the department's assertion. Thus, the notice neither mis-declared anything nor did or omitted to do anything to ender the goods liable to confiscation under section 111 of Custom Act 1962. Since goods were not liable to confiscation, the we is not liable to any penal action under Section 112(a) and or 112(b) of the Act. Had the goods been liable to confiscation the department has also not alleged any particular activity enumerated u/s 112 with which the notice was concerned. In these circumstances if the particular situation with which the notice was concerned is not specifically pointed out by the department the notice cannot be penalized under Section 112 of the Act. Section 112 of the Custom Act 1962 is extracted here below:-

Section 112. Penalty **for** improper importation of goods, etc. Any person, -

(A) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, abets the doing or omission of such an act, or

(B) who acquires possession of or is in any way concerned in carrying removing depositing, harboring, keeping concealing, selling or purchasing, or in anu other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111.

7.2 Section 112 has two limbs i.e 112(a) which applies to pre-clearance position and 112 (b) which applies to past-cleaseance scenario. The nature of omissions/act narrated are different. The department has not been able to point out as to which offence was committed by the notice. Since the notice neither did nor omitted to do any act which rendered any good liable to confiscation under section 111, provisions of clause (a) of Section 112 cannot be applied to the notice.

2. 7.3 That the department is not certain in its mind as to the nature of offence committed by the notice and it was for this reason that it proposed to impose penalty under section 112 of Custom Act, 1962. If such is the situation that nature of offence is not clear to the department, penalty cannot be imposed.

Hon'ble Tribunal Kolkata in the case of Rajesh Kumar Saini Vs. Commissioner of Customs Patna (2019(370) ELT 1583 "(T-Kolkata) Held as under:-

"if an adjudicating authority/officer is not certain as to which of the provision of penalty is applicable, he cannot be presumed to have examined the allegation and its gravity candidly in a qushi kudicial manner expected of him". Hon'ble Tribunal set aside redemption fine and penalty-imposed U/S 112(a) and or 112(b) of Customs Act. This again shows non-applicable of mind by adjudicating authority.

7.4 In view of the above settled legal position proposal of penalty under section 112 of

Customs Act on the Notice prima facie shows that the department is not clear in its mind as to the act or omission of the notice and issued show cause notice without appreciation of facts and legal position. Therefore, no penalty is imposable on the notice U/S 122 of Customs Act 1962. Further, the notice is not liable to any penal action U/S 114a of the Act also he knowingly and intentionally did not submit any such documents before Customs.

8 Burden of proof is on the department:- The burden of proving the existence of circumstances constituting the said offence, lies on the department. In this case, the department miserable failed to adduce an iota of evidence to sustain its case. The department has not discharged the burden cast on it. Hence, the show cause notice is liable to be set aside. If the department raises an allegation of liability of tax or penalty, then it is on them to prove and not on the notice to prove that they are not falling under the alleged liability of payment.

8.1 it is settled proposition of law that the onus of proving its case is on the revenue. In the present case revenue has failed to discharge the onus cast upon them and hence, penalty cannot be imposed. The revenue has issued notice in a casual manner which is not permissible in law. In the case of K.P Varghese Vs ITO, (1981) 4 SCC 172: 1981 SCC (TAX) 293 at page 189, it was opines by the Hon'ble Supreme Court That:

"*13. It is a well settled rule of law that the onus of establishing that the conditions of taxability are fulfilled is always on the Revenue and the second condition being as much as condition of taxability as the first, the burden lies on the Revenue to show that there is understatement of the consideration and the second condition s fulfilled. Moreover, to throw the burden of showing that there is no understatement of the consideration, on the assesse would be to cast an almost impossible burden upon him to establish the negative, namely, that he did not receive any consideration beyond that declared by him."*

8.2. Further, in case **of Meenesh Construction Co. Vs. Commr of EX., JAIPUR-I, [2018(12) G.S.T.L (Tri.- Del.)],** it was held that –

