OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A. File No.	:	GEN/ADJ/COMM/636/2026-Adjn-O/o Pr. Commr-Cus-Mundra.
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-37/26-27
C. Passed by	:	**Nitin Saini** **Commissioner of Customs,** **Customs House, AP & SEZ, Mundra.**
D. Date of order and Date of issue:	:	05.11.2026 05.11.2026
E. SCN No. & Date	:	Waiver of Show cause notice
F. Noticee(s) / Party / Importer	:	M/s Balson Polyplast Private Limited, Survey No. 13/1 P1 P2, Plot No. 4, National Highway 27, Opp. Sadak Pip, Gondal-360311, Gujarat.

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 सीमाशुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सी ए 3-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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

   "**केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण**, **पश्चिम जोनल पीठ**, 2nd **फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद**-380 004" **"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."**

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन 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 साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज,दंड याशास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज,

शास्तिया दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं°-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

   The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

   While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

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

   An appeal against this order shall lie before the Tribunal 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.

Subject: Conclusion of proceedings in the matter of short payment of Customs duty on import of Black Masterbatch (PLASBLAK® of various grades) by availing ineligible exemption under Sl. No. 373(I) of Notification No. 46/2011-Cus dated 01.06.2011, by M/s Balson Polyplast Private Limited, IEC 2404003691, Survey No. 13/1 P1 P2, Plot No. 4, National Highway 27, Opp. Sadak Pip, Gondal-360311, Gujarat, in terms of Section 28(5) & 28(6) of the Customs Act, 1962.

BRIEF FACTS OF THE CASE:

1.1 Intelligence was developed by the Directorate of Revenue Intelligence (DRI), Ludhiana, indicating that M/s Balson Polyplast Private Limited, Survey No. 13/1 P1 P2, Plot No. 4, National Highway 27, Opp. Sadak Pip, Gondal-360311 (IEC 2404003691) (hereinafter referred to as "the importer"), is engaged in the import of Black Masterbatch, commercially known as PLASBLAK®, in various grades such as PLASBLAK PE2772, PLASBLAK PE6269B and similar variants. The goods were primarily sourced from Indonesia and imported by claiming preferential tariff treatment under the India-ASEAN Free Trade Agreement.

1.2 Examination of the Bills of Entry showed a consistent pattern: the goods were declared under Customs Tariff Heading (CTH) 32064990 and exemption from Basic Customs Duty was claimed under Notification No. 46/2011-Cus dated 01.06.2011, Sl. No. 373(I). That entry covers only "Pigments and preparations based on cadmium compounds and pigments and preparations based on hexacyanoferrate (ferro cyanides and ferri cyanides)". On scrutiny of the import documents, technical literature and product specifications, it emerged that the goods imported as "PLASBLAK®" were not pigments of the kind specified in Sl. No. 373(I) of the said notification but polymer-based masterbatches containing carbon black as the pigmenting agent. The notification entry is chemically specific and not generic; any deviation from the exact description renders the benefit inadmissible.

1.3 It therefore appeared that the importer had availed the exemption under Sl. No. 373(I) of Notification No. 46/2011-Cus in respect of goods that did not satisfy the description in the notification, resulting in short-payment of Customs duty. Investigation was accordingly taken up to examine the nature of the goods, the correctness of the exemption claim and the resulting duty implications.

2.1 The nature, composition and functional characteristics of the goods were examined on the basis of Certificates of Analysis, Form-I declarations issued by the overseas supplier M/s PT Cabot Indonesia, invoices and product data sheets submitted by the importer. These documents establish that the goods imported under the trade name "PLASBLAK®" are polymer-based masterbatches containing carbon black as a pigmenting agent.

2.2 The product literature of the imported goods obtained during investigation corroborates the actual nature and composition of the imported goods. The literature for PLASBLAK® PE6269B describes it as a black polyethylene masterbatch designed for lower-pressure and other pressure-pipe applications, added to natural polymer resin, with polyethylene (PE) as the carrier and carbon black as the pigment, compatible with LDPE, LLDPE, HDPE, PP and ethylene copolymers, and supplied in pellet form in 25 kg bags. The literature does not describe the goods as pigments or preparations based on

cadmium compounds or hexacyanoferrate compounds covered under Sl. No. 373(I) of Notification No. 46/2011-Cus.

The salient particulars of the imported goods are:

Product Type	Black Masterbatch
Carrier	PE (polyethylene)
Pigment	Carbon Black
Product Form	Pellets

2.3 The technical literature for all the impugned products submitted by the importer establishes that the goods do not contain cadmium compounds or hexacyanoferrate compounds, which directly distinguishes them from the class of pigments covered by the exemption entry. The imported goods are therefore polymer-based carbon black masterbatches used as industrial intermediates for imparting colour and performance properties to plastic products. They are neither chemically nor functionally comparable to pigments based on cadmium compounds or hexacyanoferrates.

