OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-I
सीमा-शुल्क आयुक्त का कार्यालय, एनएस-**I**
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,
केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा-शुल्क भवन,
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707
न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र **-400 707**

Date of Order : 19.12.2025 **Date of Issue: 19.12.2025**

आदेश की तिथि **:19.12.2025** जारी किए जाने की तिथि**: 19.12.2025**

DIN: 20251278NW0000713079

F. No. S/10-157/2024-25/Commr/Gr II G /CAC/JNCH

SHOW CAUSE NOTICE No. 1514/2024-25/Commr/Gr. II G/ NS-I/CAC/JNCH dated 23.12.2024

Passed by: Shri Yashodhan Wanage

पारितकर्ता**:** श्री यशोधन वनगे

Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva

प्रधानआयुक्त**,** सीमाशुल्क **(**एनएस**-1),** जेएनसीएच**,** न्हावाशेवा

Order No.: 304/2025-26 /Pr. Commr./NS-I /CAC /JNCH

आदेशसं. : **304/2025-26** प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticees: M/s Technova Imaging Systems (P) Limited

पक्षकार **(**पार्टी**)/** नोटिसीकानाम**:** मेसर्स टेक्नोवा इमेजिंग सिस्टम्स (प्रा.) लिमिटेड

ORDER-IN-ORIGINAL

मूलआदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि: शुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2.इस आदेश से व्यथित कोई भी व्यक्ति सीमा-शुल्क अधिनियम१९६२की धारा १२९(ए) के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्याय पीठ (वेस्टरीज़नलबेंच), ३४, पी. डी. मेलो रोड, मस्जिद (पूर्व), मुंबई– ४०००० ९ को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal: -

3. अपील दाखिल करने संबंधी मुख्य मुद्दे: -

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - फार्मन. सी ए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए(.

Time Limit-Within 3 months from the date of communication of this order.

समय सीमा- इस आदेश की सूचना की तारीख से ३ महीने के भीतर

Fee- (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

फीस- (क (एक हजार रुपये–जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है।

(b) Rs. Five Thousand - Where amount of duty &Page 2 of 87

interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakhs.

(ख(पाँच हजार रुपये– जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग(दस हजार रुपये–जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है।

Mode of Payment - A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

भुगतान की रीति– क्रॉस बैंकड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

General - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधि तमाम लों के लिए, सीमा-शुल्क अधिनियम, १९९२, सीमा-शुल्क (अपील) नियम, १९८२ सीमा-शुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

4.इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीतशास्ति का ७.५% जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमा-शुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

1. BRIEF FACTS OF THE CASE

1.1. M/s Technova Imaging Systems (P) Limited (IEC No. 0388090774), having its registered office at Plot No, C2, MIDC, Taloja, Raigad District, Maharashtra- 410208 is engaged in the business of supplying offset plates and print consumables for photo and other industry.

1.2. Whereas, specific intelligence gathered by the officers of Directorate of Revenue Intelligence (DRI), indicated that the Noticee M/s Technova Imaging Systems (P) Limited had imported Polyethylene Terephthalate (PET) films by misclassifying them under CTI 3920 6290 while these goods appear to be classifiable under CTI 3920 6220. The Noticee M/s Technova Imaging Systems (P) Limited availed the benefit of Sl. No. 4040 of Notification No. 22/2022 - Customs dated 30.04.2022 (hereinafter referred to as "the said notification") which gave effect to first tranche of INDIA-UAE CEPA and had not paid BCD. The Basic Customs duty (BCD) on goods covered under CTI 3920 6220 is 10% for which the reduced duty benefit under the said notification is not available.

1.3. The Chapter Sub-Heading 3920 62 covers Other Plates, Sheets, Film, Foil and Strip, of Plastics, Non-Cellular and Not Re-inforced, Laminated, Supported or similarly combined with Other Materials of poly (ethylene terephthalate). The tariff items under this sub-heading are presented in the table below.

3920	OTHER PLATES, SHEETS, FILM, FOIL AND STRIP, OF PLASTICS, NON-CELLULAR AND NOT REINFORCED, LAMINATED, SUPPORTED OR SIMILARLY COMBINED WITH OTHER MATERIALS
3920 62	-- Of poly (ethylene terephthalate):
3920 6210	--- Rigid, plain
3920 6220	--- Flexible, plain
3920 6290	--- Other

1.4. The certificates of Analysis submitted by the Noticee M/s Technova Imaging Systems (P) Limited at the time of import of PET films showed the films to be plain. These films are usually imported in rolls which are an indicator of their flexible nature. The supplier for these films to the Noticee M/s Technova Imaging Systems (P) Limited is M/s. JBF Bahrain WLL / JBF RAK LLC. The Noticee M/s Technova Imaging Systems (P) Limited was asked vide letter dated 02.06.2023 to submit their reply to the above observation of the department.

1.5. The Noticee M/s Technova Imaging Systems (P) Limited vide its letter dated 16.06.2023, replied that they have rightly classified the goods under CTI 39206290. The summary of the explanation given by the Noticee M/s Technova Imaging Systems (P) Limited is provided below-

a) The goods imported by them are neither rigid nor flexible by taking thickness of the films as the criterion. They submitted that the film with thickness of 350-500 microns is rigid and films with thickness of 08 to 50 microns are flexible; that the films imported by them have a thickness of 75 to 250 microns which are neither rigid nor flexible.

b) The manufacturer does not produce rigid films and that the manufacturer has a separate production line for flexible films.

c) The products imported by them were used in insulation, industrial application as in offset printing plates.

d) That the UAE government confirmed their classification.

1.6. As part of the investigation, the Statement of Shri Sanjay Bhaskar Ketkar, COO (Digital Print Media), M/s Technova Imaging Systems (P) Limited was recorded on 05.07.2023. From the statement, following aspects were revealed:

a) The UAE government has not confirmed the classification made by the Noticee M/s Technova Imaging Systems (P) Limited.

b) The Customs Tariff has not provided for the meaning of Rigid/ flexible.

c) It was submitted that the Central Excise Tariff provided for meaning of Rigid/ flexible. Under Note 12 to Chapter 39 of Central Excise Tariff it was provided that in headings 3920 and 3921, the expression “flexible” means an article which has a modulus of elasticity either in flexures or in tension of not over 700 kilograms per square centimeter at 23 degree C and 50 per cent relative humidity when tested in accordance with the method of test for stiffness of plastics (ASTM Designation D-747-63), for flexural properties of plastics (ASTM Designation D-790-63), for tensile properties of plastics (ASTM Designation D-638-64T), or for tensile properties of thin plastic sheeting (ASTM Designation D-882-64T) and “rigid” means all articles other than 'flexible' as defined above.

d) It was established that they are only two categories i.e. Rigid or flexible and that the explanation provided by the Noticee M/s Technova Imaging Systems (P) Limited that the goods imported by them were neither rigid nor flexible is incorrect.

e) The Noticee M/s Technova Imaging Systems (P) Limited sought time to re-evaluate their understanding and that they would submit the necessary test certificates/documents that provide for the modulus of elasticity.

1.7. The Central Excise Tariff does not hold relevance for the current period (2022 to 2024) i.e. during the period Post GST implementation particularly when the same definition was not provided for in the Customs Tariff. When the Noticee M/s Technova Imaging Systems (P) Limited have imported PET films vide Bill of Entry 2275576 dated 23.02.2024 at INNSA1(Nhava Sheva), the samples drawn were sent for testing by the port authorities. The Central Institute of Petrochemicals Engineering & Technology (CIPET), Aurangabad in their test reports concluded the PET films to be flexible and plain.

1.8. The Statement of Shri Sanjay Bhaskar Ketkar, COO (Digital Print Media), M/s Technova Imaging Systems (P) Limited was again recorded on 29.04.2024 in light of the findings of CIPET, Aurangabad in which the following aspects were revealed:

a) He stated that the impugned goods may be said to be 'Flexible' as per the dictionary meaning as they are capable of being bent. However, based on technical parameters the impugned goods should not be classified as flexible.

b) To understand commercial parlance i.e. how the PET Films are being regarded by the industry, a sample product information of Mylar polyester films (a popular name in PET film industry) from Dupont Teijin films company which are similar to the impugned goods was shown. The product information mentioned the films as flexible and the Noticee M/s Technova Imaging Systems (P) Limited was asked to comment on the same. In response to the question, it was reiterated that the films may be flexible on physical appearance but as per technical parameters which were available in the Product description itself and as per the definition available in Central Excise Tariff they should not be classified as flexible.

1.9. The Noticee M/s Technova Imaging Systems (P) Limited vide its letter dated 21.05.2024 further submitted that reliance was being placed on definition provided by ISO 527-1:2019 (International organization for standardization) standards to classify their films as rigid.

In this regard, they submitted the opinion from Professor Dr. S.T. Mhaske, Professor & Head, Dept. of Polymer & Surface Engg., Institute of Chemical Technology (ICT), Matunga who opined the films to be Rigid.

1.10. However, the subject imported PET films seem to be flexible and merit classification under CTI 3920 6220 due to the following reasons:

a) During the statement of Shri Sanjay Bhaskar Ketkar, COO (Digital Print Media), M/s Technova Imaging Systems (P) Limited recorded on 29.04.2024, it was admitted that the films were capable of being bent and that they are flexible as per the dictionary meaning of the word flexible.

b) The certificates of Analysis submitted by the Noticee M/s Technova Imaging Systems (P) Limited at the time of import of PET films showed the films to be plain.

c) The opinion of Professor Dr. S. T. Mhaske is not in the context of Customs Tariff for reliance was placed on a definition outside the Customs Tariff. The Customs Tariff does not provide for such definitions.

d) Well-known companies like Dupont Teijin films producing Mylar brand films describe these films as flexible in their product information. This shows that even in commercial parlance the impugned goods are considered flexible.

e) The subject expert CIPET have concluded the films to be plain and flexible in their test reports.

In view of the above facts and based on the test report from CIPET, Aurangabad it appears that the goods are appropriately classifiable under CTI 3920 6220.

Obligation under Self-assessment:

1.11. The Noticee M/s Technova Imaging Systems (P) Limited had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962, in all their import declarations. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self- assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in electronic form. Section 46 of the Customs Act, 1962 makes it

mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (Issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre), a Bill of Entry number was generated by the Indian Customs Electronic Data Interchange System for the said declaration.

Reasons for raising duty demand by invoking extended period under Section 28(4) of the Customs Act, 1962.

1.12. The impugned goods at the time of import were largely in the form of rolls which indicates the flexible nature of the goods. The test certificate submitted at the time of imports does not certify the flexibility or rigidity of the goods. The Noticee M/s Technova Imaging Systems (P) Limited argued the goods to be rigid and plain but however still classified them under "others" category. Moreover, it was only after the testing of the impugned goods by CIPET, it was revealed that the impugned goods were flexible in nature. Thus, it appears that the Noticee M/s Technova Imaging Systems (P) Limited intentionally suppressed the facts of exact nature of goods.

1.13. Further, under the scheme of self-assessment, it was the importer who must ensure that he declared the correct classification / CTH of the imported goods, the applicable rate of duty, value, and the benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self- assessment by amendment to Section 17, w.e.f. 08.04.2011, it was the added and enhanced responsibility of the importer to declare the correct description, value, applicability of Notification benefit etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

1.14. Based on the discussions supra, it appeared that the subject goods are classifiable under CTI 3920 6220 which is not covered under the said notification i.e. 22/2022 – Customs dated 30.04.2022 and accordingly liable to BCD @10%. The total duty worked out to Rs. 1,69,80,775 /- for the period from 13.07.2022 till 01.03.2024. Thus, it appeared that the Noticee M/s Technova Imaging Systems (P) Limited is liable to pay differential liability of Rs.

1,69,80,775. However, the Noticee M/s Technova Imaging Systems (P) Limited has not made payment of differential duty as result of which the same is recoverable under the provisions of Section 28(4) of the Customs Act, 1962.

1.15. It appeared that the Noticee M/s Technova Imaging Systems (P) Limited had mis-classified the imported goods, in contravention of the provisions of Section 111(m) of the Customs Act, 1962. Hence, impugned goods are liable for confiscation. The Noticee M/s Technova Imaging Systems (P) Limited also appeared to be liable for imposition of penalty under Section 112 and /or 114A and/ or 114AA of the Customs Act, 1962. It appeared that as the goods in question are "other than prohibited goods", the Noticee M/s Technova Imaging Systems (P) Limited is liable to pay redemption fine under Section 125 of Customs Act, 1962 in lieu of confiscation for contravening the provisions of Section 111 as discussed in Para above.