"4. Neither the original authority nor the first appellate authority has given details of work order and nature of work executed by the appellant to confirm the tax liability. The appellants repeatedly pleaded that they have closed their firm in 2003 itself. This was not considered by the lower authorities. In fact, the impugned order put the onus on the appellant to establish that they have not rendered taxable service as alleged in the show cause notice. We find that the same is not sustainable, as basic legal principle is the person who is alleging should establish the fact. No material evidence is available in the proceedings before the lower authorities except information purported to have been received from IOCL. This is strongly denied by the appellant. In such a situation we find that the impugned order cannot be sustained. It is open to the original authority, in case, if they have evidence of such taxable activity during the impugned period carried out by the appellant to proceed against the appellant after providing all the required details to the appellant in support of such allegation made in the show cause notice presently in dispute."

8.3 From the above settled legal position it is manifest that it is the duty of the department to prove the facts that they are alleging against the notice. Further, in the case of **Manish Project Pvt. Ltd. Vs. Commr of C Ex.& S.T. Ghaziabad, [2019 (24) G.S.T.L. 741 (Tri.-All.)]** it was held by the Hon'ble CESTAT that:

"5. Having considered the submissions from both the sides and on perusal of record……..We note that the Original authority has not dealt with this aspect of onus on Revenue to prove that such building was being used for making profit to satisfy the requirement of the said circular issued by the board and the impugned order is silent on the same. Through the proceedings, we have come to know that Revenue has repeatedly passed

on the onus on the appellant to establish that the building constructed for use by Manyavar Kasnshiran Hospital was not for commercial purpose. However, as per the said clarification onus was on Revenue to prove that the said building was being used or to be used for making profit. We note that the construction of the building was done during the year 2008-09 and 2009-10 where the show cause notice was issued on 24.10.2013. we note that for issue of show cause notice Revenue could for such purpose by which the organization using the same was making profit. Therefore, in terms of the said circular Service Tax was not leviable on the said activity performed by the appellant. Since the Service Tax was not leviable and appellant is succeeding on merit the issue of limitation need not be discussed and decided."

8.4. Similar views were held by Hon'ble Apex Court in the master of **Nanya Imports & Export Enterprises Vs CCE, Chennai [2006 (197) E.L.T, 154 (S.C.)]** that the burden of proof as to whether the item in question is taxable in the manner claimed by the revenue, is on the revenue. This again shows that the burden is on the department to adduce evidence to sustain its charge against the notice but the department failed in doing so.

9. **The order passed by higher appellate authority within their respective are binding on all adjudication and appellate authority within their respective jurisdiction. Failing to do this constitutes judicial indiscipline**: Hon'ble Supreme Court in the case of **Union of India Vs. Kamlakshi Finance Corporation Ltd. [1991(55) ELT 433(SC)** held that:-

"Precedent – Principle of judicial discipline – Order passed by Collector (Appeals) and Tribunal binding on all adjudicating and appellate authorities within their respective jurisdiction.

It cannot be to vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collector and the Appellate Collector who function under the jurisdiction of the Tribunal".

9.1. From the above ruling of Hon'ble Supreme Court there remains no ambiguity in the settled legal position that the order passed by the Hon'ble Tribunal, Hon'ble High Court and Hon'ble Supreme Court is binding on all adjudicating and appellate authority within respective jurisdiction. In a similar case, Hon'ble High Court Allahabad (Jurisdictional Hogh Court) held in the case of **Commissioner of Custom (Preventive) Vs Maa Gauri Trader (2019(368) ELT 913 (All)** that if the lab report is not country specific, it cannot presume that the goods certainly originated from any country and cannot be considered. Still the department gas issued this show cause notice without caring a fig for the above decision of Hon'ble High Court. Needless to say, that the said decision was accepted by the revenue and no appeal was filed against the same. In these circumstances it is surprising to note that the decision of even Hon'ble High Court Allahabad has not been taken into account while issuing this show cause notice.