INVESTIGATION AND STATEMENTS:

3.1 During the investigation, the statement of Shri Miraj J. Baldha, Director of the importer, was recorded under Section 108 of the Customs Act, 1962 on 15.05.2026, wherein he inter alia stated that:

(i) the importer is a manufacturer-exporter and imports Black Masterbatch of PLASBLAK® grades, such as PLASBLAK® PE6269B, primarily from PT Cabot Indonesia;

(ii) the goods were declared under CTH 32064990 and exemption was claimed under Sl. No. 373(I) of Notification No. 46/2011-Cus dated 01.06.2011 under the India-ASEAN FTA;

(iii) the goods were supplied in pellet form and were polymer-based pigment masterbatches containing carbon black, with a high carbon black/pigment content depending on the grade;

(iv) as per the Certificates of Analysis and supplier data sheets, the goods did not contain cadmium compounds or hexacyanoferrate compounds, and carbon black is elemental carbon, chemically distinct from those compounds;

(v) the exemption was claimed in the belief that all goods under CTH 32064990 were eligible, and because the FTA documents, including RVC documents supplied by PT Cabot Indonesia, were considered compliant;

(vi) on perusing Sl. No. 373(I), he acknowledged that it covers only the specified cadmium and hexacyanoferrate pigments/preparations and that he was earlier unaware of this restriction;

(vii) he personally handled and decided the classification of the imported goods and was responsible for claiming the exemption when the Bills of Entry were filed;

(viii) he acknowledged the importer's responsibility under the self-assessment regime and admitted that the incorrect claim of exemption was an error on the importer's part; and

(ix) he admitted that the claim had resulted in lower payment of Customs duty and that, if found incorrectly claimed, the company would pay the differential duty with applicable interest and other dues.

3.2 In his further statement under Section 108 recorded on 03.07.2026, Shri Miraj J. Baldha reiterated and agreed with his earlier statement, and stated that: (i) **the company had paid the total differential duty along with applicable interest and penalty and had submitted proof of payment to the DRI office**; (ii) the goods were supplied as pellets, commercially described as "masterbatch", with a pigment/carbon black content that varied by grade; (iii) as per the Certificates of Analysis and supplier data sheets the goods did not contain cadmium or hexacyanoferrate compounds, and carbon black is elemental carbon; (iv) the company was not aware that Sl. No. 373(I) applied only to pigments and preparations based on those compounds; and (v) the company had never imported any other pigment masterbatch under the India-ASEAN FTA under CTH 32064990 that was not based on cadmium or hexaferrocyanate pigment. These statements are corroborated by the Bills of Entry, technical literature and import records relied upon in the investigation.

INELIGIBILITY OF EXEMPTION UNDER SL. NO. 373(I) OF NOTIFICATION NO. 46/2011-CUS:

4.1 Notification No. 46/2011-Cus dated 01.06.2011 grants preferential tariff treatment under the India-ASEAN FTA to specified goods, subject to the descriptions and conditions prescribed. Sl. No. 373(I) is not an omnibus entry for all pigments; it reads:

S. No.	Tariff item	Description	Rate (%)
373	32064990	Pigments and preparations based on cadmium compounds and pigments and preparations based on hexacyanoferrate (ferro cyanides and ferri cyanides)	0

The benefit is linked not merely to tariff classification but to the precise chemical nature/description of the goods. Even if a product falls under the same tariff item, it does not qualify unless it meets the exact description in the notification.

4.2 The Bills of Entry, invoices, Certificates of Analysis, supplier documents and product literature pertaining to the imported PLASBLAK® masterbatches establish that the impugned goods are polymer-based black masterbatches containing carbon black as the pigmenting agent, engineered for addition to polymer matrices. The Director of the importer has himself accepted this position in both statements dated 15.05.2026 and 03.07.2026, and has accepted that the goods do not contain cadmium compounds or hexacyanoferrate compounds. After perusing Sl. No. 373(I) of Notification No. 46/2011-Cus dated 01.06.2011, he acknowledged that the said entry specifically referred to pigments and preparations based on cadmium compounds and pigments and preparations based on hexacyanoferrates. He stated that the importer was earlier

not aware that the benefit under the said entry was confined to the specifically described goods and explained that the exemption had been claimed under the belief that goods falling under CTH 32064990 and supported by compliant FTA documents, including RVC documents furnished by the overseas supplier, were eligible for the concessional rate. He admitted that the incorrect claim of exemption was an error on its part and had resulted in lower payment of Customs duty. The aforesaid admissions are consistent with the technical/product literature and supplier documents available on record, which establish that the imported goods were carbon black-based polymer masterbatches and did not possess the chemical composition prescribed under Sl. No. 373(I) of the said notification.