1.16. Circular No.17/2011-Customs dated 08.04.2011 issued by Ministry of Finance, Department of Revenue, Central board of Excise & Customs vide F. No.450/26/2011-Cus.IV, Section 17 of the Customs Act, 1962 provides for self-assessment of duty by the importer by filing a Bill of Entry in the electronic form. The importer at the time of self-assessment is required to ensure that he declares the correct description of the goods, classification, applicable rate of duty, value, benefit of exemption Notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. It is seen that the Noticee M/s Technova Imaging Systems (P) Limited has resorted to incorrect self-assessment, by failing to adopt the correct classification, thereby violated provisions of Section 17 of the Customs Act, 1962.

1.17. Further, as per Section 46(4) and 46(4A) of the Customs Act, 1962, the importer is required to furnish a declaration as to the truth of the contents of Bill of entry and shall ensure accuracy and completeness of information, authenticity and validity of documents submitted. The importer is required to declare the full accurate details relating to the goods description, quantity, duties payable etc. It is noticed from the facts and the statements of the key person and legal position that the impugned goods are classifiable under CTI 3920 6220 instead of 3920 6290 as declared by the Noticee M/s Technova Imaging Systems (P) Limited in the bills of entry.

1.18. Thus, from paragraphs above, it appeared that the Noticee M/s Technova Imaging Systems (P) Limited has contravened the provisions of Section 17, Section 46(4) and 46(4A) of the Customs Act, 1962 in respect of goods covered under Bills of Entry detailed in Annexure -

B to the Show Cause Notice by not furnishing true and correct particulars of imported goods during assessment. Further, it appeared that the Noticee M/s Technova Imaging Systems (P) Limited had not adopted the appropriate classification, resulting in short payment of Customs duty on the subject goods. Hence, it appeared that the Noticee M/s Technova Imaging Systems (P) Limited is liable for penalty under 117 of the Customs Act, 1962.

SUMMARY:

1.19. In view of the foregoing facts, documentary evidence on record, statements recorded during the investigation, legal provisions, it appeared that:

a) M/s Technova Imaging Systems (P) Limited have mis-classified the subject goods i.e. Polyethylene Terephthalate (PET) films under CTH 3920 6290, while they appear to be classifiable under Customs Tariff Item 39206220 as discussed above.

b) M/s Technova Imaging Systems (P) Limited is liable to pay the customs duty (BCD@10% and consequential SWS @10% and IGST @18%) of Rs. 1,69,80,775 /- as detailed in Annexure-B to the Show Cause Notice under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Act ibid;

c) The goods imported as detailed in Annexure-B to the Show Cause Notice are liable for confiscation under Sections 111(m) of the Act ibid;

d) M/s Technova Imaging Systems (P) Limited is liable for penalties under the provisions of Sections 112 and /or 114A and/ or 114AA of the Customs Act, 1962 for various omissions and commissions.

e) M/s Technova Imaging Systems (P) Limited is liable to pay fine under Section 125 of Customs Act, 1962.

1.20. Therefore, M/s Technova Imaging Systems (P) Limited (IEC No. 0388090774), was called upon to Show Cause to the Principal Commissioner/Commissioner of Customs, Nhava Sheva –I, Jawaharlal Nehru Customs House, as to why: -

a) The subject imported goods classified under Customs Tariff Item 3920 6290 should not be re-classified under Customs Tariff Item 3920 6220;

b) Duty amounting to Rs. 1,69,80,775/- (Rupees One Crore Sixty-Nine Lakhs Eighty Thousand Seven Hundred Seventy-Five only) as detailed in Annexure-B to the Show

Cause Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;

c) Interest should not be demanded and recovered from them, on the amount demanded at (b) above, under Section 28AA of the Customs Act, 1962;

d) The goods valued at Rs. 13,08,22,618/- (Rupees Thirteen Crores Eight Lakhs Twenty-Two Thousand Six Hundred Eighteen only) imported as detailed in Annexure-B to the Show Cause Notice should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

e) Penalty should not be imposed on them under Section 112 and /or 114A and/ or 114AA of the Customs Act, 1962;

f) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

g) Fine should not be imposed on them under Section 125 of Customs Act.

2. WRITTEN SUBMISSION OF THE NOTICEE:

2.1. The Noticee M/s Technova Imaging Systems (P) Ltd. has made submissions vide letter dated 02.04.2025 wherein following submissions have been made:-

2.2. At the outset itself, the Noticee denies all the allegations made in the Impugned Show Cause Notice and humbly submits that the proposals made therein are not sustainable. Therefore, it is submitted that the Impugned Show Cause Notice is incorrect in facts as well as law and the instant proceedings merit to be dropped on this ground alone.

IMPORTED GOODS CANNOT BE CLASSIFIED UNDER TARIFF ITEM 392062 20

2.2 The case of the Department in the Impugned Show Cause Notice is that the imported goods are classifiable under Tariff Item 3920 62 20 as '*Flexible, plain'* PET film. The Noticee submits that the imported goods cannot be classified under Tariff Item 3920 62 20 for reasons stated *infra*.

Statutory provisions

The relevant portion of Customs Tariff Heading 3920 is extracted below for the ease of reference:

Chapter/Heading/Sub-Heading/Tariff Item		**Description of goods**
3920		**Other plates, sheets, film, foil and strip, of plastics, non-cellular and not-reinforced, laminated, supported or similarly combined with other materials**
***		
	-	**Of polycarbonates, alkyd resins, polyallyl esters or other polyesters :**
***		
3920 62	--	Of poly (ethylene terephthalate):
3920 62 10	---	Rigid, plain
3920 62 20	---	Flexible, plain
3920 62 90	---	Other

From the above Tariff entries, it can be seen that Sub-heading 3920 62 *inter alia* covers the following–

a. Rigid, plain plates, sheets, film, foil and strips made of polyethylene terephthalate (Tariff Item 3920 62 10);
b. Flexible, plain plates, sheets, film, foil and strips made of polyethylene terephthalate (Tariff Item 3920 62 20); and
c. Plates, sheets, film, foil and strips made of polyethylene terephthalate other than rigid and flexible kinds (Tariff Item 3920 62 90).

2.3. MEANING OF RIGID, SEMI-RIGID AND FLEXIBLE PLASTIC

Central Excise Notification

Neither the Customs Tariff Act nor the HSN Explanatory notes provide for the definition of rigid or flexible PET plates, sheets, films etc. However, reference can be made to the Notification No. 68/71-C.E. dated 29.05.1971 as amended by Notification No. 198/78-CE dated 25.11.1978 (hereinafter referred to the '**Excise Notification**') which provided exemption for articles made of plastic falling under Item No. 15A of the Central Excise Tariff of India.

Notification No. 68/71-C.E., dated 29.05.1971 as amended by Notification No. 198/78-CE is extracted below for ready reference:

"*Exemption to articles made of plastic. -- In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts articles made of plastics, all sorts, falling under sub-item (2) of Item 15A of the First Schedule to the Central Excises and Salt Act. 1944 (1 of 1944) except –*

i. rigid plastic boards, sheetings, sheets and films, whether or not; and

ii. flexible polyvinyl chloride sheetings, sheets, films and lay-flat tubings not containing and textile material, from the whole of the duty of excise leviable thereon;

from the whole of the duty of excise leviable thereon :

Provided that –

(a)such articles are produced out of the artificial resins and plastic materials or cellulose esters and others in any form falling under sub-item (1) of the said item, on which the duty of excise of the additional duty under Section 2A of the Indian Tariff Act, 1934 (32 of 1934) as the case may be, has already been paid; or

(b)such articles are produced out of scrap of plastics.

Explanation :-

For the purpose of this notification -

i. ***the expression "flexible" in relation to an article made of plastic, means the article which has a modulus of elasticity either in flexture or in tension or not over 700 kilograms per square centimetre at 23 degree centigrade and 50 percent relative humidity when tested in accordance with the method of test for*** *stiffness of plastics (ASTMO Designation D-474-63) for flexural properties of plastics (ASTM) Designation D-790-63 for Tensile properties of plastics (ASTM Designation D-638-63-T)* ***or for Tensile Properties of Thin Plastic Sheeting (ASTM Designation D-882-64-T)****.*

ii. the expression ***"rigid" in relation to an article made of plastic, means all articles other than "flexible" articles as defined in clause (i)****."*

The aforementioned Central Excise Notification is enclosed as **Annexure-15**.

2.4. Furthermore, Note 12 of Chapter 39 in the Central Excise Tariff, 1985 also provided for the same definitions of 'flexible' and 'rigid' as mentioned above. Relevant portion of the Note to Chapter 39 is extracted below for ready reference:

"CHAPTER 39
Plastics and articles thereof
Notes:
***
12. In headings 3920 and 3921, the expression "flexible" means an article which has a modulus of elasticity either in flexure or in tension of not over 700 kilograms per square centimeter at 23°C and 50 per cent relative humidity when tested in accordance with the method of test for stiffness of plastics (ASTM Designation D-747-63), for flexural properties of plastics (ASTM Designation D-790-63), for tensile properties of plastics (ASTM Designation D-638-64T), or for tensile properties of thin plastic sheeting (ASTM Designation D-882-64T) and "rigid" means all articles other than 'flexible' as defined above…"

2.5. Therefore, as seen from the above notification and Chapter Note 12 to Chapter 39, the Department envisioned 'flexible plastic' as articles fulfilling the following criteria:

a. Has modulus of elasticity not over 700kg/cm^2 at 23 degree centigrade and 50 percent relative humidity;
b. Tested with the method of test for Tensile Properties of Thin Plastic Sheeting (ASTM Designation D-882-64-T).

2.6. According to the Excise Notification and Chapter Note 12 to Chapter 39, the articles that are not 'flexible plastic' shall be 'rigid plastic'. Therefore, from the above, it is seen that the articles of plastic having a modulus of elasticity over 700kg/cm^2 shall be considered as 'rigid plastic'.

2.7. The Impugned Show Cause Notice at para 7 observed that the Central Excise Tariff does not hold relevance for the current period of import, i.e. post GST implementation particularly when the same definition was not provided for the Customs Tariff. To this extent, the Noticee submits that while the aforesaid Excise Notification was rescinded in 1986 vide Notification No. 191/86-C.E. dated 04.03.1986, and no definition of such kind is provided for in the Customs Tariff Act, 1975, the understanding of the Department is still relevant for

classification of the imported goods. It is also pertinent to note that Chapter Note 12 to Chapter 39 was existing till 30th June 2017 and the criteria laid down for 'flexible' and 'rigid' plastic was being used for purposes of levying countervailing duty on such goods.

2.8. Thus, the Noticee submits that the Excise Notification coupled with the Central Excise Tariff is relevant for understanding the definitions of 'rigid plastic' and 'flexible plastic' as intended by the Department.

2.9. *ISO Standards published by International Organization for Standardization*
The definition as provided in the Excise Notification coupled with the Central Excise Tariff is also supported by the ISO Standards published by the International Organization for Standardization.
As per ***ISO 472:2013 Plastics — Vocabulary***, the following criteria exist for rigid, semi-rigid and non-rigid plastic:

a. Rigid plastic – plastic that has a modulus of elasticity in flexure or if that is not applicable, in tension, greater than 700 MPa.
b. Semi-rigid plastic – plastic that has a modulus of elasticity in flexure or if that is not applicable, in tension, between 70 MPa and 700 MPa.
c. Non-rigid plastic - plastic that has a modulus of elasticity in flexure or if that is not applicable, in tension, not greater than 70 MPa

Relevant portion of ISO 472:2013 Plastics — Vocabulary is enclosed herewith as **Annexure-16**.

2.10. *The* ***Indian Standards 2828:2019 Plastics – Vocabulary*** published by the Bureau of Indian Standards, are identical to ISO 472:2013 Plastics — Vocabulary, which also provide for the same aforementioned criteria for rigid, semi-rigid and non-rigid plastic.

Relevant portion of Indian Standards 2828:2019 Plastics – Vocabulary is enclosed herewith as **Annexure-17**.

2.11. As per the Department, the imported goods are capable of being 'bent' in nature and therefore, are 'flexible' PET film. The Noticee submits that this understanding is incorrect. It is pertinent to note that ISO 472:1999 and IS 2828:2001 also provided for the definition of 'flexible' to be as 'easily hand-folded, twisted and bend'. However, the said standards were

revised and replaced by the aforementioned ISO 472:2013 and IS 2828:2019, respectively, to accurately provide for the definition of 'rigid', 'semi-rigid' and 'non-rigid' plastic.

2.12. Similarly, as per ***ISO 527-1:2019 Plastics - Determination of tensile properties - Part 1: General principles*** which is relevant for testing and determining tensile strength and modulus of elasticity of plastic, defines rigid and semi-rigid plastic as follows:

a. Rigid plastic – plastic that has a modulus of elasticity in flexure (or, if that is not applicable, in tension) greater than 700 MPa under a given set of conditions.
b. Semi-rigid plastic – plastic that has a modulus of elasticity in flexure (or, if that is not possible, in tension) between 70MPa and 700 MPa under a given set of conditions.