10. That Suppression or mis-statement cannot arise when dispute prevailed in the matter of classification as also held by Hon'ble Supreme Court in the case of Commissioner Vs. Ishan Research Lab (P) Ltd. (2008 (230 ELT 7(SC).

Further, that wrong classification of assessee, does not amount to suppression of fact, as held by Hon'ble Supreme Court in the case **Commissioner Vs. New Jack Printing Work (P)**

Ltd. (2015 (323) ELT A185 (SC).

11. **Goods not available can neither be seized nor confiscated:** Redemption fine can be imposed even after release of goods on execution of bond as held by SC in the case of **Weston Components Ltd. Vs. Commissioner (2000 (115) ELT 278 (SC)** but where no enforceable security is available with the deptt. And the goods are not available for confiscation, redemption fine cannot be imposed as also held by larger bench of Hon'ble Tribunal in the case of **Shiv Kripa Ispat Pvt. Ltd. Vs CCE (2009 (235) ELT 623 (Tri.LB).** In the present case neither any bond was executed nor was any security furnished by the notice because it was not a case of provisional release but final clearance was given by the department. Therefore, neither the goods can be confiscated nor any fine in lieu these of can be demanded/recovered from the notice.

12. **Confiscation of goods is preconditional of penalty section 112**: The pre-condition of penalty under section 112 is that the person being penalized must have done or omitted to do action rendering the goods liable to confiscation. The penalty under this section is the direct result of confiscation of goods under section 111 of the Act. Thus, it is primafacie seen that where there is no action of confiscation, the question of penalty does not arise, as also held by **Hon'ble Tribunal Mumbai in the case of Maersk India Ltd. Vs. Commissioner of Custom Sheva (20001 (129) ELT 44 (Tri. Mum).** The provisions of section 112 are very specific as the penalty under section 111 of Custom Act 1962. Since in this case the goods are not liable to confiscation, penalty cannot be imposed under section 112 as also held by Hon'ble Tribunal Delhi in the case of **S.S/ Gupta Vs. Commissioner of Custom New Delhi. (2001(132) ELT 441-444 (T-Del).**

13. **No confiscation can be made under section 111 (m) of Custom Act 1962:** Confiscations under section 111 (m) is justified in relation to mis-declaration as to weight. Further, in case of a Deliberate attempt to evade custom duty by mis-declaring description of goods, confiscation can be done under section 111 (m) pf the Act. Similarly, if value of goods has been mis-declared so grossly that it attracts the charge of under valuation and transaction value is rejected, goods become liable to confiscation under section 111(m) of Customs Act 1962. For confiscation of any goods under section 111 of Custom Act, there should be an element of mens rea on the part of importer in declaring its description and value. This element is absent. No variation was found in regard to description, value and quantity of the goods in this case. Hence neither goods are confiscation under section 111 (m) nor is any penalty leviable under section 112 of Custom Act. Reliance is placed on the case law of **Northern India Steel Rolling Mills Ltd. Vs. Commissioner of Custom Amritsar (2003 (162) ELT 507-511 (Tri. Delhi)** Since in this case there was no anomaly in respect of value, quantity and description of goods imported, confiscation of goods under section 111(m) is not justified at all.

14. Even where a product is capable of falling simultaneously under two entries, benefit should go to assesse as was held **Hon'ble Supreme Court in the case of Commissioner Vs. Calcutta Springs Ltd. (2008 (229) ELT 161 (SC)**.

In view of the above facts and legal position it would be seen that the department has sought to change classification on the basis of audit observation only without giving any solid reason. Instead of going in appeal against the assessment order the department has issued this show cause notice which is illegal and not sustainable in

law, deserves to be vacated. Prayed accordingly.

Please consider above stated facts to issue final order. Kindly Oblige."

11. DISCUSSION AND FINDINGS:

11.1. I have gone through the Show Cause Notice, audit observations, and case records, PH Record dated 02.09.2025 and written reply of noticee dated 02.09.2025. I find that sufficient time and opportunity has been given to the noticee, and therefore, the principles of natural justice have been complied with. Hence, I proceed with the finalization of the adjudication proceedings, based on the facts and evidence available on record.