4.3 It is a settled principle that an exemption notification is construed strictly and the benefit extends only to goods that clearly fall within the scope of the description provided. Here there is no ambiguity: the goods are carbon black-based masterbatches, outside the ambit of the exemption entry. Therefore, benefit of Notification No. 46/2011-Cus is not admissible to the importer in respect of the impugned goods. The goods are liable to be assessed at the normal rate of duty, and the exemption claimed is required to be denied. Under the self-assessment regime the responsibility for correct assessment and for eligibility to exemption rests with the importer.

RELEVANT LEGAL PROVISIONS:

5.1 SECTION 17. Assessment of duty. — (1) *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.*

5.2 SECTION 46. Entry of goods on importation. — *(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.*

5.3 SECTION 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. —

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, — (a) collusion; or (b) any wilful mis-statement; or (c) suppression of facts, by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied 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 may pay the duty in full or in part, as may be accepted by him, and the

interest payable thereon under section 28AA and the penalty equal to fifteen per cent. 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.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion — (i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140, be deemed to be conclusive as to the matters stated therein and penalty so paid under sub-section (5), on determination under this sub-section, shall also be deemed to be a charge for non-payment of duty; or (ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).

5.4 SECTION 28AA. Interest on delayed payment of duty. — *(1) ... the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section. (2) Interest at such rate not below ten per cent and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid ... up to the date of payment of such duty.*

5.5 SECTION 110AA. Action subsequent to inquiry, investigation or audit or any other specified purpose. — *Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, an officer of customs has reasons to believe that any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made, such officer shall, after causing inquiry, investigation or audit, transfer the relevant documents, along with a report in writing, to the proper officer having jurisdiction as assigned under section 5 in respect of assessment of such duty or, in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, and thereupon the powers exercisable under sections 28, 28AAA or Chapter X shall be exercised by such proper officer.*

5.6 SECTION 111. Confiscation of improperly imported goods, etc. — *The following goods brought from a place outside India shall be liable to confiscation: — (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act ...*

5.7 SECTION 112. Penalty for improper importation of goods, etc. — *Any person, — (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act ... shall be liable, — ... (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher ...*

5.8 SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. — *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid ... by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty*

or interest, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid shall be twenty-five per cent. of the duty or interest so determined: ... Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

5.9 SECTION 114AA. Penalty for use of false and incorrect material. — *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

CONTRAVENTIONS:

6.1. From the facts brought on record during investigation, it emerges that the importer failed to correctly determine eligibility of exemption and consequently failed to discharge statutory obligations under the Customs Act, 1962 relating to self-assessment and accurate declaration affecting duty liability. The imported goods were declared and cleared by claiming exemption under Notification No. 46/2011-Cus although the goods did not satisfy the chemical description prescribed therein. The conduct of the importer therefore resulted in incorrect availment of exemption and consequent short-payment of customs duty. Such acts amount to contravention of Sections 17, 46(4) and 46(4A) of the Customs Act, 1962 and attract appropriate recovery and penal consequences under law.

6.2. In terms of Section 46(4) and 46(4A) of the Customs Act, 1962, every importer is mandatorily required to make a declaration as to the truthfulness and accuracy of the contents of the Bill of Entry and to ensure that all particulars furnished therein, including description, classification, valuation, and eligibility of exemption, are complete and correct in all respects. In the present case, M/s Balson Polyplast Private Limited imported carbon black-based polymer masterbatches and wrongly availed exemption under Notification No. 46/2011-Cus by declaring the goods as eligible under Sl. No. 373(I). The goods do not contain cadmium compounds or hexacyanoferrates and are therefore not covered under the said entry. Such incorrect declaration, made despite availability of complete technical literature and product specifications, amounts to a clear contravention of the provisions of Section 46(4) and 46(4A).

6.3. Further, under the scheme of self-assessment introduced under Section 17 of the Customs Act, 1962, the importer is entrusted with the responsibility to correctly assess the duty leviable on imported goods. This responsibility is not merely procedural but substantive in nature, requiring due diligence and proper application of mind. In the instant case, the importer has failed to exercise such due diligence and has instead adopted an incorrect and unsustainable interpretation of the exemption notification, thereby resulting in short-payment of duty.

6.4. By virtue of the aforesaid incorrect declaration relating to exemption eligibility and consequential short-payment of duty, the imported goods appear liable for confiscation under Section 111(m) of the Customs Act, 1962 inasmuch as the assessment particulars declared for clearance materially affected determination of duty liability. By knowingly rendering the goods liable to confiscation through acts of misdeclaration and suppression of material facts, M/s Balson Polyplast Private Limited appears liable to penalty under Section 112(a) of the Customs Act, 1962.