Relevant portion of ISO 527-1:2019 Plastics - Determination of tensile properties - Part 1: General principles is enclosed herewith as **Annexure-18**.

Opinion by Professor (Dr.) S.T. Mhaske, Institute of Chemical Technology (ICT)

2.13. Further, as seen from the opinion on the imported goods given by **Professor (Dr.) S.T. Mhaske, Institute of Chemical Technology (ICT)**, rigid plastic and flexible plastic have different tensile strengths. The following are the observations made by Professor (Dr.) S.T. Mhaske with respect to the general values of tensile strength of rigid and flexible plastic:

Type of film	**Specification**	**Tensile Strength values**
Rigid film	ISO 527-1:2019	70 MPa or 713kg/cm^2
Flexible film	ISO 527-1:2019	30 MPa or 305kg/cm^2

2.14. The Impugned Show Cause Notice at para 9(ii) observed that the opinion of Prof. Dr. S.T. Mhaske is not in the context of the Customs Tariff as the Customs Tariff does not provide for such definition. In this regard, the Noticee submits that the opinion of Prof. Dr. S.T. Mhaske was obtained after the Department requested the Noticee to obtain an opinion in line with the understanding of the imported goods in common parlance. The Noticee submits that the opinion of Prof. Dr. S.T. Mhaske is based on definitions provided by the ISO standards and how 'rigid', 'semi-rigid' and 'non-rigid/flexible plastic' are known in common parlance. The

Noticee submits that the importance of common parlance test was emphasized by the Hon'ble Supreme Court in ***CCE, New Delhi v. Connaught Plaza Restaurant (p) Ltd., 2012 (286) ELT 321 (SC)*** wherein the Hon'ble Supreme Court held that the perception of the product by the consumers is of relevance.Therefore, the opinion of Prof. Dr. S.T. Mhaske is important and relevant for understanding the definition of 'rigid', 'semi-rigid' and 'non-rigid/flexible plastic' and its understanding in common parlance.

2.15. A combined reading of the Excise Notification, Central Excise Tariff, ISO 472:2013, IS 2828:2019, ISO 527-1:2019 and opinion of Professor (Dr.) S.T. Mhaske shows that plastic may be understood and classified as rigid, flexible and other based on their tensile properties.

2.16. Thus, the Customs Tariff Items under Sub-Heading 3920 62 can be understood to cover the following:

S. No.	**Tariff Item**	**Particulars**
1	3920 62 10	Rigid plastic having a modulus of elasticity greater than 700 MPa and tensile strength of 70MPa.
2	3920 62 20	Flexible or Non-rigid plastic having a modulus of elasticity less than 70MPa and tensile strength of 30MPa.
3	3920 62 90	Other than rigid and flexible plastic (Semi-rigid plastic) having a modulus of elasticity between 70 MPa and 700MPa and tensile strength of between 30 to 70 MPa.

Therefore, it can be seen that the modulus of elasticity or the tensile properties of the imported goods are relevant for classification of the same.

Properties of the imported goods

Technical data sheet

2.17. The Noticee submits that as per the technical data sheet of the imported goods, the properties of the imported goods appear to be the same as that of rigid plastic and not flexible plastic. An illustrative example of the technical data sheet in respect of the imported goods (100 microns) is tabulated below for ready reference–

Aryafilm A600 (Milky White) – 100 Microns				
Properties	**Test Method**	**Target**	**Minimum**	**Maximum**

Thickness		JBF Method	100 micron	98 micron	102 micron
Tensile Strength at break*	Machine direction	ASTM D 882	1800kg/cm^2 ~176 MPa	1600kg/cm^2 ~157 MPa	2000kg/cm^2 ~196 MPa
	Transverse direction		1800kg/cm^2 ~176 MPa	1600kg/cm^2 ~157 MPa	2000kg/cm^2 ~196 MPa

*1 MPa = 10.19kg/cm^2

2.18. As mentioned in Professor (Dr.) S.T. Mhaske's Opinion, goods having tensile strength of greater than 713 kg/cm^2 are rigid PET film. Therefore, as per the technical data sheet, the values of the imported goods are in line with the values of rigid PET film and not with flexible PET film.

Certificate of analysis

2.19. The Impugned Show Cause Notice has, at para 13, alleged that the test certificate submitted at the time of import does not certify the flexibility and rigidity of the imported goods and it was only after the testing of the imported goods by CIPET Aurangabad that it was revealed that the imported goods were flexible in nature. The Noticee submits that in this regard, the Impugned Show Cause Notice is incorrect for reasons stated *infra*.

2.20. The Noticee submits that as per the Certificate of Analysis provided by the Supplier of the imported goods, the properties of the imported goods appear to be the same as that of rigid plastic and not flexible plastic. An illustrative Certificate of Analysis issued in respect of the imported goods (100 microns) is tabulated below for ready reference–

Aryafilm A600 (Milky White) – 100 Microns					
Properties		**Test Method**	**Target**	**Minimum**	**Maximum**
Thickness		JBF Method	100 micron	99.3 micron	100.9 micron
Tensile Strength at break*	Machine direction	ASTM D 882	-	1834g/cm^2 ~180 MPa	1985kg/cm^2 ~195 MPa
	Transverse direction		-	1842kg/cm^2 ~181 MPa	1998kg/cm^2 ~196 MPa
Young's Modulus*	Machine direction	ASTM D 882	-	25314kg/cm^2 ~2484 MPa	27629kg/cm^2 ~2711 MPa

	Transverse direction		-	33785kg/cm^2 ~3315 MPa	34859kg/cm^2 ~3421 MPa

*1 MPa = 10.19kg/cm^2

2.21. As mentioned in Professor (Dr.) S.T. Mhaske's Opinion, goods having tensile strength of greater than 713 kg/cm^2 are rigid PET film. Therefore, as per the Certificate of Analysis submitted at the time of import, it is evident that the values of the imported goods are in line with the values of rigid PET film and not with flexible PET film.

2.22. The Impugned Show Cause Notice at para 9(ii) has alleged that the Certificate of Analysis submitted by the Noticee at the time of import of the imported goods shows the imported goods to be plain and therefore, the imported goods appear to flexible and classifiable under Tariff Item 3920 62 20. At the outset, the Noticee submits that the term 'plain' has not been used in the Certificate of Analysis submitted by the Noticee. Further, even if the imported goods are 'plain' it has no bearing on the classification of the imported goods as flexible or rigid PET film. The Noticee submits that as explained above, the properties of the imported goods as per the Certificate of Analysis are in line with the values of rigid PET film and not flexible PET film.

2.23. In view of the above, the Impugned Show Cause Notice is incorrect in relying on the Certificate of Analysis to allege that the imported goods are flexible PET film falling under Tariff Item 3920 62 20.

BTRA Test Report

2.24. Further, during the summons, the Noticee furnished test reports of the imported goods received from BTRA to the DRI. Even from this test report, it can be seen that the properties of the imported goods are not similar to that of flexible plastic but of rigid plastic. An illustrative example of the **BTRA Test report** in respect of the imported goods (100 micron) is tabulated below for ready reference:

Aryafilm A600 (Milky White) 100 Micron Polyester Film			
Properties		**Test Method**	**Results**
Tensile Strength at break*	Machine direction	ASTM D 882	1562 kg/cm^2 ~153 MPa

	Transverse direction		1942.60 kg/cm^2 ~191 MPa
Young's modulus*	Machine direction	ASTM D 882	29503.1 kg/cm^2 ~2895 MPa
	Transverse direction		57976 kg/cm^2 ~5689 MPa

*1 MPa = 10.19kg/cm^2

2.25. The values of tensile strength when compared with the values mentioned in the opinion of Professor (Dr.) S.T. Mhaske (i.e. > 713 kg/cm^2) and the values of young's modulus when compared with ISO and IS Standards (i.e. > 700 MPa) show that the imported goods are not flexible PET film but rigid PET film.

CIPET Aurangabad Test Report

2.26. The Noticee submits that during the DRI investigation, few test reports of the imported goods were obtained by the Department from CIPET. An illustrative example of the observations made in the CIPET test report are extracted below:

Test report no. 30381 dated 20.03.2024 Polyester Film (Poly Ethylene Terephthalate) A 600 (Milky White) – Mic. Thickness 110 X W 1540 MM			
Name of the test		**Test Method**	**Results Obtained**
Physical Examination			
Form, Size, Shape, Colour and Contamination		-	White coloured film in 65 x 95 cm dimensions - flexible and plain
Material Analysis			
Identification		ASTM E1252	Polyethylene Terephthalate (PET)
Thickness		IS 2508 Annex A	252 microns
Tensile Strength at break*	Machine direction	ASTM D882	57.3 MPa ~ 584 kg/cm^2
	Transverse direction		97.4 MPa

			~ 992 kg/cm^2
Modulus of Elasticity @ 1% Secant*		ASTM D882	430. 2 MPa ~ 4384 kg/cm^2

*1 MPa = 10.19kg/cm^2

2.27. At the outset, the Noticee submits that the CIPET test reports have some discrepancies and appear to be incorrect. The aforementioned CIPET test report no. 30381 dated 20.03.2024 has mentioned the thickness of the sample of the imported goods as 252 microns while the actual thickness is 110 microns as seen from the certificate of analysis enclosed to the report. It is evident that in both the CIPET test reports, the thickness is mentioned as 252 microns instead of the correct thickness of the samples furnished. Therefore, it is submitted that the CIPET test reports have few discrepancies and are incorrect.

2.28. Without prejudice, if the discrepancies are ignored and the CIPET test reports are considered to be correct and valid, it is evident that on testing the imported goods, CIPET Aurangabad found that the values of modulus of elasticity observed by CIPET (i.e. 430.2 MPa) are in line with the values of semi-rigid plastic (i.e. between 70 to 700 MPa).

2.29. However, the values of tensile strength in Machine Direction, i.e. 57.3 MPa, are in line with the values of semi-rigid plastic (i.e. 30 to 70MPa) as opined by Professor (Dr.) S.T. Mhaske. Whereas, the values of tensile strength in Transverse Direction, i.e. 97.4 MPa, are in line with the values of rigid plastic, (i.e. > 70 MPa). Therefore, the CIPET Test Report, when seen in its entirety, shows that the properties of the imported goods do not align with the values of rigid plastic as well as flexible plastic.

2.30. Therefore, if the CIPET test report is considered for classification of imported goods, as the values are similar to semi-rigid plastic and not rigid or flexible plastic, the imported goods would be classifiable under Tariff Item 3920 62 90 as ‘Other’ PET film and not under Tariff Item 3920 62 20 as ‘flexible, plain’ PET film.

2.31. The Impugned Show Cause Notice at paras 7, 9(v) and 13 has alleged that the subject expert in CIPET have concluded that the films are plain and flexible. The Noticee submits that this understanding of the Department is entirely incorrect. The Noticee submits that the CIPET test report only mentions the imported goods to be flexible on physical examination whereas, the properties of the imported goods such as tensile strength, modulus of elasticity when tested with ISO approved tests, are not in line with flexible plastic. Further, nowhere does the CIPET

test report draw the conclusion that after testing on technical parameters the imported goods are found to be flexible PET films.

2.32. In view of the above, the Noticee submits that the imported goods are not classifiable as 'flexible plastic' but are classifiable as either as rigid plastic or semi-rigid plastic depending upon the properties of the imported goods, specifically the tensile strength and the modulus of elasticity. A summary of the parameters compared with the properties of imported goods is as follows:

Particulars	**Parameter**	**Rigid Plastic**	**Semi-rigid plastic**	**Flexible/non-rigid plastic**
Excise Notification and Chapter Note 12 to Chapter 39 of the Central Excise Tariff	Modulus of elasticity	> 700kg/cm^2	N.A.	< 700kg/cm^2
ISO and IS Standards	Modulus of elasticity	> 700 MPa	70 – 700 MPa	< 70 MPa
Opinion of Professor (Dr.) S.T. Mhaske, ICT	Tensile Strength	70 MPa or 713kg/cm2	N.A.	30 MPa or 305kg/cm2
Particulars	**Parameter**	**Rigid Plastic**	**Other than rigid and flexible (Semi-rigid plastic)**	**Flexible/non-rigid plastic**
Properties of imported goods				
Technical data sheet	Tensile Strength	176 MPa – 196 MPa	N.A.	N.A.
Supplier's Certificate of Analysis	Tensile Strength	180 MPa – 196 MPa	N.A.	N.A.
	Modulus of elasticity	2484 MPa – 3421 MPa	N.A.	N.A.
BTRA Report	Tensile	153 MPa –	N.A.	N.A.

