
		<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</b> <b>CUSTOMS HOUSE, MP &amp; SEZ</b> <b>MUNDRA, KUTCH-GUJARAT -370421</b> <b>Email Id: Group2-mundra@gov.in</b>	 सत्यमेव जयते
<b>A</b>	<b>File No.</b>	<b>GEN/ADJ/ADC/368/2025-Adjn-O/o Pr Commr-Cus-Mundra</b>	
<b>B</b>	<b>OIO No.</b>	<b>MCH/ADC/ZDC/579/2025-26</b>	
<b>C</b>	<b>Passed by</b>	<b>Sh. Dipak Zala, Additional Commissioner of Customs (Import Assessment), Custom House, Mundra</b>	
<b>D</b>	<b>Date of order</b>	<b>.01.2026</b>	
<b>E</b>	<b>Date of Issue</b>	<b>.01.2026</b>	
<b>F</b>	<b>SCN F. No. &amp; Date</b>	<b>CUS/APR/BE/79/2025-Gr 2-O/o Pr Commr-Cus-Mundra dated 28.01.2025</b>	
<b>G</b>	<b>Noticee / Party/ Importer</b>	<b>M/s. RADHA RAMAN METAL PVT LTD (IEC-312059523), 602 ORCHID PLAZA, NATAKWALA LANE, BORIWALI JAIL ST, NEAR DATTAPADA PHATAK BORIWALI WEST, MUMBAI, MUMBAI SUBURBAN, MAHARASHTRA, 400097</b>	
<b>H</b>	<b>DIN</b>	<b>20260171MO000000F79F</b>	

1. यह अपील आदेश संबन्धित को निःशुल्क 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**

**4<sup>th</sup> 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 ड्यूटी/ 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. RADHA RAMAN METAL PVT LTD (IEC-312059523), 602 ORCHID PLAZA, NATAKWALA LANE, BORIWALI JAIL ST, NEAR DATTAPADA PHATAK BORIWALI WEST, MUMBAI, MUMBAI SUBURBAN, MAHARASHTRA, 400097** (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:**

<i>HS Code</i>	<i>Item Description</i>	<i>BCD</i>	<i>SWS</i>	<i>IGST</i>
			<i>(10%</i>	
			<i>of</i>	
			<i>BCD)</i>	
3920	<i>Other plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials</i>			
392010	- <i>Of polymers of ethylene</i>			
39201099	- <i>Other</i>	10%	1	18%
392020	- <i>Of polymers of propylene</i>			
39202090	- <i>Others</i>	10%	1	18%
392069	- <i>Of other polyesters</i>			
39206919	- <i>Others</i>	10%	1	18%

392071	-	<i>Of regenerated cellulose</i>			
39207119	-	<i>Others</i>	10%	1	18%
392099	-	<i>Of other plastics:</i>			
<b>39209999</b>	--	<b><i>Other</i></b>	<b>15%</b>	<b>1.5</b>	<b>18%</b>

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. 1,53,053/, 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-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

PROVIDED that before issuing notice, the proper officer shall hold pre- notice consultation with the 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 transshipment, with the declaration for transshipment 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. RADHA RAMAN METAL PVT LTD (IEC-312059523), 602 ORCHID PLAZA, NATAKWALA LANE, BORIWALI JAIL ST, NEAR DATTAPADA PHATAK BORIWALI WEST, MUMBAI, MUMBAI SUBURBAN, MAHARASHTRA,400097**, 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. 1,53,053/-** (Rupees One Lakh Fifty Thousand and Fifty Three 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, 02.09.2025 and 03.09.2025. Sh. Hansraj Garg, Consultant of the importer attended hearing through Virtual Hearing at 11:30 HRS on

03.09.2025 & requested to consider importer's reply letter dated 21.02.2025 to conclude the SCN dated 28.01.2025 under Section 28(5) read with Section 28(6) inasmuch as the entire amount of Customs Duty demand along with applicable interest and penalty equal to 15% of the duty demand has been paid by the importer within 30 days of the receipt of the SCN. Importer's reply dated 21.02.2025 is reproduced as under:

1. We, M/s Radha Raman Metal Pvt Ltd, Mumbai, are in receipt of the captioned SCN demanding the differential BCD, SWS & IGST amounting to Rs 1,50,053/- under Section 28(4) of the Customs Act, 1962 along with applicable interest and penalty on the two imported consignments listed in Annexure 'A' to the SCN.  
Copy of the SCN is attached for quick reference.
2. We state that the demand has been raised on account of alleged misclassification of the goods invoking extended period available under Section 28(4) by stating and mentioning that 'the mis-classification appears to be a deliberate attempt by us to pay Customs Duty at lower rate' based on Post Clearance Audit, without any investigation and evidence. The extended period can be invoked if and only if ingredients and pre-conditions of Section 28(4) are satisfied i.e. where any duty has been short-levied or short-paid by reason of (a) collusion; or (b) any wilful mis-statement; or (c) suppression of facts. None of these conditions have been stated to have been proved in this case. On this ground alone, the demand needs to be dropped.
3. Be that as it may, we intend to close the proceedings under Section 28(5) read with Section 28(6) of the Customs Act, 1962 by paying the differential Customs Duty demanded along with applicable interest and penalty equal to 15% of the duty demanded.
4. Accordingly we have voluntarily paid today i.e. before the period of 30 days from do the date of receipt of the impugned SCN expires online in terms of the of the instructions vide Customs Circular No. 27/2024 - Customs F. No. 450/54/2024-Cus.IV dated the 23rd December, 2024 the following amounts vide two separate Challans for the two imported consignments impugned in the SCN:

Bill of Entry No & Date	Amount of differential duty demanded (Rs.)	Period for which interest payable	Amount of Interest @ 15% Per annum	Amount of Penalty (Rs) i.e. 15% of the duty demanded	Total (Rs.)
7363452/ 27.03.2020	52,140.90	01.04.2020 to 28.02.2025=59 months	38,454/-	7,821/-	98416/-
7421596/ 09.04.2020	97,912.21	01.05.2020 to 28.02.2025 = 58 months	70,987/-	14,687/-	1,83,586/-
Total	1,50,053.11		1,09,441/-	22,508/-	2,82,002/-

Copies of the online generated two Challans both dated 21.02.2025 are attached herewith for your records.

5. Therefore, we request that the payment made may please be verified before the period of 30 days expires and the proceedings may please be deemed to have been concluded under Section 28(5) read with Section 28(6) of the Customs Act, 1962 under intimation to us.
6. In case any discrepancy is noticed in payment made by us, please let us know immediately for rectification before the expiry of the said 30 days.
7. If necessary, we may please be granted personal hearing in virtual mode.
8. We have engaged Shri Hans Raj Garg, Consultant, Retd Addl Commissioner of Customs, Mumbai to help us in this matter. He can be reached at Mobile Number: 91589 91437 and his email id hrgarg18@gmail.com.

## **11. DISCUSSION AND FINDINGS:**

**11.1.** I have gone through the Show Cause Notice, audit observations, case records, PH record dated 03.09.2025 & reply of importer dated 21.02.2025. I find that sufficient opportunity has been given to the importer as such 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 ₹1,53,053/- is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.
- iii. Whether the SCN is deemed concluded under Section 28(6) of the Customs Act, 1962, on the basis of voluntary payment made by the importer vide ECL Challan or otherwise?
- iv. Whether the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.
- v. 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. RADHA RAMAN METAL PVT LTD (IEC-312059523)**, 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. Instead, they merely declared generic descriptions. 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.

**11.5.** I observe that classification under the Customs Tariff Act must be done strictly based on description and composition of the goods. In this case, the importer neither furnished laboratory reports nor documentary evidence to substantiate the claimed classification under 392010, 392020, 392069, or 392071. Therefore, the reliance on these headings was incorrect. As per the settled law, where specific description is absent, goods fall under the residual entry. Accordingly, the correct classification is under **CTH 39209999**, attracting **BCD @ 15%**, **SWS @ 10%** of BCD, and **IGST @ 18%**, i.e., total effective duty of **37.470%**, instead of 30.980% wrongly applied.

**11.6.** 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 **₹1,53,053/-** 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.

**11.7.** 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.

**11.8.** 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.

**11.9.** 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.”*

**11.10.** 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.

**11.11.** In view of the foregoing, I hold that the importer is liable to pay the differential duty of **₹1,53,053/-** 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.

**ELIGIBILITY FOR DEEMED CONCLUSION OF THE IMPUGNED SCN:**

**11.12.** I take note that the importer, vide letter dated 21.02.205, has intimated that they have discharged liability of differential duty of

Rs.1,50,053/- along with appropriate interest of Rs. 1,09,441/- and penalty of Rs.22,508/- vide ECL Challan No. 8241614748 (Rs.98,416/-) & 1645074754 (Rs.1,83,586/-) both dated 21.02.2025 and requested for deemed conclusion of the matter. I find that the detailed calculation of duty, interest & penalty as submitted by importer is as under:

Bill of Entry No & Date	Amount of differential duty demanded (Rs.)	Period for which interest payable	Amount of Interest @ 15% Per annum	Amount of Penalty (Rs) i.e. 15% of the duty demanded	Total (Rs.)
7363452/ 27.03.2020	52,140.90	01.04.2020 to 28.02.2025 = 59 months	38,454/-	7,821/-	98,416/-
7421596/ 09.04.2020	97,912.21	01.05.2020 to 28.02.2025 = 58 months	70,987/-	14,687/-	1,83,586/-
Total	1,50,053.11		1,09,441/-	22,508/-	2,82,002/-

**11.13.** I note that Section 28(5) of the Customs Act, 1962 provides that where non-levy, short-levy, non-payment, short-payment of duty arises due to collusion, wilful misstatement, or suppression of facts by the importer, exporter, or their agents, and a notice has been served under Section 28(4), the person concerned may discharge the duty in full or as accepted, along with interest under Section 28AA and a penalty equal to 15% of the duty demanded or accepted, within thirty days of receipt of the notice and inform the proper officer of such payment in writing.

**11.14.** I further take note of the Section 28(6) of the Customs Act, 1962, which is reproduced below:

*“...Section 28(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 section 135, 135A and be deemed to be conclusive as to the matters stated therein; 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).”*

**11.15.** To verify the payment particulars, I have examined the details available in ICES pertaining to the voluntary payment made by the importer against the impugned Bill of Entries. I observe that the importer has deposited an amount of Rs.98416/- vide Challan No.8241614748 dated 21.02.2025 under voluntary payment details in EDI System against BE No. 7363452 dated 27.03.2020 & an amount of Rs.183586/- vide Challan No. 1645074754 dated 21.02.2025 under voluntary payment details in EDI System against BE No. 7421596 dated 09.04.2020. I further find that the said amount of Rs.98416/- for 1st Challan corresponds to the differential duty of Rs.52141/-, interest of Rs.38454/- and penalty equivalent to 15% of the duty amounting to Rs.7821/- and 2nd Challan corresponds to the

differential duty of Rs.97912/-, interest of Rs.70987/- and penalty equivalent to 15% of the duty amounting to Rs.14687/- as indicated by the importer in their letter dated 21.02.2025. I also note that this payment was made within the statutory period of 30 days prescribed under Section 28(5) of the Customs Act, 1962, and therefore the benefit of deemed conclusion under Section 28(6)(i) of the Act is available to the noticee.

**11.16.** Therefore, in terms of Section 28(6) of the Customs Act, 1962, I determine the amount of duty, interest and penalty, payable by the importer in the instant case, as given below:-

<b>Be No. &amp; Date</b>	<b>Differential Duty</b>	<b>Interest@15% p.a.</b>	<b>Penalty@15 %</b>	<b>Challan No. &amp; Date</b>
7363452/ 27.03.2020	52,140.90	38,454/-	7,821/-	Challan No. 8241614748 dated 21.02.2025 for Rs.98416/-
7421596/ 09.04.2020	97,912.21	70,987/-	14,687/-	Challan No. 1645074754 dated 21.02.2025 for Rs.1,83,586/-
<b>Total</b>	<b>1,50,053/-</b>	<b>1,09,441/-</b>	<b>22,508/-</b>	<b>2,82,002/-</b>

**11.17.** I observe that the noticee has discharged the duty, interest, and penalty amounts, as detailed above, through Challan No. 8241614748 & 1645074754 both dated 21.02.2025. Accordingly, in terms of Section 28(6)(i) of the Customs Act, 1962, I hold that the proceedings initiated against **M/s. RADHA RAMAN METAL PVT LTD** vide Show Cause Notice issued vide F.No. CUS/APR/BE/79/2025-Gr 2-O/o Pr Commr-Cus-Mundra dated

28.01.2025 are fit for conclusion with respect to the matters covered therein.

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

**ORDER**

i. I order to conclude the proceedings, initiated against **M/s. RADHA RAMAN METAL PVT LTD** vide SCN issued from **CUS/APR/BE/79/2025-Gr 2-O/o Pr Commr-Cus-Mundra dated 28.01.2025**, under the provisions of Section 28(6)(i) 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.

Encl: Annexure-‘A’

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

To,

**M/s. RADHA RAMAN METAL PVT LTD (IEC-312059523),**  
**602 ORCHID PLAZA, NATAKWALA LANE, BORIWALI JAIL ST, NEAR**  
**DATTAPADA PHATAK BORIWALI WEST, MUMBAI, MUMBAI SUBURBAN,**  
**MAHARASHTRA,400097**

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
736345 2	27-03- 2020	8,03,403.74	3,01,035.38	2,48,894.48	52,140.90
742159 6	09-04- 2020	15,08,662.64	5,65,295.89	4,67,383.69	97,912.21
		<b>23,12,066.38</b>	<b>8,66,331.27</b>	<b>7,16,278.17</b>	<b>1,50,053.11</b>