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

i. Whether the importer had correctly classified the impugned goods under CTH 39201099, 39202090, 39206919 & 39207119, or whether the goods are correctly classifiable under CTH 39209999 of the Customs Tariff Act, 1975.

ii. Whether short-levied duty of ₹1,34,404/- is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

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

iv. Whether penalty is imposable upon the importer under Section 114A of the Customs Act, 1962.

11.4. I find from available records that the importer, **M/s. TIRUPATI BALAJI ENTERPRISES (IEC-513026711)**, filed various Bills of Entry declaring the goods as *"Stock lot of printed/unprinted plastic packaging material/rolls in mix size and micron"*, *"Stock lot of plastic packaging material in mix size and gsm"*, *"Leftover stock lot of plastic packaging*

film/rolls in variable/mix size and gsm", etc., and classified them under Customs Tariff Headings (CTH) **39201099, 39202090, 39206919 & 39207119**. For assessment, they discharged duty @ **30.980%** (BCD 10% + SWS 10% + IGST 18%). However, on careful scrutiny, I find that these headings are specific to polymers of ethylene, propylene, polyesters, and cellulose respectively, whereas the importer failed to provide any evidence or description matching those specifications.

11.5. I find that importer has placed reliance upon the fact that Bill of Entries have been assessed by FAG Officers & examination of the goods was carried out by Docks as such there is no misclassification. I find that government has introduced various checks and measures to ensure that even if mistake has been made unknowingly at one end the same can be corrected at another end. As such, even if FAG Officers have not been able to caught misclassification, the same has been caught by Audit Officers. As such, I find that importer can't be granted impunity on the facts that their misclassification has gone un-noticed by FAG Officers. Also, I find that generally examination of goods is carried out visually by Docks Officers & testing of goods is carried out in very few cases. Most of the consignments are cleared on visual appearance & on the general belief that importer has correctly classified the goods. If importer was not caught at that material time that does not warrant that importer has been granted impunity against the misclassification for lifetime. So, importer can't hide behind the garb that examination of goods was carried out by Docks Officers.

11.6. I find that noticee has submitted that after order of assessment of duty, no show cause notice can be issued for recovery of differential duty as it becomes a case of res judicata and only appeal can be filed against the assessment order. The above submission of the noticee is not acceptable and is misconceived both on facts and in law. The contention that issuance of a show cause notice for recovery of differential duty is barred once an order of assessment has been passed under Section 17 of the Customs Act, 1962, on the principle of res judicata, is untenable. It is a settled position of

law that an assessment under Section 17 is not immune from subsequent proceedings under Section 28 of the Customs Act, 1962, where it is found that duty has not been levied, short-levied or erroneously refunded. Section 28 is a self-contained code which specifically empowers the proper officer to issue a show cause notice for recovery of duty short-paid or not paid, notwithstanding the fact that an assessment order has already been passed. Therefore, initiation of proceedings under Section 28 does not amount to review of the assessment order, nor is it a substitute for appellate proceedings, but is an independent statutory mechanism expressly provided under the Act.

11.7. Further, I find that the reliance placed on the doctrine of res judicata by notice is misplaced, as the said doctrine has limited application in taxation matters, particularly where statutory provisions expressly permit reopening of assessments under specified circumstances. The case law cited by the noticee, namely Paro Food Products, is distinguishable on facts and is rendered in the context of Section 11A of the Central Excise Act, 1944, where an earlier proceeding on the same issue had already been concluded and dropped without any allegation of suppression or new material. In the present case, the impugned proceedings have been initiated on the basis of material facts which reveal that the goods were not correctly declared/classified, leading to short-levy of duty, thereby squarely attracting the provisions of Section 28 of the Customs Act, 1962. Hence, the issuance of the present show cause notice is in accordance with law and cannot be termed as illegal or barred by the principle of res judicata. Accordingly, the contention of the noticee is rejected as devoid of merit.