	Strength	191 MPa		
	Modulus of elasticity	2895 MPa – 5689 MPa		N.A.
CIPET Report	Tensile Strength	97.4 MPa (If TD considered)	57.3 MPa (If MD considered)	N.A.
	Modulus of elasticity	N.A.	430.2 MPa	N.A.

2.33. In view of the above, the Noticee submits that it is seen that except for the CIPET Report, the properties of the imported goods align with that of 'Rigid, plain film' classifiable under Tariff Item 3920 62 10. If the values of the CIPET Report are considered, even then the imported goods would be considered as semi-rigid PET film classifiable under Tariff Item 3920 62 90 and the imported goods cannot be classified under Tariff Item 3920 62 20 as flexible PET film.

Application of the imported goods

2.34. The Noticee submits that the imported goods are used in industrial applications and coatings such as offset printing plates/sheets. Images are fixed on the printing plates and then the plate is mounted on a small offset printing machine and used for printing papers. The imported goods are also used in print consumable media where the printing takes place directly on the sheets. End product in such cases is photo books/albums, certificates etc.

2.35. Whereas flexible PET film is most commonly used in the food packaging industry as pouches for biscuits, chips, protein bars, etc. Flexible PET film can also be used in consumer goods packaging and packaging of detergent, personal care products, etc. Therefore, the application of the imported goods is entirely different than the usual application of flexible PET film.

2.36. The Noticee submits that due to the imported goods having entirely different properties that flexible PET film, they are not applied in industries where flexible PET film is required.

The imported goods are more suited to industries requiring rigid or semi-rigid PET film and therefore, are used in such industries.

2.37. Therefore, even as per the application of the imported goods, the proposal of classification of the imported goods under Tariff Item 3920 62 20 is incorrect.

Mylar polyester film produced by DuPont Teijin Films

2.38. The Impugned Show Cause Notice at para 9(iv) has alleged that the classification of the imported goods appears to be under Tariff Item 3920 62 20 as other companies such as DuPont Teijin Films describe such films as flexible in their product information. Therefore, it is alleged that as per commercial parlance, the imported goods are considered flexible.

2.39. The Noticee submits that though DuPont Tejin Film uses the word 'flexible' to describe 'Mylar polyester film' manufactured by them, it is evident that the properties of said product, such as tensile strength and modulus are not in the range of flexible films.

2.40. As seen from the product information, the tensile strength of the said product ranges from 200 to 230 MPa and the young's modulus of the said product ranges from 4200 MPa to 4100 MPa. The Noticee submits that as per the properties of the said product, it is rigid or semi-rigid PET film. Reliance in this regard is placed on the parameters of flexible, rigid and semi-rigid provided in the Excise Notification, Central Excise Tariff, ISO and IS Standards, and Opinion of Prof. S. T. Mhaske, ICT discussed in paras B.4 to B.22 *supra*.

2.41. Further, as per the product information of 'Mylar polyester film', it is used for office supplies, electrical insulation and industrial laminations. The Noticee submits that even the applications of the said product are different than the applications of flexible PET film. Therefore, the Impugned Show Cause Notice has not considered the properties of 'Mylar polyester film' and only relied upon the usage of the word 'flexible' in the description of the said product to allege that the imported goods are considered as flexible in commercial parlance. Therefore, even 'Mylar polyester film' manufactured by DuPont Tejin Film is not flexible PET film as per its properties and the imported goods cannot be classified under Tariff Item 3920 62 20 only due to the word 'flexible' being used in the product information of the said product. Therefore, the Noticee submits that the proposal in the Impugned Show Cause Notice to re-classify the imported goods under Tariff Item 3920 62 20 is incorrect and not sustainable.

IMPORTED GOODS ARE CORRECTLY CLASSIFIABLE UNDER TARIFF ITEM 3920 62 90. ALTERNATIVELY, THE IMPORTED GOODS ARE ALSO CLASSIFIABLE UNDER TARIFF ITEM 3920 62 10.

2.42. The Noticee submits that the imported goods are correctly classifiable under Tariff Item 3920 62 90 as '*Other'* PET film. Alternatively, the imported goods are also classifiable under Tariff Item 3920 62 10 as '*Rigid, plain*' PET film.

Classification of the imported goods under Tariff Item 3920 62 90

2.43. As mentioned in para B.3 *supra*, PET film which is neither rigid, nor flexible shall be classifiable under Tariff Item 3920 62 90 as '*Other*'. The Noticee craves leave to rely on paras B.34 to B.36 *supra*, where it is submitted that on testing the imported goods by CIPET, it was found that the values of modulus of elasticity (i.e. 430.2 MPa) are in line with the values of semi-rigid plastic (i.e. between 70 to 700 MPa). Therefore, even as per the test report relied upon and obtained by the Department, the imported goods are not flexible plastic but semi-rigid plastic. As there is no specific entry for 'semi-rigid' PET film, the Noticee submits that the imported goods would be classified under the residuary entry of Tariff Item 3920 62 90 available for PET film other than flexible or rigid.

Classification in case of similar imports from Malaysia and Japan

2.44. The Noticee submits that, as mentioned in para 14 *supra*, the Noticee has been importing similar goods from Malaysia and Japan and classifying them under Tariff Item 3920 62 90. Furthermore, the Noticee has also been availing the benefit of exemption under the respective Free Trade Agreements. Illustrative Certificate of Analysis for import of PET film from Malaysia vide Bill of Entry No. 5812153 dated 26.09.2024 is tabulated below for ready reference:

POLYESTER FILM 93-RM1X-1485 X 3400-EE1C		
Properties		**Avg. Value**
Thickness		92.6 micron
Tensile Strength at break	Machine direction	185 MPa 1885kg/cm^2
	Transverse direction	203 MPa

		2069kg/cm^2

Certificate(s) of Analysis of similar imports from Malaysia and Japan along with corresponding Bills of Entry, import documents are already enclosed as Annexure-13. As seen from above, the imported goods have a tensile strength of greater than 70 MPa or 713 kg/cm^2 which, as per the opinion of Professor (Dr.) S.T. Mhaske are not flexible PET film.

2.45. The Noticee submits that no objection has been raised by the Department and the Department has been allowing clearance of such similar goods under Tariff Item 3920 62 90. Therefore, the Department has also accepted the classification adopted by the Noticee. It has been held by the Hon'ble Supreme Court that the Department cannot adopt conflicting stands in terms of classification of the very same product and the department ought to have maintained consistency in determining the classification. In this regard, reliance is placed on the decision of ***Damodar J. Malpani v. Collector of Central Excise, 2002 (146) E.L.T. 483 (SC)***.

2.46. The Noticee submits that evidently the issue of classification of the imported goods under Tariff Item 3920 62 90 stands accepted by the Department and therefore, the Department cannot adopt a completely different and conflicting stance. For this reason as well, the Impugned Show Cause Notice is liable to be dropped.

Supplier's classification supports the classification adopted by the Noticee.

2.47. The Noticee submits that the Supplier has provided a declaration to the Noticee wherein it is stated that the flexible PET films manufactured by them have thickness of 08 to 50 micron and are manufactured in an entirely different product line than what is imported. Such flexible PET film is used in packaging such as pouches for biscuits, chips, food, etc. The imported goods manufactured by the Supplier have a typical thickness of 75 to 250 microns and are used for applications in the printing industry. Therefore, from this, it is evident that the imported goods are not flexible PET films. Further, the Supplier's invoice as well as the Form-I filled by the Supplier also mentions that the imported goods are classifiable under Tariff Item 3920 62 90. The concerned UAE Ministry has also issued the Certificate of Origin for imported goods where the classification mentioned is Tariff Item 3920 62 90/3920 62 00.Thus, the aforementioned declarations / documents provided by the Supplier also support the classification of the imported goods under Tariff Item 3920 62 90 as '*Other*' PET film.

Classification of the imported goods has been accepted by the Department

2.48. The Noticee submits that as mentioned in para 13 *supra*, the Noticee has been importing identical 'PET' films from the same Supplier since 2011 and classifying the same under Tariff Item 3920 62 90. The Earliest Bill of Entry evidencing the same is already enclosed as Annexure-12. The Noticee submits that the Department has accepted the classification of identical goods under Tariff Item 3920 62 90 since 2011 and no dispute was raised pertaining to the classification of the same till the issuance of the Show Cause Notice dated 23.12.2024. Considering the acceptance of the classification of the identical goods by the Department, the imported goods are correctly classifiable under Tariff Item 3920 62 90.

Classification adopted by other importers for identical goods

2.49. The Noticee submits that, as mentioned in para 15 *supra*, several other importers are also importing from the same Supplier and classifying the imported goods under Tariff Item 3920 62 90 since few years. The classification of these goods has not been disputed by the Department. Imports of such goods as recent as December 2024 have been permitted to be cleared by the Department under Tariff Item 3920 62 90 without any objection. Import data of identical goods imported by other importers is already enclosed as Annexure-14. Reliance is placed again on the decision of the Hon'ble Supreme Court in ***Damodar J. Malpani v. CCE*** *supra* where it has been held that the Department cannot adopt conflicting stand in terms of classification of the very same product and ought to have maintained consistency in determining the classification. Therefore, in light of the classification adopted by other importers for identical goods imported from the same Supplier, the Noticee submits that the imported goods are also classifiable under Tariff Item 3920 62 90. In view of the above submissions, the Noticee submits that the imported goods are correctly classifiable under Tariff Item 3920 62 90 as '*Other*' PET film.

Classification of the imported goods under Tariff Item 3920 62 10

2.50. The Noticee submits that alternatively, the imported goods are classifiable under Tariff Item 3920 62 10 as '*Rigid, plain*' PET film. The Noticee submits that the properties of the imported goods, such as tensile strength and modulus of elasticity are in line with values of rigid plastic. In this regard, the Noticee craves leave to rely upon the technical data sheet, certificate of analysis, BTRA test reports, Excise Notification and Central Excise Tariff, ISO

and IS Standards and Opinion of Professor (Dr.) S.T. Mhaske, ICT as mentioned in paras B.4 to B.31 *supra*. In light of the above discussion, it is evident that the imported goods cannot be classified as 'Flexible, plain film' under Tariff Item 3920 62 20. The Noticee submits that imported goods Tariff Item 3920 62 20 as '*Other*' PET film or alternatively, would be classifiable under either Tariff Item 3920 62 20 as '*Rigid, plain*' PET film.

THE IMPORTED GOODS ARE ELIGIBLE FOR THE BENEFIT OF EXEMPTION NOTIFICATION.

2.51. The Noticee submits that the Noticee has availed the benefit of BCD exemption under Sl. No. 4040 of Table-I to the Exemption Notification. The Noticee submits that both semi-rigid and rigid PET film is entitled to the exemption benefit under the Exemption Notification. The relevant entries are extracted below for ready reference:

S. No.	Tariff Item	Description	BCD Rate in % (unless otherwise specified)
4039	39206210	All Goods	0
4040	39206290	All Goods	0

2.52. As submitted above, the imported goods fall under Tariff Item 3920 62 90 or alternatively under Tariff Item 3920 62 10. Therefore, the imported goods are eligible for exemption under the aforesaid entries. In light of the above, the Noticee submits that the Impugned Show Cause Notice proposing to reject the classification of the imported goods under Tariff Item 3920 62 90 and thereby denying the exemption benefit is incorrect and not sustainable.

ONUS IS ON THE REVENUE TO ESTABLISH THAT THE IMPORTED GOODS FALL UNDER TARIFF ITEM 3920 62 20. REVENUE HAS NOT DISCHARGED THE BURDEN IN THE PRESENT CASE.

2.53. Without prejudice to the above submissions, it is settled law that the onus is on the Revenue to establish that the goods are classifiable under a particular tariff entry. Reliance is placed on the following decisions in this regard:

a. **Hindustan Ferodo Ltd. Vs. CCE – 1997 (89) ELT 16 (SC)**
b. **CCE Vs. Calcutta Steel Industries – 1989 (39) ELT 175 (SC)**
c. **Hindalco Industries Ltd Vs. CCE – 1994 (74) ELT 233 (Cal)**

d. Colgate Palmolive (India) Ltd. Vs. UOI – 1980 (6) ELT 268 (Bom)

e. Bombay Paints and Allied Products Vs. UOI – 1985 (21) ELT 663 (Bom).

