कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,

सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,

CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421

Email: adj-mundra@gov.in

A. File No.	:	GEN/ADJ/COMM/19/2025-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	:	**MUN-CUSTM-000-COM-049-25-26**
C. Passed by	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order Date of issue:	:	**01.01.2026** 01.01.2026
E. SCN No. & Date	:	GEN/ADT/PCA/496/2025-Gr 2 dated 08.01.2025
F. Noticee(s) / Party / Importer	:	M/s N. K. Exim (IEC: 306016974)
G. DIN	:	20260171MO0000888FC3

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 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए 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 या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, शास्ति या 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 खण्ड पीठ बेंचआहरितट्रिब्यूनल 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 मदसं°-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.

BRIEF FACTS OF THE CASE:

M/s N.K. Exim, A-702, Versora Golden Sands CHS, SVP Nagar Mhada Layout Andheri Cont, Mumbai-400 053, having IEC: 306016974 (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 mis-classified 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 up for retail sale,

those headings are to be regarded as equally specific in relation to those goods, even if one of the 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 the 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. 1,23,31,950/-, as detailed in Annexure-A to the SCN.

7. 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.

(i) Accordingly, M/s N.K. Exim, A-702, Versora Golden Sands CHS, SVP Nagar Mhada Layout Andheri Cont, Mumbai-400 053, having IEC: 306016974, was called upon to show cause to the Principal Commissioner of Customs, Customs House, Mundra having office at 5B, First Floor, PUB Building, Adani Port, Mundra, as to why:

(ii) 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;

(iii) The short payment of Basic Customs Duty amounting to Rs. 1,23,31,950/- (Rupees One Crore Twenty Three Lakh Thirty One Thousand Nine Hundred and Fifty 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;

(iv) Interest should not be recovered from them under Section 28AA of the Customs Act, 1962;

(v) 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 willful mis-statement and suppression of facts;

(vi) 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;

8. RECORDS OF PERSONAL HEARING:

Following the principles of natural justice, opportunities of personal hearing were granted to the importer. Shri Ashwini Kumar, Advocate, appeared for the personal hearing on 07.11.2025 through virtual mode. He re-iterated the earlier written submission dated 17.03.2025 and submitted that there was no objection to the classification of the goods at the time of assessment or examination.

The Adjudicating Authority sought clarification from the importer as to whether any test report/analysis report, etc., had been submitted at the time of clearance of the goods. In response, Shri Ashwini Kumar, Advocate, stated that a detailed written submission will be made. Accordingly, a next date of hearing was re-scheduled on 29.12.2025. The authorised representative through mail stated that one personal hearing has already been held and concluded.

9. DEFENCE SUBMISSION

M/s N.K. Exim, A-702, Versora Golden Sands CHS, SVP Nagar Mhada Layout Andheri Cont, Mumbai-400 053, in their written submission dated 17.03.2025 and 14.11.2025, inter alia, have submitted as follows:

(i) That no documents mentioned and supplied with the Show Cause Notice: The importer submitted that although the Show Cause Notice mentions various documents and evidence gathered from records such as Bills of Entry, it nowhere specifies the documents proposed to be relied upon to sustain the allegations against the importer, nor have such documents, from which the evidence has been adduced, been supplied. They further submitted that the entire allegations in the Show Cause Notice are based upon scrutiny of

documents and evidence conducted at the back of the importer, which violates the principles of natural justice.

(ii) That the entire demand is time barred by Normal Period of Limitation in absence of any ingredient for invocation of extended period under the provisions of Section 28 of the Customs Act, 1962: The importer submitted that the Show Cause Notice has invoked classification of the goods under CTH 39209999 with the description "other" and has alleged that the Noticee misclassified the goods by describing them as "Stock Lot of Plastic Packaging Material in Mix Size and GSM" under CTHs 392010, 392020, 392069, and 392071. The importer further submitted that it is the case of the Revenue that the name of the plastic material was not mentioned in the description column of the Bills of Entry, which may at best amount to an incomplete description; however, the tariff entries declared were specific to particular types of material, viz. polymers of propylene, polyesters, etc., and that the description of the plastic material in the Bills of Entry has to be read in conjunction with the description under the declared CTHs.