6.5 Further, where duty has not been levied or has been short-paid by reason of wilful mis-statement or suppression of material facts, penalty provisions under Section 114A of the Customs Act, 1962 become applicable upon determination of duty under Section 28. Accordingly, the importer appears liable for action under Section 114A of the Customs Act, 1962, subject to statutory provisions and adjudication.

6.6. Investigation has established that M/s Balson Polyplast Private Limited repeatedly claimed exemption under Sl. No. 373(I) of Notification No. 46/2011-Cus dated 01.06.2011 in respect of imported Black Masterbatch (PLASBLAK® grades), despite the imported goods not being pigments or preparations based on cadmium compounds or hexacyanoferrates as required under the said notification. The exemption was claimed through Bills of Entry, declarations and supporting import documents submitted before Customs for assessment and clearance of the goods. The evidence gathered during investigation, including technical literature, supplier documents and statements recorded under Section 108 of the Customs Act, 1962, establishes that the importer was aware of the actual nature and composition of the imported goods and that the goods were not covered under the notification entry under which exemption was claimed. By making, signing, using and causing to be used declarations containing materially incorrect particulars regarding eligibility of exemption, thereby resulting in short-payment of customs duties, the importer appears to have rendered itself liable to penal action under Section 114AA of the Customs Act, 1962.

6.7. Investigation has revealed that Shri Miraj J. Baldha, Director of M/s Balson Polyplast Private Limited, was directly concerned with the classification of the imported goods and the claim of exemption under Sl. No. 373(I) of Notification No. 46/2011-Cus dated 01.06.2011 at the time of filing the impugned Bills of Entry. In his statement dated 15.05.2026 recorded under Section 108 of the Customs Act, 1962, he categorically stated that the responsibility for classification and claiming exemption rested with the importer/company and that the said functions were personally handled by him. He specifically admitted that he decided the classification of the imported goods and was responsible for claiming the exemption. Investigation further established that the technical/product literature, Certificates of Analysis and supplier data sheets available with the importer clearly reflected the actual nature and composition of the goods, namely that the PLASBLAK® products were polymer-based pigment masterbatches containing carbon black and did not contain cadmium compounds or hexacyanoferrate compounds. Shri Miraj J. Baldha also acknowledged that carbon black was elemental carbon and chemically distinct from the compounds specifically referred to at Sl. No. 373(I) of the said notification. Despite being directly responsible for classification and exemption claims and having access to the technical particulars of the imported goods, exemption under the aforesaid chemically specific entry was repeatedly claimed in the Bills of Entry. He further acknowledged the responsibility of the importer under the self-assessment regime and admitted that the incorrect claim of exemption was an error on their part and had resulted in lower payment of Customs duty. These facts and admissions establish his direct and active role in the acts and omissions relating to the claim of inadmissible exemption, which resulted in short-payment of Customs duty and rendered the impugned goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, Shri Miraj J. Baldha appears liable to penalty under Section 112(a) of the Customs Act, 1962.

6.8. Investigation further indicates that the inadmissible exemption under Sl. No. 373(I) of Notification No. 46/2011-Cus dated 01.06.2011 was claimed through Bills of Entry and declarations filed before Customs for assessment and clearance of the impugned goods. Shri Miraj J. Baldha, by his own admission, personally decided the classification of the imported goods and was responsible for claiming the exemption on behalf of the importer. The exemption claims made through such import declarations represented the carbon black-based PLASBLAK® masterbatches as eligible for a notification entry specifically restricted to pigments and preparations based on cadmium compounds or hexacyanoferrates, whereas the technical literature, Certificates of Analysis and supplier records available with the importer established that the goods contained carbon black as the pigmenting agent and did not contain the compounds specifically prescribed under the said entry. His subsequent statement dated 03.07.2026 further reiterated the actual composition of the imported goods and confirmed that the goods did not contain cadmium compounds or hexacyanoferrates. Thus, by being directly concerned with the decision, making and use of import declarations containing materially incorrect particulars regarding eligibility for exemption, Shri Miraj J. Baldha appears to have knowingly caused or used declarations which were incorrect in a material particular for the purposes of the Customs Act, 1962 and, accordingly, appears liable to penal action under Section 114AA of the Customs Act, 1962.

6.9. In view of the foregoing facts, evidence and admissions brought on record during investigation, the imported goods appear liable to confiscation under Section 111(m) of the Customs Act, 1962. Further, M/s Balson Polyplast Private Limited appears liable to penalty under Sections 112(a), 114A and 114AA of the Customs Act, 1962. Shri Miraj J. Baldha, the person responsible, appears liable to penalty under Sections 112(a) and 114AA of the Customs Act, 1962. The acts and omissions of the aforesaid importer and persons warrant initiation of appropriate proceedings under the Customs Act, 1962 for recovery of duty, interest, confiscation and imposition of penalties.