2.54. In the present case, evidently, the Department while issuing the Impugned Show Cause Notice has not discharged the aforesaid burden cast on it and therefore, the Impugned Show Cause Notice is not sustainable. The Impugned Show Cause Notice proposes to reject the Noticee's classification of the imported goods and re-classify them under Tariff Item 3920 62 20 without considering the properties of the imported goods. As submitted *supra*, the Impugned Show Cause Notice appears to have merely proceeded on the basis that the imported goods can be bent. The Impugned Show Cause Notice appears to have simply gone by the fact that the CIPET upon physical examination found that the imported goods can be bent and thus, appear to be flexible, plain. Clearly, the Impugned Show Cause Notice has not considered the CIPET report in its entirety and has failed to take into consideration the BTRA test report, Supplier's declaration, ISO Standards or provide any report / evidence which shows the contrary. Therefore, the Noticee submits that the onus cast on the Department to prove that the classification of the imported goods as adopted by the Noticee is incorrect or that they are correctly classifiable under Tariff Item 3920 62 20, has not been discharged. For this reason, it is submitted that the proceedings initiated under the Impugned Show Cause Notice are liable to be dropped.

WITHOUT PREJUDICE, THE STATEMENTS OF THE EMPLOYEES OF THE NOTICEE, ADMITTING THAT IMPORTED GOODS CAN BE BENT, CANNOT BE A GROUND TO RECLASSIFY THE IMPORTED GOODS. THERE IS NO ESTOPPEL IN LAW AGAINST A PARTY IN TAXATION MATTERS. ALSO, THERE CAN BE NO ESTOPPEL AGAINST LAW.

2.55. The Impugned Show Cause Notice, at para 9(i), has alleged that in Statement dated 29.04.2024 by Shri Sanjay Bhaskar Ketkar, COO (Digital Print Media) of the Noticee, it was admitted that the imported goods are capable of being bent and they are flexible as per the dictionary meaning of the word 'flexible' and therefore, according to the Impugned Show Cause Notice, the imported goods are classifiable under Tariff Item 3920 62 20.

2.56. At the outset, it is submitted that the Impugned Show Cause Notice has misunderstood the statement of employee of the Noticee and that he never admitted to the imported goods being 'flexible' PET film. The Noticee submits that the employee of the Noticee only

commented on the physical attribute of the imported goods and their capability of being bent. It is pertinent to note that the Noticee specifically clarified that as per the technical parameters, the imported goods should not be classified as flexible. Without prejudice to the above, the Noticee submits that there exists no estoppel in law against the statements made by a party in taxation matters. The Noticee cannot be bound in law by the statements made by them during investigation. Hence, the Impugned Show Cause Notice proposing to reclassify the imported goods under Tariff Item 3920 62 20 on the basis of such statements is unsustainable in law. In support of the above submissions, the Noticee places reliance on the case of ***Dunlop India Ltd. & Madras Rubber Factory Ltd. v Union of India and Others – 1983 (13) ELT 1566 (SC)***. In the said case, the Apex Court, at para 40, held as under:

> "***40.*** *At one stage Mr. Sanghi pointed out that in certain Bill of Entry of Dunlop India Limited, their Agents, Messrs Mackinnon, Mackenzie & Co., Private Ltd., gave the I.C.T. Item No. 87 with regard to the imported V.P. Laitex. This, according to Mr. Sanghi, clearly shows how the appellants themselves have understood the matter. There is, however, no estoppel in law against a party in a taxation matter. In order to clear the goods for the Customs, the appellant Agents may have given the classification in accordance with the wishes of the authorities or they may even be under some misapprehension. But when law allows them the right to ask for refund on a proper appraisement and which they actually applied for, we do not attach any significance to this aspect of the matter pointed out by counsel. The question is of general importance and must be decided on its merits."*

2.57. The aforesaid position of law as held in the case of Dunlop India Ltd. was followed in the case of ***Collector of Customs v International Exports Inc. – 1992 (62) ELT 608 (Tribunal)***. Reliance is also placed on ***Laxmi Colour Lab v Collector of Customs – 1992 (62) ELT 613 (Tribunal)*** wherein the Ld. Tribunal held as under:

> "***7.*** *In the absence of any endorsement by the Collector that they were received in the office of Collector they cannot be relied upon. However, even assuming that there is acceptance, it does not preclude the appellant from challenging the same by way of appeal as there cannot be estoppel against law. In other words, if according to law viz. under Section 14(1) the assessable value is the price at which the goods are ordinarily sold in the course of international trade, then that price alone should be the basis for assessable value. In absence of contemporary imports at higher price the invoice value should be accepted. Therefore, mere*

acceptance of escalated price does not preclude them from challenging the same on the ground that assessable value should be in accordance with Section 14(1) of the Act, 1962. We have already held that telex message cannot be relied upon as evidence of a contemporary import at higher price. Therefore, the appellants are not precluded from challenging the assessable value"

The aforesaid decision was maintained by the Apex Court in ***Collector v Laxmi Colour Lab – 1997 (90) ELT A183***. In view of the aforesaid case laws holding that there is no estoppel in law against a party in taxation law, the Noticee submits that it is immaterial that they had, earlier in their statements, accepted that the imported goods are 'flexible' as per the dictionary meaning. In view of the reasons stated in paras C.1 to C.23 *supra*, the Noticee submits that the imported goods are rightly classifiable under Tariff Item 3920 62 10 and Tariff Item 3920 62 90. In view of the above, the Impugned Show Cause Notice proposing to reclassify the imported goods under Tariff Item 3920 62 20 on the ground that the said same had been accepted by the Noticee in their statements is incorrect. Hence, the Impugned Show Cause Notice is liable to be dropped on this ground.

THE SHOW CAUSE NOTICE IS INVALID IN THE ABSENCE OF A CHALLENGE TO THE ALREADY ASSESSED BILLS OF ENTRY.

2.58. Without prejudice to the submissions made *supra*, it is submitted that the imported goods were imported on the basis of assessed Bills of Entry which are in themselves to be considered as appealable orders under Section 47 of the Act, which reads as follows:

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

2.59. The Noticee submits that the Bills of Entry being a quasi-judicial order, can only be set aside by a competent appellate authority in an appeal. It is submitted that quasi-judicial orders cannot be set aside by a mere show cause notice while declaring the duty to be short levied and liable to recovery.

2.60. In the case of ***ITC Ltd. Vs. CCE, Kolkata -IV, 2019 (368) ELT 216***, the Hon'ble

Supreme Court has conclusively settled the aforesaid legal position and has specifically observed that even an order of self-assessment is nonetheless an assessment order passed under the Act and is appealable by either the revenue or the assessee. The cornerstone for this conclusion is reliance on a previous decision of the Hon'ble Supreme Court in ***Escorts Ltd., (1994) Supp. 3 SCC 86*** wherein it was held that signing of the bill of entry itself amounted to passing an order of assessment as it signifies the approval of the appraising officer. It was also held that once the Bill of Entry is assessed, the same cannot be reviewed unless it is set aside by way of procedure prescribed under the Act, 1962.Therefore, if the customs officers are aggrieved by the assessment, they ought to have challenged the assessment resorted to in the bills of entry itself. In the absence of the same, taking recourse to Section 28 of the Act without challenging the assessment is incorrect and not sustainable. Thus, the Impugned Show Cause Notice is invalid and liable to be dropped.

DEMAND OF IGST IS LIABLE TO BE DROPPED TO THE EXTENT THE DEMAND IS REVENUE NEUTRAL.

2.61. The Noticee further submits that the demand of differential IGST ought to be dropped to the extent the Noticee is entitled to avail credit of the IGST paid, since the same would result in a revenue neutral situation. The Hon'ble CESTAT, Ahmedabad in the case of ***Neuvera Wellness Ventures P. Ltd. vs. C.C. Mundra, 2023 (10) TMI 964*** held that:

*"……**We find force in the submission of the learned counsel that whatever IGST needs to be paid by the appellant, it was available as an input tax credit to them, therefore, the present case is involved revenue neutrality.** Accordingly, the malafide intention cannot be attributed to the act of the appellant. For this reason, the demand for the extended period is not sustainable also on time bar."*

(***Emphasis supplied***)

2.62. The Hon'ble Tribunal in the following decisions has held that when the confirmation of duty demand would result in a revenue neutral situation, then such duty demand is not sustainable:

a. **Birla NGK Insulators Vs. CC – 2014 (309) E.L.T. 501 (Tri.- Ahmd.);**
b. **STI Industries Vs. CC – 2015 (237) E.L.T. 514 (Tri. – Ahmd.);**
c. **Mahindra & Mahindra Ltd. v. Commr. of C.Ex., Mumbai – 2019 (368) E.L.T. 105 (Tri. – Mumbai);**

Affirmed by the Hon'ble Supreme Court in 2019 (368) E.L.T. A41 (SC).

Therefore, it is submitted that the demand of IGST ought to be dropped as the demand is revenue neutral. For this reason, the Impugned Show Cause Notice proposing to demand IGST is liable to be dropped.

DEMAND RAISED IN THE IMPUGNED SHOW CAUSE NOTICE IS BARRED BY LIMITATION. EXTENDED PERIOD OF LIMITATION IS NOT INVOKABLE IN THE PRESENT CASE SINCE THERE WAS NO MIS-STATEMENT OR SUPPRESSION OF FACTS BY THE NOTICEE IN RESPECT OF THE IMPORTS IN QUESTION.

2.63. The Impugned Show Cause Notice proposes to recover differential duty amounting to Rs.1,69,80,775/- by invoking extended period of limitation under Section 28(4) of the Act, alleging that the Noticee had suppressed facts and misclassified the imported goods under Tariff Item 3920 62 90 instead of Tariff Item 3920 62 20. The Noticee submits that the allegations in the Impugned Show Cause Notice are incorrect and there was no suppression of facts or mis-classification by them with intention to evade payment of duty. Therefore, the extended period of limitation is not invokable in the facts of the present case for reasons explained *infra*. Section 28(1) of the Act entitles the proper officer to serve notice on any person for any short levy/non-levy *within two years from the relevant date*. Therefore, any demand of duty made, in respect of imports beyond the period of two years from the relevant date, is barred by normal period of limitation. However, in terms of Section 28(4) of the Act, the aforesaid notice can be issued within an extended period of five years from the relevant date in cases where the duty has not been levied or has been short-levied, etc. **by reason of collusion or any willful mis-statement or suppression of facts by the importer**.

2.64. The relevant portion of Section 28 reads as under:

> ***"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."

2.65. Thus, normally, the notice for recovery of short paid duty has to be issued within a period of 2 years from the relevant date. However, show cause notice can be issued within a period of 5 years from the relevant date in case the ingredients mentioned under Section 28(4) are found to be present in the facts of the case. It has been frequently held by the Apex Court that extended period of limitation cannot be invoked for mere non-payment or short payment of duty and can only be invoked when the duty was not paid or short paid with intention to evade payment of duty.

2.66. Reliance is placed on the decision of ***Aban Lloyd Offshore Ltd. vs. Commissioner of Customs, 2006 (200) ELT 370 (SC)***, wherein the Hon'ble Supreme Court held as under:

*"20. The proviso to Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any willful mis-statement or suppression of facts. So far as 'mis-statement or suppression of facts' are concerned, they are qualified by the word "willful**". The word "willful" preceding the words "mis-statement or suppression of facts" clearly spells out that there has to be an intention on the part of the Assessee to evade the duty."***

(Emphasis Supplied)

2.67. Further, in the case of ***Maruti Udyog Ltd. vs. Commissioner of C. Ex., Delhi, 2002 (147) ELT 881 (Tri. - Del.)***, the Hon'ble Tribunal has held that the duty of an Assessee is to make a true and full disclosure of the primary facts and does not extend beyond it to advising the assessing officer as to what inference he should draw from such facts.

2.68. Thus, in order to invoke the extended period of limitation, it is necessary to prove an act or omission on the part of the Noticee equivalent to collusion or willful misrepresentation or suppression of facts to evade customs duty. In the present case, the Noticee have been issued with the Impugned Show Cause Notice dated 23.12.2024. Therefore, demand made in respect of imports made after 23.12.2022 alone will be within normal period of limitation. The

Impugned Show Cause Notice covers imports made by the Noticee from 13.07.2022 to 01.03.2024. Imports undertaken upto 23.12.2022 are beyond the normal period of limitation of 2 years from the relevant date. Thus, the differential duty demand of Rs.40,56,522/- pertaining to the period 13.07.2022 to 23.12.2022 out of the total differential duty demand of Rs.1,69,80,775 /- is barred by limitation.

2.69. The Impugned Show Cause Notice proposes to invoke extended period of limitation on the grounds that the Noticee has wilfully misstated the classification of the imported goods with intention to evade payment of duty. The said allegation is made in the Impugned Show Cause Notice on the following grounds:

a. The imported goods were largely in the form of rolls which indicates their flexible nature. The test certificate submitted at the time of importation does not certify the flexibility or rigidity of the imported goods. Only after testing by CIPET Aurangabad, it was revealed that the imported goods were flexible in nature. Therefore, it appears that the Noticee intentionally suppressed facts of exact nature of goods. Further, under the scheme of self-assessment under Section 17, it was the importer who must ensure that he declared the correct classification of the imported goods. Thus, Section 28(4) of the Act, 1962 is invokable [Paras 13 to 14, 17 of the Impugned Show Cause Notice].