11.8. I find that importer in their submission has submitted that onus is on department for correct classification whereas I observe that Section 17 of the Customs Act, 1962, governs self-assessment and casts a statutory obligation on the importer to correctly assess and discharge customs duty. This responsibility is not contingent upon departmental intervention. In addition, Section 46(4) of the Act specifically mandates that an importer, while presenting a Bill of Entry, shall make and subscribe to a declaration as to the truth of the contents. Therefore, any misrepresentation or

suppression in the declaration, especially with regard to classification, directly attracts penal consequences under the Act. In the present case, the importer, by misclassifying the goods under incorrect headings, failed in their legal responsibility.

11.9. I find that importer has submitted that rule 3 of Interpretation Rules is not applicable in the present case whereas I find that they had merely declared generic descriptions such as Stock lot of plastic packaging material in mix size and gsm which indicates this description cannot fit into Customs Tariff Headings (CTH) **39201099, 39202090, 39206919 & 39207119** which are specific to **polymers of ethylene, propylene, other polyesters, cellulose**. As per Rule 3 of the General Rules for Interpretation of Import Tariff, where goods cannot be specifically classified, they are to be classified under the last applicable heading. Hence, the goods are correctly classifiable under **CTH 39209999 – Other plastics**. Their declaration was factually incorrect and legally impermissible. By mis-declaring the classification, they misled the Department into assessment at a lower duty rate.

11.10. I find that importer has submitted that as per notification no. 57/2017- Cus dated 30.06.2017 as amended the goods covered under CTH 39209999 were leviable to basic custom duty @10% adv. against Sl. No. 10 (effective rate). This entry no. 10 was subsequently omitted vide notification no. 3/2021-Cus dated 01.02.2021 with effect from 02.02.2021 and the rate of 15% adv. was restored. Thus, prior to 02.02.2021, the goods imported were assessable to basic customs duty @10%. Therefore, no question of demand of differential duty can be raised in respect of bills of entry filed before 02.02.2021 even in respect of goods meriting classification under CTH 39209999. In this connection, I find that above mentioned Notification Heading is **“Seeks to prescribe BCD rates on certain electronic goods”.** As such, I find goods are Stocklot which is not meant for use in electronic goods. In view of above facts, this Notification can’t help the notice to dodge the question of evasion of duty due to misclassification.

11.11. I find that the importer, by adopting incorrect classification, discharged duty at the effective rate of **30.980%** instead of the correct **37.470%**. This deliberate misstatement has resulted in short levy of Customs Duty amounting to **₹1,34,404/-** on an assessable value of the imported goods as detailed in Annexure A to the SCN. The computation of differential duty, as brought out in the SCN, has been verified and found correct.

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

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

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

- **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General),**

Mumbai [2009 (234) ELT 389 (SC)] – burden was on the appellant to prove that the appellant satisfied the terms and conditions of the claimed classification/exemption.

- **Krishi Upaj Mandi Samiti v. CCE** [2022 (58) GSTL 129 (SC)] – interpretation of taxing statute must follow plain language and strict interpretation.
- **Uttam Industries Vs. CCE** [2011 (265) ELT 14 (SC)] – exemption notifications and tariff headings must be strictly construed, literally applied.
- **Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Co.** [2018 (3327 SC)] – Constitutional Bench held that benefit of ambiguity in exemption/interpretation cannot go to the assessee; it must be interpreted in favour of Revenue.

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

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

11.16. In view of the foregoing, I hold that the importer is liable to pay the differential duty of **₹1,34,404/-/-** under Section 28(4) of the Customs Act, 1962. In terms of Section 28AA, the importer is further liable to pay interest on the said amount from the date it became due till the date of actual payment. The statutory liability of interest is automatic and compensatory in nature, and no separate mens rea is required for such demand.