The importer further submitted that the description given in the commercial invoices issued by the supplier of the goods, and any alleged incomplete description therein, could be supplemented by the tariff heading. It was submitted that a slight incomplete description cannot, in all cases, be termed as misdeclaration, and that for invoking the extended period of limitation under Section 28 of the Customs Act, 1962, proof of *mens rea* for evasion of duty is *sine qua non*, and mere inadvertent omission would not attract invocation of the extended period.

The importer further submitted that, in the present case, the Show Cause Notice proceeds solely on the documents available on record of the Noticee and has failed to bring on record any evidence to suggest that the goods in question were not actually made of the material corresponding to the tariff entries declared. In such circumstances, neither the existence of *mens rea* for evasion of duty is established, nor are the ingredients necessary to sustain the allegation of misdeclaration made out. Accordingly, it was submitted that the extended period of limitation for demand of duty under the Customs Act, 1962 is not invocable in the present case.

In support of their submissions, the importer relied upon the judgment in Central Excise v. Chemphur Drugs and Liniments, reported in 1989 (40) E.L.T. 276 (S.C.).

(iii) That Rule 3 of the General Rule of Interpretation of the Customs Tariff is not invocable in the instant case: The importer submitted that the Notes to the General Rules for the Interpretation of the Customs Tariff read as follows: "The classification of goods in this Schedule shall be governed by the

following principles." It was submitted that the General Rules for Interpretation apply to the classification of goods and, for that purpose, proper ascertainment of the description of the goods is essential.

In the instant Show Cause Notice, it was submitted that the Revenue has applied the Rules of Interpretation without conducting any investigation regarding the specific character of the goods and their composition and has, merely on the basis of the description of the goods, assigned a specific tariff entry and applied Rule 3 of the General Rules for Interpretation. It was further submitted that the Show Cause Notice does not provide any plausible reason as to why the preceding rules were not applicable and why the rule requiring adoption of the "specific description" was bypassed in favour of Rule 3.

Accordingly, the importer submitted that the assertions made in the Show Cause Notice are based on a faulty foundation, are perverse and illegal, and, on this ground alone, the Show Cause Notice is liable to be withdrawn.

(iv) That burden of proof for substantiating the classification lies upon revenue: The importer submitted that it is a settled principle that the burden to prove the asserted classification and demand of duty lies upon the Revenue, and that, in the instant case, the Revenue has proceeded to demand duty without conducting any investigation or gathering any evidence to suggest that the goods imported by the Noticee were not conforming to the tariff entries declared in the Bills of Entry and were made of some other type of material necessitating their classification under tariff entry 39209999. The importer further submitted that it is a settled principle of law that there can be no presumption in matters of taxation and that intendments cannot be supplemented for charging provisions under taxation laws.

(v) Importer submitted that once the goods are cleared for home consumption it ceases to be "imported goods" and hence the same cannot be confiscated. Consequently, when the goods are not "improperly imported", the liability to confiscation ceases and the penalty under Section 112 of the Act would also not apply. In support of their submissions, the importer relied upon the decision in Southern Enterprises v. Commissioner of Customs (Bangalore), reported in 2005 (186) E.L.T. 324 (Tri.-Bang.).

(vi) That once the demand of duty fails on the ground of limitation or on merits, the demand of interest and penalties automatically fails.

(vii) The importer, vide their submission dated 14.11.2025, submitted copies of the Test Reports and stated that, since no queries were raised at the time of assessment of the Bills of Entry, the same were not submitted at that stage; however, the correct tariff heading in respect of each of the goods had been duly mentioned.

(viii) Based on the above submissions, the importer requested that the proceedings initiated vide Show Cause Notice No. F. No. GEN/ADT/PCA/496/2025-Gr-2-O/o Pr. Commr.-Cus.-Mundra dated 08.01.2025 be dropped

DISCUSSION AND FINDINGS:

10. I have gone through the Show Cause Notice, audit observations, and case records and written submissions. The principles of natural justice, particularly *audi alteram partem*, have been duly complied with by granting adequate opportunity to the noticees to present their defence. I find that following main issues are involved in this case, which are required to be decided:

(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 Rs. 1,23,31,950/- (Rupees One Crore Twenty Three Lakh Thirty One Thousand Nine Hundred and Fifty only) 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 112 or 114A of the Customs Act, 1962.