2.70. The Noticee submits that the aforesaid allegations are incorrect and the Noticee has not suppressed facts or mis-classified the imported goods for the reasons stated *infra* and further, the Noticee did not have any intention to evade payment of duty. Therefore, extended period of limitation is not invokable in the present case. It is submitted that as part of the self-assessment scheme, the Noticee has correctly classified the imported goods and paid BCD and IGST on the same correctly. The Noticee also submits that the Impugned Show Cause Notice has not produced any evidence to prove that the Noticee acted with intention to evade payment of duty.

IMPORTED GOODS HAVE BEEN CORRECTLY DESCRIBED IN THE BILLS OF ENTRY AND THEREFORE, THE NOTICEE HAS CORRECTLY SELF-ASSESSED THE IMPORTED GOODS UNDER SECTION 17 OF THE ACT.

2.71. The Impugned Show Cause Notice, in paras 13, 14 and 19, has alleged that the Noticee had wilfully mis-classified and suppressed facts regarding the exact nature of the goods

and contravened provisions of Section 17 of the Act, 1962 and Section 46(4) and Section 46(6) of the Act, 1962. In this regard, it is submitted that there was no mis-classification or suppression of facts by the Noticee in the instant case. It is submitted that, upon import, the imported goods were correctly declared by the Noticee in the import documents and the description of the imported goods were in line with that mentioned in the supplier's invoices. This fact is also evident upon an analysis of the Bills of Entry. Illustrative descriptions in the bills of entry have been tabulated in para 9 *supra*. As is evident from the table, the Noticee has described the goods in accordance with the invoices. There is no allegation or evidence suggesting that the Noticee has not followed the description of the imported goods in the invoices while making the declarations in the import documents. It is also not the case in the Impugned Show Cause Notice that the imported goods were not the same as the declaration made in the import documents. The description of the imported goods in the import document duly indicates the nature of the goods imported. Therefore, it is not a case wherein the goods imported by the Noticee is different from what is declared in the Bills of Entry. Resultantly, there is no misdeclaration or suppression of facts by the Noticee as alleged in the Impugned Show Cause Notice. Further, the Impugned Show Cause Notice has not made any allegations regarding collusion between the Noticee and the foreign Supplier. Consequently, the Noticee has duly complied with Section 17 of the Act.

2.72. Thus, the very premise in the Impugned Show Cause Notice that the Noticee has mis-classified and suppressed facts regarding the imported goods in the import documents is incorrect and baseless. The Noticee submits that the said provision can be said to be violated only if the description of the goods does not apply to the goods imported. In the present case, no such misstatement has been made. Therefore, the aforesaid allegation is incorrect and not sustainable. Resultantly, extended period of limitation is not invokable in the present case.

THE NOTICEE WAS ALWAYS OF THE BONA FIDE BELIEF THAT THE IMPORTED GOODS ARE CLASSIFIABLE UNDER TARIFF ITEM 3920 62 90.

2.73. It is submitted that the actions of the Noticee have been completely bonafide. It is submitted that the Noticee was and has always been of the bonafide belief that the imported goods were not '*flexible, plain*' PET film and therefore, not classifiable under Tariff Item 3920 62 20 in accordance with the properties of the imported goods. The Noticee also submits that their understanding that the imported goods are not '*flexible*' PET film was supported by the Excise Notification, the Central Excise Tariff, Technical Data Sheet, Certificates of Analysis

issued by the Supplier, technical parameters of BTRA and CIPET test reports, Certificate of Origin issued by the UAE ministry and the declaration provided by the Supplier. Owing to the above facts, the Noticee was and is of the bonafide belief that the imported goods are classifiable under Tariff Item 3920 62 90 and not under Tariff Item 3920 62 20. Therefore, it is submitted that the Noticee's actions are bonafide and that the Impugned Show Cause Notice is incorrect in alleging that the Noticee has deliberately mis-classified the imported goods with intention to evade payment of duty.

WITHOUT PREJUDICE, MERE INCORRECT CLASSIFICATION CANNOT BE A BASIS TO INVOKE EXTENDED PERIOD OF LIMITATION.

2.74. Further, it is settled legal position that in the era of self-assessment, mere declaration of classification different from the view of the Department cannot be a basis to invoke extended period of limitation. In this regard, the decision in the case of ***Challenger Cargo Carriers Vs. Principal CC – 2022 (12) TMI 621*** is relied upon wherein the Tribunal held that the importer needs to subscribe to the truth of the factual contents of the bills of entry and not opinions. The classification adopted by the importer under the self-assessment regime would be according to their view and the Department may hold a different view. Reliance is also placed on the decision in ***Sirthai Superware India Ltd. v. CC, 2019 (10) TMI 460-CESTAT Mumbai***, wherein the Hon'ble Tribunal has been held that misdeclaration/suppression cannot be alleged merely because imports with incorrect classification have been made in the self-assessment regime. Specifically rebutting the Department's argument of self-assessment, the Bench held as follows:

"5.5 *When Commissioner has himself in the para 33 of his order for holding the classification under the Heading 392410, referred to description made in the Bill of Entries/invoices he cannot be justified in holding the charge of misdeclaration against appellants. For that reason we are of the view that by giving the correct description on the documents relating to import clearance appellants have discharge the burden of making correct declaration on the Bill of Entry. Hence any error in classification or the exemption claimed on Bill of Entry cannot be misdeclaration with the intention to evade payment of duty for the purpose of invoking extended period of limitation. Hence demand made by invoking extended period of limitation needs to be set aside."*

2.75. In view of the above, it is submitted that to invoke extended period of limitation under Section 28(4) of the Act, it has to be proved that there was a conscious or intentional act of

collusion, willful mis-statement or suppression of fact, on the part of the importer. Merely having imported in self-assessment regime is not enough. The intention or deliberate attempt, on the part of importer, to evade duty has to be proved beyond reasonable doubt to justify invocation of extended period. No such proof had been adduced in the Show Cause Notice. In the present case also, the imported goods have been correctly declared in the Bills of Entry. Given the same, no misdeclaration/misclassification can be alleged on part of the Noticee. Therefore, extended period of limitation cannot be invoked merely because the Noticee have allegedly claimed benefit of incorrect classification.

ALL FACTS WERE KNOWN TO THE CUSTOMS AUTHORITIES. THEREFORE, THERE IS NO SUPPRESSION OR WILLFUL MISSTATEMENT OF FACT BY THE NOTICEE.

2.76. It is submitted that the Noticee has been importing PET film since 2011 from JBF under Tariff Item 3920 62 90 and the imported goods have been cleared for home consumption by the Department. The Noticee submits that the properties of the imported goods have not changed since the first import. Furthermore, as mentioned above in para 13, the Noticee has been importing similar goods having the properties of rigid / semi-rigid film as per ISO Standards, from Malaysia and Japan under Tariff Item 3920 62 90 without any objection from the Department. Hence, it is evident from the above-stated facts that the Department was well aware of the characteristics, properties and functions of the imported goods and there was nothing that the Noticee could suppress or mis-state as to the nature and the functions of the imported goods. It is settled legal position that suppression cannot be alleged when all the relevant facts are known to the authorities. Reliance is placed on the decision of Apex Court in ***Nizam Sugar Factory v. CCE [2006 (197) E.L.T. 465 (S.C.)]*** in this regard. Therefore, it is submitted that the Department has wrongly alleged that the Noticee has suppressed facts with respect to the imported goods and that they mis-stated/mis-represented the declarations made in the import documents.

SPECIFIC REBUTTALS TO THE ALLEGATIONS IN THE SHOW CAUSE NOTICE

2.77. The following are the specific rebuttals to the allegations made in the Impugned Show Cause Notice:

Para No.	Allegation in the Show Cause	Submissions of the Noticee

	Notice	
13	At the time of import, the imported goods were largely in the form of rolls which indicates their flexible nature.	The Noticee submits that the fact that the imported goods are imported in the form of rolls does not have a bearing on the classification of the imported goods. As mentioned above in paras B.4 to B.39 *supra*, the properties of the imported goods do not align with the values of flexible film and therefore, the imported goods cannot be classified as flexible PET film under Tariff Item 3920 62 20.
13	The test certificate submitted at the time of importation does not certify the flexibility or rigidity of the imported goods.	The Noticee submits that, as mentioned in paras B.25 to B.29 *supra*, the Certificate of Analysis submitted at the time of import evidently showed that the properties of the imported goods align with the values of rigid or semi rigid PET film and not flexible PET film.
13	Only after testing by CIPET Aurangabad, it was revealed that the imported goods were flexible in nature. Therefore, it appears that the Noticee intentionally suppressed facts of exact nature of goods.	As mentioned in paras B.32 to B.37 *supra*, the CIPET test report only mentioned the imported goods to be flexible as per physical examination. Upon testing of the imported goods, even as per CIPET test report, the properties of the imported good were found to be in line with the values of semi-rigid PET film.

In view of the above, it is submitted that the extended period is not invokable and the demand proposed in the Impugned Show Cause Notice for the period till 23.12.2022 is time barred and cannot be sustained.

THE IMPORTED GOODS ARE NOT LIABLE FOR CONFISCATION UNDER SECTION 111(m) OF THE ACT.

2.78. The Impugned Show Cause Notice has alleged that the Noticee has mis-classified and suppressed facts relating to the imported goods. In light of the same, it has been alleged that the imported goods are liable to confiscation under Section 111(m). The relevant portion of Section 111 has been extracted below for reference:

> ***"Section 111- The following goods brought from a place outside India shall be liable to confiscation : –***
>
> ***
>
> *(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54."*

2.79. Under Section 111(m), goods are rendered liable to confiscation where the goods do not correspond in respect of value or in any other particular with the entry made under the Act. In terms of the provisions of Section 2(16) of the Act, 1962, "entry" in relation to goods means an entry made in a Bill of Entry. As already submitted *supra*, the imported goods had been correctly declared in the Bill of Entry and thus, the description of the imported goods corresponds to the goods imported. Thus, Section 111(m) of the Act is not applicable. It is pertinent to note that the expression 'value' as incorporated in Section 111(m) of the Act, 1962 would mean value as determined under Section 14 of the Act, 1962, as per Section 2(41) of the Act, 1962. The Noticee submits that there is no misdeclaration of value of the imported goods as determined under Section 14 of the Act, 1962. Further, it is not the Department's case in the Impugned Show Cause Notice that the Noticee has mis-declared the value of the imported goods. It is submitted that for the reasons given in the foregoing paragraphs, there was no mis-declaration either in respect of value or in any other particular with the entry made under the Act. The Impugned Show Cause Notice has only alleged suppression of facts on the ground that the imported goods are correctly classifiable under Tariff Item 3920 62 20 whereas, in the preceding grounds, the Noticee has already established that the imported goods are correctly classifiable under Tariff Item 3920 62 90/ 3920 62 10. For the above reasons, it is submitted that the proposal for confiscation of the imported goods under Section 111(m) of the Act, 1962 is not sustainable in law.

2.80. Without prejudice to the above, mere classification of the imported goods, which is not acceptable to the Department does not render them liable for confiscation under Section

111(m). In this regard, the Noticee places reliance on the decision of the Apex Court in the case of ***Northern Plastic Ltd. vs. Collector of Customs & Central Excise, 1998 (101) E.L.T. 549 (S.C.)***, wherein the Hon'ble Supreme Court has held that merely claiming a particular classification or availing an exemption under the Bill of Entry does not amount to mis-declaration under section 111(m) of the Act. The relevant extract of the decision is reproduced below:

> *"22… While dealing with such a claim in respect of payment of customs duty we have already observed that the* ***declaration was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m)*** *of the Act. As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.*
>
> *23.* ***We, therefore, hold that the appellant had not mis-declared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications which have been found not applicable to the imported goods****.... "*
>
> ***[Emphasis Supplied]***

2.81. In view of the aforesaid decision of the Apex Court, without prejudice, even if it is assumed that the imported goods are not correctly classified by the Noticee, the imported goods cannot be held liable for confiscation under Section 111(m) of the Act. In view of the aforesaid submissions, it is submitted that the proposal for confiscation of the imported goods under the provisions of Section 111(m) of the Act is incorrect and the Impugned Show Cause Notice is liable to be dropped.

Once goods are cleared for home consumption, Section 111 does not apply.