LIMITATION AND INVOCATION OF EXTENDED PERIOD:

7. The present case involves short-payment of customs duty arising out of incorrect availment of exemption under Notification No. 46/2011-Cus dated 01.06.2011. The issue for determination is whether the extended period under Section 28(4) of the Customs Act, 1962 is invocable. Investigation has revealed that the importer consistently imported PLASBLAK® grades of black masterbatch over an extended period and repeatedly claimed exemption under Sl. No. 373(I) of Notification No. 46/2011-Cus. At all material times, the importer was in possession of product literature, supplier declarations, certificates and technical specifications establishing that the imported goods were polymer-based masterbatches containing carbon black and did not contain cadmium compounds or hexacyanoferrate compounds as required under the notification. The Director of the importer also admitted in his statement under Section 108 that the imported goods did not contain the specified compounds and that responsibility for assessment and exemption claim rested with the importer under the self-assessment framework. Despite the availability of such information and repeated imports over multiple years, exemption continued to be claimed. This incorrect claim amounts to wilful mis-statement in order to claim ineligible exemption. Further, nowhere has the importer intimated that the goods under consideration were not pigments or preparations based on cadmium compounds or hexacyanoferrates, which

is a fact material to the claim of exemption benefit. Thus, the importer has also suppressed material facts from the department. Therefore, the facts brought on record disclose wilful mis-statement and suppression of material facts within the meaning of Section 28(4) of the Customs Act, 1962 and justify invocation of the extended period for recovery of differential duty along with applicable interest.

COMPUTATION OF DIFFERENTIAL DUTY:

8. Scrutiny of the Bills of Entry, invoices, packing lists and product literature for the period August 2023 to February 2026 showed that multiple consignments of PLASBLAK® masterbatch were cleared at Mundra (INMUN1) by availing the exemption. Basic Customs Duty at 7.5%, Social Welfare Surcharge at 10% of BCD, and IGST at 18% were short-paid on each Bill of Entry. The total differential duty works out to **Rs. 51,08,959/-**, year-wise as under (Bill of Entry-wise details are in Annexure-I):

Period	Assessable Value	BCD payable	SWS payable	IGST payable	Total duty payable	Duty already paid	Differential duty
2023 (from 04.08.2023)	1,07,71,640	8,07,873	80,787	20,98,854	29,87,514	19,38,895	10,48,619
2024	1,08,18,138	8,11,360	81,136	21,07,914	30,00,410	19,47,265	10,53,146
2025	2,06,19,335	15,46,450	1,54,645	40,17,677	57,18,773	37,11,480	20,07,292
2026 (up to 14.02.2026)	1,02,71,200	7,70,340	77,034	20,01,343	28,48,717	18,48,816	9,99,902
TOTAL	**5,24,80,313**	**39,36,023**	**3,93,602**	**1,02,25,789**	**1,45,55,415**	**94,46,456**	**51,08,959**

FINDINGS OF THE INVESTIGATION:

9. It appears from the investigation that:

(i) M/s Balson Polyplast Private Limited imported Black Masterbatch (PLASBLAK of various grades) from ASEAN countries.

(ii) The goods were declared under CTH 32064990 and exemption was claimed under Notification No. 46/2011-Cus.

(iii) The imported goods are polymer-based carbon black masterbatches.

(iv) The goods do not contain cadmium compounds or hexacyanoferrates. Therefore, the imported goods are not covered under Sl. No. 373(I) of the notification and thus exemption benefit was wrongly availed.

(v) The importer had access to technical literature and product specifications at the time of import. The importer had knowledge of the composition of the imported goods.

(vi) The importer repeatedly claimed exemption under Notification No. 46/2011-Cus in respect of imported goods which did not satisfy the prescribed description under Sl. No. 373(I). The incorrect declaration relating to eligibility of exemption materially affected assessment and resulted in short-payment of duty and therefore attracts the provisions of Section 28(4) of the Customs Act, 1962.

(vii) The total duty short-paid is Rs. 51,08,959/- (BCD + SWS + IGST).

(viii) The import goods are liable for confiscation under Section 111(m).

(ix) The importer appears liable for penalty under Sections 112(a), 114A and 114AA of the Customs Act, 1962 for short-payment of duty arising out of incorrect availment of exemption. Further, the person responsible for processing, approval and use of declarations and supporting records relating to the impugned imports, namely Shri Miraj J. Baldha, appears liable for penal action under Sections 112(a) and 114AA of the Customs Act, 1962 based on his respective role and involvement brought on record during investigation.