10.1 The importer, M/s N.K. Exim had filed various Bills of Entry (as detailed in Annexure-A to the SCN) declaring the goods as “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., and classified them under Customs Tariff Headings (CTH) 39201099, 39202090, 39206919 & 39207119. They discharged duty @ 30.980% (BCD 10% + SWS 10% + IGST 18%). However, findings of post clearance audit suggested that the imported goods merit classification under CTH 39209999 as “Others”. Therefore, I proceed to determine the correct classification of goods.

10.2 The description of goods falling under CTH 3920 as mentioned under Customs Tariff is reproduced as under:-

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%

10.3 The importer declared the impugned goods in the Bills of Entry as *"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 coloured/plain plastic packaging film/rolls in variable/mix size and GSM"* etc. and classified them under Customs Tariff Headings (CTH) 39201099, 39202090, 39206919 and 39207119. On examination of the relevant tariff entries, it is observed that Heading 3920 covers plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials, and that the respective sub-headings are polymer-specific, namely polymers of ethylene, polymers of propylene, polyesters and regenerated cellulose. Classification under these sub-headings necessarily requires clear declaration of both the form of the goods (film, sheet, foil, plate or strip) and their precise polymer composition. However, the importer has failed to declare these essential particulars required for classification under Heading 3920 in the Bills of Entry and related documents, rendering the declarations vague and incomplete and incapable of supporting classification under the claimed sub-headings. Further, the importer has not specified the exact polymer composition of the imported goods, i.e., whether they were made of ethylene, propylene, polyester or regenerated cellulose, which is crucial to classify the goods under the

respective entries. Thus, the classification declared by the importer in respect of the imported goods described as stock lot of plastic packaging material is found to be incorrect and liable to be rejected.

10.4 I have carefully examined the submissions of the importer wherein test reports were furnished with the contention that since no queries were raised at the time of assessment, the test reports were not submitted earlier, though the correct tariff headings were claimed to have been mentioned. With respect to this claim, I observe that the said test reports were neither uploaded at the time of filing the Bills of Entry, nor were they produced during the assessment and clearance of the goods. I find that these test reports have been obtained from the supplier and do not bear any independent or verifiable identification linking them to the specific consignments imported earlier. I observe that, at this stage, when the goods are not available, there is no mechanism to verify the authenticity or relevance of the said test reports vis-à-vis the impugned consignments. I further find it relevant to note that if the importer was aware of the specific polymer from which the goods were manufactured and was already in possession of the relevant test results, there was no valid justification for not disclosing this information in the description of the goods at the time of filing the Bills of Entry. I observe that the failure to declare such a critical material characteristic while declaring the goods and claiming their classification doubt on the credibility of the importer's subsequent reliance on the said test reports. The importer is under a statutory obligation to make true, correct, and complete declarations and to upload all relevant supporting documents at the time of filing the Bills of Entry. These unauthenticated test reports cannot be accepted as reliable evidence for determining the correct classification of the goods. Accordingly, I find no merit in the importer's reliance on these non-authenticated and unverifiable test reports, and I therefore reject the same.

10.5 In the present case, the importer admittedly imported "stock lot/leftover stock" of mixed plastic packaging materials and declared the goods generically without specifying the exact form or polymer composition. The test reports relied upon by the importer also do not establish with clarity and certainty that each consignment uniformly and exclusively conformed to a specific polymer-based sub-heading, particularly in view of the mixed nature of the goods. The importer's submissions at the time of clearance of the goods are also silent regarding the precise polymer composition of the goods in the respective consignments. As a result of such vague and incomplete declarations, the goods could not be classified under sub-headings 392010, 392020, 392069 or 392071, each of which mandates clear identification of the constituent polymer.

11. In order to determine the correct classification of the impugned goods, it is necessary to examine the matter in the light of the General Rules for the Interpretation of the Import Tariff, which provide a structured and sequential framework for classification of goods under the Customs Tariff. The said Rules are required to be applied strictly in sequence, and recourse to a subsequent rule is permissible only when classification cannot be determined by application of the preceding Rule. Accordingly, the classification of the impugned goods is examined herein below by sequential application of Rules 1, 2 and 3 of the General Rules for Interpretation.