2.82. Without prejudice to the above, it is respectfully submitted that Section 111 provides for liability for confiscation of the improperly imported goods. It is, therefore, respectfully submitted that only imported goods can be confiscated under Section 111. The term 'imported goods' has been defined under Section 2(25) as:

"imported goods means any goods brought into India from a place outside India ***but does not include goods which have been cleared for home consumption****"*

(Emphasis Supplied)

2.83. In the case of ***Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay [2004 (163) ELT 304 (Bom.)]***, the Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Act, 1962 and consequently are not liable to confiscation under Section 111 of the Act, 1962. The Hon'ble High Court held as under:

> *"7…The learned counsel urged that once the goods are cleared for home consumption, then the goods covered by the consignments cease to be imported goods in accordance with the definition of expression 'imported goods' under Section 2 of the Act and consequently such goods are not liable for confiscation. There is considerable merit in the submission of the learned counsel.* ***The goods lose its character of imported goods on being granted clearance for home consumption and thereafter the power to confiscate can be exercised only in cases where the order of clearance is revised and cancelled****…*"
>
> *(Emphasis Supplied)*

2.84. The above cited decision was maintained by the Hon'ble Supreme Court reported in ***2004 (163) ELT A160***. Further, this view has also been reiterated by the Hon'ble Tribunal in the case of ***Southern Enterprises vs. Commissioner of Customs, 2005 (186) ELT 324 (T)*** wherein it has held as follows:

> *"6. ... Furthermore, Revenue cannot confiscate the goods which have already been cleared for home consumption as they ceased to be imported goods as defined in Section 2 of the Act and as held by the Bombay High Court in the case of Bussa Overseas & Properties P. Ltd. (cited supra)."*

2.85. Even in the facts of the present case, the imported goods have been cleared for home consumption and therefore, the question of confiscation under the provisions of Section 111 does not arise. Thus, the proposal in the Impugned Show Cause Notice for confiscation of the imported goods is not sustainable in law. In view of the detailed submissions made above, it is submitted that the proposal in the Impugned Show Cause Notice to hold that the imported goods are liable to confiscation under Section 111(m) is incorrect and unsustainable.

NO REDEMPTION FINE IS IMPOSABLE UNDER SECTION 125 OF THE CUSTOMS ACT, 1962

2.86. The Impugned Show Cause Notice at para 16 has proposed that redemption fine shall be payable for the imported goods under Section 125 of the Customs Act, 1962. The Noticee submits that redemption fine is only imposable when imported goods are liable for confiscation. As set out in detail above, the imported goods are not liable for confiscation. Thus, by extension, redemption fine is also not payable on the imported goods under Section 125 of the Customs Act, 1962. Further, when goods are not physically available for confiscation, the redemption fine is not payable. In the present case, the imported goods have been undisputedly cleared by the Noticee and are no longer available for confiscation. Therefore, in view of the above, the proposal of confiscation of the imported goods is not sustainable and the redemption fine merits to be dropped. Reliance is placed upon the decision of the Hon'ble Bombay High Court in ***CC v. Finesse Creations – 2009 (248) ELT 122 (Bom.)*** in this regard. In the said case, the Hon'ble Court held that no redemption fine is imposable if the goods are not physically available. The relevant portion of the decision is extracted below:

> *"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 above decision was also affirmed by the Apex Court in ***CC Vs. Finesse Creation Inc. – 2010 (255) ELT A120 (SC)***.

2.87. It is, therefore, submitted that the imported goods are not available for confiscation and therefore, they cannot be confiscated. Consequently, when the confiscation itself is not

possible, redemption fine is also not imposable. Therefore, the Impugned Show Cause Notice proposing to impose redemption fine is liable to be dropped.

PENALTY AND INTEREST ARE INCORRECTLY PROPOSED TO BE RECOVERED WITH RESPECT TO DEMAND OF IGST ON IMPORTS, AS THERE IS NO PROVISION FOR THE SAME UNDER LAW.

2.88. The Impugned Show Cause Notice has proposed demand of differential IGST, levied under Section 3(7) of the Customs Tariff Act, 1975. It is submitted that when demand is of differential IGST duty, no interest and penalty is imposable / payable, as there is no provision under the Customs Tariff Act levying interest/penalty. Relevant extracts from Section 3 of the Customs Tariff Act, reads as under:

> ***SECTION 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges. —***
>
> ****
>
> *(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) [or sub-section (8A), as the case may be.*
>
> ****
>
> *(12) The provisions of the Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act. ...(Emphasis Supplied)*

2.89. From a plain reading of the above provision, it is evident that all the provisions of Act have not been made applicable to the levy of CVD under the provisions of Section 3(7) of the Customs Tariff Act. By virtue of Section 3(12) of the Customs Tariff Act only the provisions relating to levy of duty under the Act including the provisions relating to drawback, refunds and exemption from duties, have been borrowed for the purpose of IGST chargeable under Section 3(7) of the Customs Tariff Act respectively. It is therefore, respectfully submitted that the provisions of the Act, relating to levies of penalty and interest are not applicable in respect of levy/non-levy/short-levy of IGST under the provisions of Section 3(7) of the Customs Tariff

Act. It is submitted that in contradistinction with the wordings of Section 3(12), the provisions of Sections 8B(4A), 8C(5A), 9(7A) & 9A(8) of the Tariff Act, expressly provide for applicability of various provisions of the Act, including inter-alia, the provisions relating to levy of penalty. To make the distinction clear, the wordings of these Sections are reproduced below:

SECTION 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges *—*

(8) The provisions of the Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.

SECTION 8B. Power of Central Government to impose safeguard duty —

(4A)The provisions of the Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, ***offences and penalties*** *shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act. (inserted w.e.f. 14.5.1997 by Section 95 of the Finance Act, 2009)*

SECTION 8C. Power of Central Government to impose transitional product specific safeguard duty on imports from the People's Republic of China –

(5A) The provisions of the Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, ***offences and penalties*** *shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act. (inserted w.e.f. 11.5.2002 by Section 97 of the Finance Act, 2009)*

SECTION 9. Countervailing duty on subsidized articles —

(7A) The provisions of the Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, ***offences and penalties*** *shall, as far as may be, apply to the duty chargeable under this section*

as they apply in relation to duties leviable under that Act. (substituted w.e.f. 19.8.2009 by Section 101 of the Finance Act, 2009)

SECTION 9A. Anti-dumping duty on dumped articles –

(8) The provisions of the Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, ***offences and penalties*** *shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act. (substituted w.e.f. 01.01.1995 by Section 101 of the Finance Act, 2009)*

... (Emphasis Supplied)

2.90. From a reading of the above provisions, it is evident that the Legislature has consciously adopted different provisions of the Act, for different types of duties leviable under the Customs Tariff Act. Moreover, even while making these amendments retrospectively, by the Finance Act, 2009, Legislature has consciously adopted different dates for bringing into effect the amendments in different provisions. It is therefore, respectfully submitted that where the Legislature wanted to adopt the provisions of the Act, in respect of offences and penalties, it has been so provided expressly in the relevant provisions.

2.91. It is also significant to note that while Section 3(12) of the Customs Tariff Act was enacted, the Legislature consciously chose to adopt Section 3(12) in the manner that it currently is, even though they had an option to adopt a Section which was much wider in its purview. Therefore, non-mention of the provisions relating to interest and penalties in Section 3(12) indicates the clear legislative intent of not invoking the penal provisions of the Act, in respect of IGST leviable under Section 3(7) of the Customs Tariff Act. It is, therefore, respectfully submitted that no penalty is imposable in the present case on the Noticee and no interest also is payable. Reliance in this regard is placed on the following decisions:

a. ***Mahindra & Mahindra Vs. UOI – 2022-VIL-690-BOM-CU*** Affirmed in ***Union of India & Ors. V. Mahindra and Mahindra Ltd***. reported as ***2023 (8) TMI 135 - SC ORDER;***

b. ***Khemka and Co. (Agencies) Vs. State of Maharashtra - (1975) 2 SCC 22;*** and

b. ***Pioneer Silk Mills Vs. Union of India – 1995 (80) ELT 507 (Del.).***

2.92. Recently, Hon'ble Ahmedabad Tribunal relying upon the judgment of Mahindra and

Mahindra in the case of ***Chiripal Poly Films Ltd. Vs. CC-Ahmedabad – 2024-VIL-876 CESTAT-AHM-CU*** has held that there is no specific provision made for recovery or charging of interest, fine and penalty in Customs Tariff Act, 1975. Revenue has not been able to show any charging provision for levy and collection of interest, fine and penalty for late payment of IGST. In the absence of specific provision relating to levy of interest, redemption fine and penalty, same cannot be demanded by taking recourse to machinery provisions relating to recovery of duty. Similarly, the Hon'ble Tribunal in the decision of ***Philips India Limited v. Commr. of Cus. (I) [Final Order No. A/86879/2024]*** has also followed the decision of ***Mahindra & Mahindra*** to hold that there is no provision in Section 3 of the Customs Tariff Act, 1975 requiring any payment of penalty or interest on demand of IGST. Thus, it is respectfully submitted that the ratio of the aforesaid judgments is applicable to the case of the Noticee and therefore, in view of the wordings of Section 3(12) of the Customs Tariff Act, no penalty and interest on IGST can be demanded in the present case.

2.93. Further, it is submitted that the intent of the legislation is also relevant and to be seen. It is submitted that in the present case, the legislative intent was clear that Section 3(12) of Custom tariff Act, 1975 does include short levy i.e., Section 28 of Act, however the same does not include interest i.e., Section 28AA of the Act, 1962. If the intention of legislature was always to include 'interest' in Section 3(12) of Customs Tariff Act, 1975, then the amendment to add interest and penalty under Section 3(12) of the Customs Tariff Act, 1975 vide Finance Act, 2024 would not have been brought to force. It is therefore submitted that the legislative intent to include interest or levy of penalty in Section 3(12) of Customs Tariff Act, 1975 was not present prior to the Finance Act, 2024. Lastly, levy of IGST is a legal issue and therefore, no penalty ought to be imposed in such cases. In view of the above, no penalty and interest on IGST can be demanded in the present case. Therefore, the Impugned Show Cause Notice is incorrect in proposing to impose penalty and interest on the IGST portion of the demand and liable to be dropped for this reason.

NO PENALTY IS IMPOSABLE ON THE NOTICEE UNDER SECTION 112 OF THE ACT, 1962

2.94. The Impugned Show Cause Notice proposes to impose penalty on the Noticee under Section 112 of the Act, 1962 on the grounds that by committing willful misstatement, and suppression of facts, the Noticee has rendered the imported goods liable for confiscation under Section 111. For ease of reference, relevant portion of Section 112 is reproduced below for

reference:

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, 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, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(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 :

Provided that where such duty 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 communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the

highest.]

2.95. A reading of Section 112 shows that the penalty under the said Section is imposable on a person who deals with the goods or is in possession of any knowledge which renders the goods liable for confiscation.

Imported goods are not liable for confiscation under Section 111 of the Act, 1962. Therefore, Section 112 is not attracted in the present case.

The Impugned Show Cause Notice alleges that the imported goods are liable for confiscation under Section 111(m) of the Act. As submitted in detail *supra*, the imported goods are not liable for confiscation in terms of Section 111 of the Act and therefore, for this reason alone, penalty under Section 112 is not imposable.

Noticee has not done any act which has rendered the goods liable for confiscation. Hence, Section 112(a) cannot be applied.

2.96. Penalty under Section 112(a) is only imposable on a person who 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. As submitted above, the imported goods have been correctly described and correctly classified at the time of import. In this regard, detailed submissions have been made in paras *supra*. In light of the facts involved in the present case and detailed submissions made above, the Noticee submits that they have neither done any act or omission of any act nor abetted such an act or omission which renders the imported goods liable to confiscation under Section 111 of the Act. Therefore, it is submitted that no penalty is imposable on the Noticee under Section 112(a) of the Act.

Noticee was not in possession of any knowledge which has rendered the imported goods liable for confiscation in the instant case. Hence, Section 112(b) cannot be applied.

2.97. For levy of penalty under Section 112(b), the person should be in 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. Thus, to impose penalty under Section 112(b), the following conditions must be satisfied simultaneously:

a. The person should be dealing with any goods;

b. The goods should be liable for confiscation under Section 111 of the Act, 1962; and
c. The person should know or have reason to believe that the goods are liable for confiscation.

2.98. As explained above, the imported goods are not liable to confiscation under Section 111 of the Act. The Noticee was always of the bonafide belief that the imported goods are not 'flexible' PET film and not classifiable under Tariff Item 3920 62 20. Therefore, the Noticee had no reason to believe that the imported goods would be liable for confiscation. Thus, it is submitted that penalty under Section 112(b) cannot be imposed on the Noticee in the facts of the present case.