(x) The importer has voluntarily deposited the duty amount of Rs. 51,08,959/- and Rs. 11,32,682/- towards interest. Further, they have also paid penalty equivalent to fifteen per cent of the differential duty, in terms of Section 28(5) of the Customs Act, 1962. Since the duty short-paid was Rs. 51,08,959/-, an amount of Rs. 7,66,344/- has been deposited towards penalty.

RECOMMENDATIONS OF THE INVESTIGATING AGENCY:

10. Recommendations:

In view of the above,

i. The imported goods covered under the impugned Bills of Entry having assessable value of Rs. 5,24,80,313/- (Five Crore Twenty-Four Lakhs Eighty Thousand Three hundred and Thirteen only) as detailed in Annexure-I should be confiscated under Section 111(m) of the Customs Act, 1962 for wrongful availment of exemption benefits;

ii. Customs duty amounting to Rs. 51,08,959/- (including BCD, SWS and IGST) be demanded and recovered from M/s Balson Polyplast Private Limited under Section 28(4) of the Customs Act, 1962; Amount of Rs. 51,08,959/- (including BCD, SWS and IGST) voluntarily paid by the importer be appropriated against the said demand.

iii. Interest should be recovered under Section 28AA of the Customs Act, 1962 on the differential duty recoverable from the importer; the interest amounting to Rs. 11,32,682/- voluntarily paid by the importer be appropriated towards interest liability under Section 28AA of the Customs Act, 1962.

iv. Penalty under Sections 112(a), 114A and 114AA of the Customs Act, 1962 be imposed upon M/s Balson Polyplast Private Limited. Amount of Rs. 7,66,344/- (equivalent to 15% of the duty short-paid) voluntarily paid by the importer be appropriated against the said penalty.

v. Penalty under Sections 112(a) and 114AA of the Customs Act, 1962 be imposed upon Shri Miraj J. Baldha.

WAIVER OF SHOW CAUSE NOTICE:

11. M/s Balson Polyplast Private Limited vide their letter dated 12.08.2026 have given written intimation to DRI, waiving their right for a Show Cause Notice (SCN) in light of the order issued by the Hon'ble Supreme Court in the case of Commissioner of Customs, Mumbai Vs. Virgo Steels [2002 (141) E.L.T. 598 (S.C.)]. The importer has requested that the proceedings be closed under Section 28(6) of the Customs Act, 1962, without the issuance of a Show Cause Notice.

11.1. The office of DRI has recommended closure of the proceedings under Section 28(6) of the Customs Act, 1962 on the ground that M/s Balson Polyplast Private Limited

have paid the entire differential duty, applicable interest, and penalty at the rate of fifteen percent.

11.2 In view of the above, reliance is placed upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs, Mumbai Versus Virgo Steels reported in 2002 (141) E.L.T. 598 (S.C.) wherein the Apex court has held that:

> *"14. From the ratio laid down by the Privy Council and followed by this Court in the above cited judgments, it is clear that even though a provision of law is mandatory in its operation if such provision is one which deals with the individual rights of person concerned and is for his benefit, the said person can always waive such a right.*
>
> *15. Bearing in mind the above decided principle in law, if we consider the mandatory requirement of issuance of notice under Section 28 of the Act, it will be seen that the requirement is provided by the Statute solely for the benefit of the individual concerned, therefore, he can waive that right. In other words, this Section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken. This is not in the nature of a public notice nor any person other than the person against whom the proceedings are initiated has any right for such a notice. Thus, the right of notice being personal to the person concerned the same can be waived by that person.*
>
> *16. If the above position in law is correct, which we think it is, M/s Virgo Steels, having specifically waived its right for a notice, cannot now be permitted to turn around and contend that the proceedings initiated against them are void for want of notice under Section 28 of the Act, so as to frustrate the statutory duty of the Revenue to demand and collect Customs duty which M/s Virgo Steels had intentionally evaded."*

Therefore, in view of the aforesaid decision and the request made by M/s. Samskruthi Exporters and Shri K Ramesh, I hereby allow the waiver of the Show Cause Notice in the instant matter, as they have agreed with the findings of the investigation and have paid the differential duty along with applicable interest and penalties.

PAYMENT UNDER SECTION 28(5) OF THE CUSTOMS ACT, 1962:

12.1 During the investigation, M/s Balson Polyplast Private Limited admitted their duty liability and has voluntarily deposited the duty amount of Rs. 51,08,959/- and Rs.11,32,682/- towards interest on 03.07.2026. Further, they have also paid penalty equivalent to fifteen per cent of the differential duty, in terms of Section 28(5) of the Customs Act, 1962 The amounts deposited are detailed below:

Particulars	Provision	Amount (Rs.)
Differential Customs duty (BCD + SWS + IGST)	Section 28(4)	51,08,959
Interest	Section 28AA	11,32,682
Penalty at 15% of the duty	Section 28(5)	7,66,344
Total		**70,07,985**

12.2 The payments were made only after the department had initiated the investigation and detected the issue. The importer vide letter dated 12.08.2026 has informed the department of the payments in writing and has asked that the proceedings be concluded under Section 28(6).