11.1 Rule 1 of the General Rules for the Interpretation of the Import Tariff provides that classification shall be determined according to the terms of the headings and any relevant Section or Chapter Notes. Accordingly, the first step in classification is to examine whether the goods, as declared and supported by documents, clearly conform to the description of a particular heading or sub-heading of the Customs Tariff. In the present case, the importer declared the goods as stock lot / leftover stock of plastic packaging material in mixed size, mixed GSM and mixed micron. However, Heading 3920 covers plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials. Further, the relevant sub-headings under Heading 3920 are polymer-specific, namely polymers of ethylene, polymers of propylene, polyesters and regenerated cellulose. For classification under Rule 1, it is essential that the importer clearly have declared both the form of the goods (film, sheet, foil, plate or strip) and the exact polymer composition. Since the importer failed to declare these essential particulars, classification under Rule 1 could not be conclusively determined.

11.2 Rule 2(b) provides that any reference in a heading to a material or substance shall be taken to include mixtures or combinations of that material or substance with other materials or substances. However, application of Rule 2 presupposes that the constituent material or dominant substance is known or identifiable. In the instant case, the importer did not disclose whether the goods were composed of ethylene, propylene, polyester, regenerated cellulose or any combination thereof. The description merely states that the goods are stock lot / leftover stock in mixed sizes and GSM, without indicating the nature or proportion of polymers involved. In the absence of such information, it is not possible to apply Rule 2(b), as the material composition of the goods remains indeterminate. Therefore, classification could not be finalized even by resorting to Rule 2.

11.3 Rule 3 of the General Rules for the Interpretation of the Import Tariff becomes applicable when goods are prima facie classifiable under two or more headings or sub-headings. In the present case, the imported goods, being

plastic films in stock lots of mixed rolls, are prima facie classifiable under more than one sub-heading of Heading 3920, depending upon the polymer composition, such as polyethylene, polypropylene or other plastics. Rule 3(a) mandates that the heading which provides the most specific description shall be preferred. However, in the present case, due to the absence of declaration regarding the exact polymer composition and form of the goods, no single heading or sub-heading can be regarded as providing a more specific description. Accordingly, Rule 3(a) cannot be applied. Rule 3(b) provides that mixtures or composite goods shall be classified as if they consisted of the material or component which gives them their essential character. In the present case, since the importer has not disclosed the nature, proportion or predominance of any particular polymer, the essential character of the goods cannot be ascertained. Consequently, Rule 3(b) is also inapplicable. In such a situation, Rule 3(c) mandates that classification shall be effected under the heading which occurs last in numerical order among those which equally merit consideration. Since the goods do not satisfy the description of any specific sub-heading under Heading 3920 due to lack of essential particulars, they necessarily fall under the residual category, i.e. CTH 39209999, covering "Other" plastics. Accordingly, the impugned goods are correctly classifiable under the residual tariff item CTH 39209999. The classification claimed by the importer is therefore rejected as legally untenable.

DEMAND OF DUTY UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962:

12. I find that the non-declaration of the specific polymer material is not a technical lapse, but a material omission which impacts classification and applicable rate of duty. By deliberately declaring the goods in a generic manner as "stock lot of plastic rolls" without specifying the polymer composition, the noticee effectively withheld material information which was required to be disclosed under the Customs law. Assessment based on mis-declared or suppressed facts does not bar subsequent demand under the extended period, once such suppression comes to light. The importer, despite being fully aware of the true nature and composition of the goods, deliberately chose concessional subheadings such as 39201099, 39202090, 39206919 and 39207119, accompanied by vague and incomplete descriptions like "stock lot of plastic packaging material in mix size and gsm," to claim undue benefit of lower duty. I observe that although the goods were examined and the Bills of Entry were assessed, such examination was necessarily based on the importer's declarations. Examination cannot substitute or cure a defective or incomplete declaration, particularly where material composition is decisive for classification. Visual examination cannot determine the precise polymer composition of mixed stock lots of plastic rolls. The importer, despite being engaged in the trade of plastic packaging materials, declared vague and generic descriptions over a prolonged period. Although the tariff structure

clearly required polymer-specific classification. Such repeated non-disclosure of material particulars constitutes wilful mis-statement and suppression of facts, justifying invocation of Section 28(4) of the Customs Act, 1962. In view of the above, I hold that the importer is liable to pay differential duty of Rs. 1,23,31,950/- under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under section 28AA of the Customs Act, 1962

13. Since the duty has been short levied by reason of suppression and wilful mis-statement and the importer is liable to pay differential duty of Rs. 1,23,31,950/- as determined under Section 28(8) of the Customs Act, 1962, the importer is liable for penalty equal to the duty amount under Section 114A of the Customs Act, 1962. However, in terms of fifth proviso to Section 114A, once penalty is imposed under Section 114A, no penalty under Section 112 is imposable.