CONFISCATION AND REDEMPTION FINE:

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

11.18. I find from the case records that the importer while filing the impugned Bill of Entry declared the imported goods with generic description ""Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron", "Stock lot of plastic packaging material in mix size and gsm", "Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm", etc., classifying the same under different CTH 39201099, 39202090, 39206919 & 39207119 of the First Schedule of the Customs Tariff Act, 1975. I find that this false declaration of description and classification is not a bonafide mistake but an intentional mis-declaration of a material particular within the meaning of Section 111(m) of the Customs Act, 1962 which was done to avail benefit of concessional rates of customs duty by defrauding the government exchequer. These

acts and omissions at the end of the importer has rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962.

11.19. In view of the above, I hold that the goods imported valued **at Rs.20,70,939/- (as per SCN Annexure A) are liable for confiscation** under Section 111(m) of the Customs Act, 1962.

IMPOSITION OF REDEMPTION FINE:

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

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

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

11.22. In view of the foregoing discussion, I find that the importer had misclassified the said imported goods resulting in short levy of duty. For such acts/omissions, the importer has rendered themselves liable for penal action under Section 114A of the Customs Act, 1962.

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

ORDER

(i). I reject the classification declared by the importer under CTH 39201099, 39202090, 39206919 & 39207119, and hold that the goods are correctly classifiable under **CTH 39209999** of the Customs Tariff Act, 1975.

(ii). I order to confiscate the goods having assessable value of **₹ 20,70,939/- (Rupees Twenty Lakhs Seventy Thousand Nine Hundred and Thirty Nine only) (as per Annexure A of SCN)** under Section 111(m) of the Customs Act, 1962. I also note that the goods have already been cleared and are not available physically for confiscation; however, as noted above, since the goods are not physically available for confiscation, I do not impose any redemption fine in lieu of such confiscation.

(iii). I order to demand and recover the short-levied duty amounting to **₹1,34,404/- (Rupees One Lakh Thirty Four Thousand Four Hundred and Four only)** from the importer under Section 28(4) of the Customs Act, 1962.

(iv). I order to demand and recover interest at the appropriate rate on the short-paid duty of **₹1,34,404/-** under Section 28AA of the Customs Act, 1962.

(v). I order to impose penalty of **₹1,34,404/- (Rupees One Lakh Thirty Four Thousand Four Hundred and Four only)** under Section 114A of the Customs Act, 1962. However, in case the said importer pays the duty along with interest within 30 days of the communication of the order, the amount of penalty payable shall be reduced to **25% of the penalty amount**, as per provisions of Section 114A of the Customs Act, 1962.

13. This Order-in-Original is issued without prejudice to any other action

that may be taken against the importer under the Customs Act, 1962 or any other law for the time being in force.

14. The Show Cause Notice issued vide CUS/APR/BE/79/2025-Gr 2-O/o Pr Commr-Cus-Mundra dated 28.01.2025 stands disposed of in above terms.

Digitally signed by Dipakbhai Zala
Date: 23-01-2026 17:55:28

Encl: Annexure-'A'

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

To,

M/s. TIRUPATI BALAJI ENTERPRISES (IEC-513026711),
B-109 GALI NO.1, RADHEYSHYAM PARK EXTN., DELHI, SHAHDARA, DELHI, 110051

Copy to:-

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

Annexure-A

BE No	BE Date	Assessable Value	Revised total Duty (BCD:15%, SWS:10% & IGST:18%)(in Rs.)	Total Duty as declared (BCD:10%, SWS:10% & IGST:18%)(in Rs.)	Duty Recoverable
7013128	25-02-2020	5,13,125.10	1,92,267.97	1,58,966.16	33,301.82
727149	17-03-	7,03,699.55	2,63,676.22	2,18,006.12	45,670.10

9	2020				
7369246	30-03-2020	8,54,114.39	3,20,036.66	2,64,604.64	55,432.02
		20,70,939.04	**7,75,980.85**	**6,41,576.92**	**1,34,403.94**