DISCUSSION AND FINDINGS:

13. I have carefully gone through the Investigation report, payment made under Section 28(5) and request of closure of the proceedings under Section 28(6) of the Customs Act, 1962. As mandated under Section 28(6) of the Customs Act, 1962, the proper officer is required to determine the duty payable under Section 28(4) together with the interest leviable under Section 28AA. Upon such determination, the proper officer is required to ascertain whether the duty, interest and penalty at the rate of fifteen percent have been discharged in full. Where the entire liability stands paid, the proceedings are deemed to be concluded in terms of Section 28(6)(i) of the Customs Act, 1962, and penalty so paid under sub-section (5), shall be deemed to be a charge for non-payment of duty. Accordingly, I proceed to determine the duty, interest and penalty payable in the instant case.

DETERMINATION OF DUTY, INTEREST AND PENALTY UNDER SECTION 28(6)-

14. I find that the present case arises out of an investigation conducted by the Directorate of Revenue Intelligence (DRI) into the alleged short payment of customs duty by M/s. Balson Polyplast Private Limited on import of Black Masterbatch, commercially known as PLASBLAK® by wrongfully claiming the ineligible benefit of S.No. 373(I) of Notification No. 46/2011-Cus. The said entry of notification extends preferential duty treatment to a narrowly defined category of goods, namely "Pigments and preparations based on cadmium compounds and pigments and preparations based on hexacyanoferrate (ferro cyanides and ferri cyanides)". Upon closer scrutiny of import documents, technical literature, and product specifications, it emerged that the goods imported under the description "PLASBLAK®" were not pigments of the type specified in the notification but were polymer-based masterbatches containing carbon black as a pigmenting agent. The above factual and technical position was also categorically acknowledged by Sh. Miraj J. Baldha, Director of M/s Balson Polyplast Private Limited, in his statement dated 15.05.2026, recorded under Section 108 of the Customs Act, 1962. Thus, the differential duty on account of wrongfully claimed notification benefit of S. No. 373(I) of Notification No. 46/2011-Cus amounts to Rs. 51,08,959/-, as detailed in Annexure-I (prepared by DRI and attached with this conclusion order) which is liable to be recovered under Section 28(4) of the Customs Act, 1962.

Interest under Section 28AA of the Customs Act, 1962-

15. Section 28AA(1) of the Customs Act, 1962 provides that *"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."*

Further, sub-section (2) stipulates that *"Interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may*

16. Accordingly, in the present case, the liability to pay interest arises automatically by operation of law once the duty is determined as payable, and the interest payable amounts to **Rs. 11,32,682/-** as per the computation in Annexure-I (prepared by DRI and attached to this order).

17. Penalty under Section 28(5). Penalty equal to fifteen per cent of the duty is payable for closure under Section 28(6). Fifteen per cent of Rs. 51,08,959/- works out to Rs. 7,66,344/-.

18. The total duty, interest and penalty at 15% payable under Sections 28(4) and 28(5) read with Section 28AA and paid by the importer is summarised below:

Duty / Interest / Penalty	Payable (Rs.)
Duty payable under Section 28(4)	51,08,959
Interest under Section 28AA	11,32,682
Penalty at 15% under Section 28(5)	7,66,344
Total	**70,07,985**

19. Thus, the total amount payable towards duties of customs, interest and penalty @15% has been determined at Rs. 70,07,985/- which has been duly paid by M/s Balson Polyplast Private Limited, as mentioned in Para 14 above. Since the entire duty liability, together with the applicable interest and penalty as prescribed under Section 28(5) of the Customs Act, 1962, has been duly discharged by M/s Balson Polyplast Private Limited, the proceedings initiated against M/s Balson Polyplast Private Limited are liable to be deemed concluded in terms of Section 28(6)(i) of the Customs Act, 1962, as amended, in respect of the matters stated therein and penalty so paid under sub-section (5), shall be deemed to be a charge for non-payment of duty.