14. I also find meritless the importer's contention that once the goods were assessed and cleared for home consumption, they ceased to be "imported goods" under Section 2(25) of the Customs Act, 1962 and therefore could not be treated as "improperly imported goods" under Section 111, nor subjected to penal action. I find that clearance for home consumption does not confer immunity where such clearance is obtained on the basis of mis-declaration, wilful misstatement or suppression of material facts. An assessment based on incorrect or incomplete declarations does not attain finality so as to bar subsequent proceedings once such mis-declaration comes to light. Further, liability to confiscation flows from the act of improper importation itself and is not extinguished merely because the goods are no longer physically available.

CONFISCATION AND REDEMPTION FINE:

15. As discussed earlier, it is clear that the importer had declared a vague and generic description of the imported goods as "stock lot of plastic packaging material in mix size and gsm," without disclosing their actual nature, composition, or polymer type, thereby concealing the true character of the goods. This deliberate omission directly resulted in the misclassification of the goods under inapplicable headings 39201099, 39202090, 39206919, and 39207119, attracting a lower rate of Basic Customs Duty (10%) instead of the applicable rate (15%) under CTH 39209999. Hence, the misdeclaration in respect of the description and classification of goods squarely attracts the provisions of Section 111(m) of the Customs Act, 1962, rendering the goods liable to confiscation. However, the goods are not physically available for confiscation. Therefore, redemption fine is not imposable in the instant case. In this regard, I rely upon the decision of Hon'ble High Court of Bombay in the matter of Commissioner of Customs (Import), Mumbai vs Finesse Creation (Inc.) 2009 (248) E.L.T 122 (Bom.) wherein Para 5 and 6, the Hon'ble Court held that-

"5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently appeal stands dismissed."

The above decision of the Hon'ble High Court of Bombay has been affirmed by the Hon'ble Supreme Court of India 2010 (255) E.L.T. A120 (S.C.) [12-05-2010].

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

ORDER

(i) I reject the declared classification and order to classify the said goods under CTH 39209999 of the Customs Tariff Act, 1975 and order to re-assess the Bills of Entry at the correct rate of duty under this heading without the benefit of the wrongly claimed classification.

(ii) I hold that the goods having assessable value of Rs. 19,00,14,642/- (as per Annexure A of the SCN) are liable for confiscation under Section 111(m) of the Customs Act, 1962. Since the goods are not physically available for confiscation, I refrain from imposing any Redemption fine under Section 125 of the Customs Act, 1962.

(iii) I confirm the demand of differential duty amounting to R**s. 1,23,31,950/- (Rupees One Crore Twenty Three Lakh Thirty One Thousand Nine Hundred Fifty only)** under Section 28(4) of the Customs Act, 1962 and order to recover the same from the importer M/s. N. K. Exim.

(iv) I order to recover interest at the appropriate rate on the short-paid duty of Rs. 1,23,31,950/- from the importer under Section 28AA of the Customs Act, 1962.

(v) I impose penalty of **Rs. 1,23,31,950/- (Rupees One Crore Twenty Three Lakh Thirty One Thousand Nine Hundred Fifty 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.

(vi) I don't impose penalty under Section 112 of the Customs Act, 1962 in terms of fifth proviso to Section 114A of the Customs Act, 1962.

17. 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.

18. The Show Cause Notice issued vide GEN/ADT/PCA/496/2025-Gr 2 dated 08.01.2025 stands disposed off in above terms.

Digitally signed by
Nitin Saini
Date: 01-01-2026
12:40:07

(Nitin Saini)
Commissioner of Customs
Customs House, Mundra

DIN: 20260171MO0000888FC3
By Mail/Speed Post & through proper/official channel

To,
M/s N.K. Exim, A-702,
Versora Golden Sands CHS,
SVP Nagar Mhada Layout Andheri Cont,
Mumbai-400 053

Copy to:

(i) The Chief Commissioner of Customs, CCO, Ahmedabad.
(ii) The Dy./Assistant Commissioner (Legal/Prosecution), CH, Mundra.
(iii) The Dy./Assistant Commissioner (Recovery/TRC), CH, Mundra.

(iv) The Dy./Assistant Commissioner (EDI), Customs House, Mundra.
(v) Guard file/Office Copy.