CONFISCATION OF IMPORTED GOODS-

20. The Investigation report has proposed confiscation of the goods imported under the Bills of Entry as detailed in Annexure-I (prepared by DRI and attached to this order), under Section 111(m) of the Customs Act, 1962. The importer imported carbon black-based polymer masterbatches and wrongly availed exemption under Notification No. 46/2011-Cus by declaring the goods as eligible under Sl. No. 373(I). The goods do not contain cadmium compounds or hexacyanoferrates and are therefore not covered under the said entry. The importer was fully aware of these facts, despite such knowledge, the importer continued availing exemption which amounts to wilful mis-statement. Section 111(m) of the Customs Act, 1962 provides that goods which do not correspond in respect of value or in any other particular with the entry made under the Act shall be liable to confiscation. In the present case, it is established that the importer has made

incorrect declaration relating to exemption eligibility of the subject goods. Therefore, I hold that, the subject goods as detailed in Annexure-I (prepared by DRI and attached to this order) are held liable to confiscation under Section 111(m) of the Customs Act, 1962.

20.1 The impugned goods, which were cleared for home consumption, are neither prohibited nor restricted, and the importer has voluntarily paid the entire duty with interest and penalty at 15% under Section 28(5) and has sought conclusion under Section 28(6). Where the proceedings are deemed to be concluded under Section 28(6)(i), I hold that no redemption fine can be imposed on the subject goods, as provided in the first proviso to Section 125(1) of the Customs Act, 1962. The relevant portion of that proviso is reproduced below for ready reference:

> *"Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed: ..."*

PENALTIES PROPOSED IN THE INVESTIGATION REPORT-

21. The Investigation Report, apart from proposing recovery of duty under Section 28(4) of the Customs Act, 1962, had also proposed penalty under Sections 112(a), 114A and 114AA of the Customs Act, 1962 on M/s Balson Polyplast Private Limited, and penalty under Sections 112(a) and 114AA of the Customs Act, 1962 on Shri Miraj J. Baldha, Director of M/s Balson Polyplast Private Limited. In this regard, it is noted that once the duty, interest and 15% penalty stand paid under Section 28(5), the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4) stand deemed concluded under Section 28(6)(i) of the Customs Act, 1962 in respect of the matters stated therein, and imposing further penalty would go against the purpose of Section 28(5)/28(6) of the Customs Act, 1962, which is to bring such proceedings to a complete end once such payment is made. This benefit, being available to such person or other persons to whom the notice is served, equally applies to Shri Miraj J. Baldha, who was proceeded against only on account of his role, as Director, in the same acts and omissions of M/s Balson Polyplast Private Limited. Accordingly, no penalty is imposable under Sections 112(a), 114A and 114AA on either M/s Balson Polyplast Private Limited or Shri Miraj J. Baldha, the proceedings in respect thereof being deemed concluded under Section 28(6)(i) of the Customs Act, 1962.

22. In view of the foregoing, since the entire duty of ₹51,08,959/-, interest of ₹11,32,682/- and penalty of ₹7,66,344/- at the rate of fifteen percent under Section 28(5) stands duly paid by M/s Balson Polyplast Private Limited, and since no redemption fine or penalty under Sections 112(a), 114A and 114AA survives for the reasons discussed above, I hold that the proceedings in respect of M/s Balson Polyplast Private Limited and Shri Miraj J. Baldha, Director of M/s Balson Polyplast Private Limited, are deemed concluded under Section 28(6)(i) of the Customs Act, 1962, in respect of the matters stated therein, without prejudice to Sections 135, 135A and 140 of the Customs Act, 1962.

23. In view of the above, I hereby pass the following order:

ORDER

The proceedings initiated against M/s Balson Polyplast Private Limited and Shri Miraj J. Baldha, Director of M/s Balson Polyplast Private Limited are deemed to be concluded in terms of Section 28(6)(i) of the Customs Act, 1962, as amended, in respect of the matters stated therein and penalty paid under sub-section (5), shall be deemed to be a charge for non-payment of duty.

24. This order is issued without prejudice to any action that can be taken under the Customs Act, 1962 or any other law for the time being in force.

Digitally signed by
Nitin Saini
Date: 05-11-2026
17:26:22

(Nitin Saini)
Commissioner of Customs,
Customs House, Mundra.

Encl.: Annexure-I (Bill of Entry-wise computation of differential duty and interest).

To,

(i) M/s Balson Polyplast Private Limited,
Survey No. 13/1 P1 P2, Plot No. 4, National Highway 27,
Opp. Sadak Pip, Gondal-360311, Gujarat.

(ii) Shri Miraj J. Baldha
Director, M/s Balson Polyplast Private Limited,
Survey No. 13/1 P1 P2, Plot No. 4, National Highway 27,
Opp. Sadak Pip, Gondal-360311, Gujarat.

Copy to-

(i) The Chief Commissioner, Gujarat Customs Zone, Ahmedabad, for Review.

(ii) The Additional Director General / Joint Director, Directorate of Revenue Intelligence, Zonal Unit, Ludhiana.

(iii) Shri Miraj J. Baldha, Director, M/s Balson Polyplast Private Limited.

(iv) The Superintendent (TRC / Legal / EDI) for necessary action.