Penalty under Section 112 cannot be imposed if penalty under Section 114A is imposed.

2.99. It is submitted that the Impugned Show Cause Notice proposes to impose penalty on the Noticee under Section 112 or Section 114A of the Act. It, therefore, appears that the Impugned Show Cause Notice is not clear as to under which provision it seeks to impose penalty on the Noticee. In any case, it is submitted that penalty cannot be imposed on the Noticee under both the provisions. In this regard, Section 114A has been extracted below for reference:

> ***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 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 [1][sub-section (8) of section 28] shall also be liable to pay a penalty equal to 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.***
>
> ***

2.100. As is evident from the above extracted proviso to Section 114A of the Act, penalty cannot be levied under Section 112 if penalty has been levied under Section 114A. Hence, the proposal in the Impugned Show Cause Notice for imposition of penalty on the Noticee under Section 112 is incorrect and liable to be dropped.

NO PENALTY IS IMPOSABLE UNDER SECTION 114A OF THE ACT

2.101. The Impugned Show Cause Notice has alleged that the short-payment of duty is on account of willful mis-statement and suppression of facts on part of the Noticee and therefore, the Noticee is liable to be penalized under Section 114A of the Act. It is submitted that penalty under Section 114A can only be imposed in cases where duty has not been paid or short/part paid because of **collusion or willful mis-statement or suppression of facts**. As laid down in ***CC vs. Videomax Electronics, 2011 (264) ELT 0466 (Tri.-Bom)***, if the extended period of limitation under Section 28 is not invokable, penalty under Section 114A of the Act, 1962 cannot be imposed. It has already been submitted and clarified in the foregoing paras that the Noticee has committed no offence or made no omissions or commissions in the entire matter. Moreover, penalty under Section 114A of the Act, 1962 can be imposed only when the duty has not been paid by the importer due to suppression or misrepresentation of facts etc. It has been narrated in the foregoing paras that no suppression with intent to evade payment of duty can be alleged against the Noticee. Thus, penalty under Section 114A of the Act, 1962 is not sustainable. Further, as mentioned above, the conduct of the Noticee was completely bona fide. The Noticee neither had any intention to evade payment of duty, nor had any knowledge of the liability of the imported goods to confiscation. In the absence of any malafide on the part of the Noticee, no penalty is imposable. In the case of ***Hindustan Steel Ltd. Vs. State of Orissa, 1978 (2) ELT (J159) (SC)***, Hon'ble Supreme Court held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bona-fide belief. In light of the above, it is submitted that the Impugned Show Cause Notice proposing to impose penalty under Section 114A is incorrect and not sustainable in law.

Penalty cannot be imposed in the absence of mens rea

2.102. Furthermore, it is a well settled principle of law that penalty under Section 114A can be imposed only when mens rea is proved beyond all reasonable doubts. This has been reiterated and reaffirmed in the following decisions:

a. ***Akbar Badruddin Jiwani V/s CC 1990 (47) ELT 161 (SC)***
b. ***M/s Wooltex Associates V/s CC 1998 (99) ELT 245 (T)***
c. ***M/s Siris Aqua Ltd V/s CCE 2000 (115) ELT 186 (T)***
d. ***M/s SIJ Electronics Comp Tech V/s CC 2001 (129) ELT 528 (T)***
e. ***(CC V/s R.A. Spinning Mills (P) Ltd. 2004 (171) ELT 54 (T)***.

2.103. The Impugned Show Cause Notice has alleged that the Noticee has been evading customs duty with a malafide intention. In this regard, it is submitted that, there is not even an iota of evidence on record to show that the Noticee acted with mens rea. It is submitted that the Noticee was and are of the bona fide belief that the imported goods are not classifiable under Tariff Item 3920 62 20. Furthermore, the present issue being that of classification, mens rea cannot be alleged against the Noticee plainly on the ground that the Department is not agreeable with the classification adopted by the Noticee. In view of the above, the Noticee submits that the proposal in the Impugned Show Cause Notice to impose penalty under Section 114A is incorrect and not sustainable.

PENALTY IS NOT IMPOSABLE UNDER SECTION 114AA OF THE ACT

2.104. The Impugned Show Cause Notice has proposed to impose penalty on the Noticee under Section 114AA of the Act, 1962 on the grounds that the Noticee has mis-classified the imported goods, in contravention with provisions of Section 111(m) of the Act, 1962 and therefore, are liable to be penalized under Section 114AA of the Act. For ease of reference, the Section is extracted herein below:

> ***"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."*

2.105. So, in order to invoke the above Section, a person must fulfill all of the following conditions cumulatively:

- knowingly or intentionally
- make, sign or use
- or cause to make sign or use
- any declaration, statement or document
- which is false or incorrect in any material particular in the transaction of any business for the purposes of the Act.

2.106. A perusal of Section 114AA provides that penalty under this section can be imposed only 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 instant case, the Noticee has not knowingly or intentionally made, signed or used any declaration, statement or document which was false or incorrect in any material particular. All the details mentioned in the Bills of Entry, including the description of the imported goods (as established in the preceding grounds), are correct. Thus, there is no false or incorrect declaration or statement, or documents furnished by the Noticee warranting imposition of penalty under Section 114AA. Without prejudice, it is submitted that penalty under Section 114AA is imposable only in those situations where exports benefits are claimed without exporting the goods and by presenting forged documents. In support of this argument, reliance is placed on the **Twenty Seventh Report of the Standing Committee of Finance** wherein insertion of Section 114AA was discussed at paragraph 62. For the ease of perusal, the entire discussion is reproduced below:-

"Clause 24 (Insertion of new section 114AA)

62. Clause 24 of the Bill reads as follows:

After section 114A of the Act, the following section shall be inserted, namely:—

"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."

63. The information furnished by the Ministry states as follows on the proposed provision:

"Section 114 provides for penalty for improper exportation of goods. ***However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported.*** *The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A."*

64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of

industries, by way of summoning an importer to give a 'false statement' etc. Questioned on these concerns, the Ministry in their reply stated as under:

"The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. *The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."*

65. The Ministry also informed as under:

"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. *The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."*

66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. ***The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty.*** *The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."*

(Emphasis supplied)

2.107. The aforesaid extract from the report of the standing committee explains the purpose for which Section 114AA has been inserted in the Act. The purpose is to punish those people who avail export benefits without exporting anything. Such cases involve serious criminal intent and it cannot be equated with the cases of duty evasion. According to the legislature, Section 114 of the Act provided penalty for improper exportation of goods, and it was not covering situations where goods were not exported at all. Such serious manipulators could have

escaped penal action even when no goods were actually exported. Therefore, it is submitted that penalty under Section 114AA is imposable only in those circumstances where export benefits are availed without exporting any goods. In the light of aforesaid discussion, it is submitted that the present case relates to import and thus, there cannot be any question of goods having not been exported by the Noticee. Therefore, penalty under Section 114AA is not applicable in the present case. In this regard, the Noticee rely upon the case of ***Commissioner of Customs, Sea Chennai vs. Sri Krishna Sounds and Lightings, 2018 (7) TMI 867-CESTAT Chennai*** wherein penalty under Section 114AA was set aside on the ground that the transaction was in relation to imports and not a situation of paper transaction. Further, the wording of Section 114AA suggests that penalty under this section is imposable only on natural individuals and not on juristic entities. Such an inference comes out from the use of the expression *'if a person knowingly or intentionally makes, signs or uses'*. Only an individual can make or sign any declaration or statement. A company cannot do such an act on its own. In support of this argument, reliance is placed on the judgment of ***ITC Ltd. v Commissioner of Central Excise, Bangalore, 1998 (104) E.L.T. 151 (Tribunal)***. In this case, the Hon'ble Tribunal was dealing with Rule 52A(5)(c) of the Central Excise rules which read as follows:

> *"**If any person** -*
> ***(a) carries or transports excisable goods from a factory without a valid gate pass, or***
> *(b) while carrying or removing such goods from the factory does not on request by an officer, forthwith produce a valid gate pass, or*
> *(c) enters particulars in the gate pass which are, or which he has reason to believe to be false,*
> *he shall be liable to a penalty not exceeding one thousand rupees, and the excisable goods in respect of which the offence is committed shall be liable to confiscation."*

2.108. In the light of aforesaid provision, the question before the Hon'ble Tribunal was whether the term "person" included ITC or not. The Hon'ble Tribunal holding that the penalty was not imposable on ITC observed as follows:

> *"Thus we find the Board circular and trade notices do not help Revenue to establish that ITC was required to show the correct PP in G.P.1, delivery invoice etc. and had shown false PP in the said document. Hence Rule 52A(5)(c) of the Rules could not have been invoked against ITC.* ***Further, penalty under Rule 52A(5)(c) is on any***

person who enters false particulars in the gate pass. It appears that the sub-rule (5) (c) seeks to rope in individuals who are responsible for gate passes with false particulars and not the manufacturer as such, unless the manufacturer is an individual and has personally entered such false particulars in the gate pass. For these reasons, we hold that the penalties imposed on ITC under Rule 52A(5)(c) of the Rules are unsustainable.*"*

2.109. In the light of aforesaid decision, it is submitted that penalty under Section 114AA is imposable only on individuals, who actually makes or signs such forged documents and not on the company. Therefore, it is submitted that under Section 114AA penalty cannot be imposed on the Noticee. Further, the Noticee also place reliance on the following cases wherein it has been held that no penalty can be imposed under Section 114AA of the Act in absence of any mala fide on the part of the assessee:

- ***Parag Domestic Appliances vs. Commissioner of Customs, Cochin, 2017 (10) TMI 812-CESTAT Bangalore-***

  "20. The next point is imposition of penalty under Section 114AA on both the importers as well as Director of one of the importer. We note that while there is no contest regarding the imposition of penalty under Section 112(a) except for prayer to reduce the same, the imposition of penalty under Section 114AA is strongly contested. ***We note that the provisions of Section 114AA will apply in cases where 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. As discussed elaborately above, we find that there is no situation of any false document submitted by the importer or by the Director of the importer. As such, we find that the application of provisions of Section 114AA is not fully justified by the impugned order and accordingly, we set aside the penalties imposed under Section 114AA****."*

  (Emphasis Supplied)

- ***Premax Logistics vs. Commissioner of Customs, Chennai, 2017 (4) TMI 483-CESTAT Chennai-***

  "5.4 Nonetheless, nowhere in the notice or even in the impugned order has there been any attempt made to demolish the depositions of said Shri

Nagasundaram or Shri Suresh. Even more interestingly, in the entire impugned order spanning 16 pages in 31 paragraphs, there is just one (para-30), which even refers to the role of the Noticees. Even this para which has been relied by Ld. A.R comes to an abrupt conclusion without any discussions or findings, that the Noticees has committed acts of omission and commission and actively aided and abetted the main player. Having done this, adjudicating authority goes ahead to confirm the proposals made in the notice and inter alia impose the penalties appealed against. There is no reasoned analysis as to what was the part played by Noticees and how that has resulted in acts of 'omission and commission'. ***I do not find any basis for imposition of the penalty for the raison d'etre for the high quantum of the penalty imposed has also not been brought out. Viewed in this context, it is but obvious that the adjudicating authority has been unjudicious and peremptory in imposition of the impugned penalty under section 114AA, since, unless it is proved that the person to be penalized, has knowingly or intentionally implicated himself in use of false and incorrect materials, there can be no justification for penalty under that section. This requirement has not been satisfactorily met either in the notice or in the impugned order and hence I do not have any hesitation in setting aside the same****."*

(Emphasis Supplied)

2.110. In view of the above, it is submitted that since the present case neither involves fraudulent exports nor has there been any *mala fides* on the part of the Noticee, imposition of penalty under Section 114AA of the Act is not warranted and the same is liable to be dropped. In view of the above, the Noticee submits that the proposal in the Impugned Show Cause Notice to impose penalty under Section 114AA is incorrect and not sustainable.

PENALTY IS NOT IMPOSABLE UNDER SECTION 117 OF THE CUSTOMS ACT.

2.111. The Impugned Show Cause Notice also proposes to impose penalty on the Noticee under Section 117 of the Customs Act. Section 117 of the Act has been extracted below for ready reference:

*"**SECTION 117. Penalties for contravention, etc., not expressly mentioned.***

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which

it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees]."

2.112. Section 117 of the Act deals with the penalties not expressly mentioned under the Act. Any person who fails to comply with any provision of the Act, abets any such contravention or who fails to comply with any such provision with which it was his duty to comply and for which there is no express penalty mentioned under the Act, the said Section can be invoked. It is submitted that Section 117 is a residuary provision which is applied in cases of contravention of provisions of Customs Act, wherein no other provision for penalty is provided in the Act for such contravention. In the instant case, the Impugned Show Cause Notice has proposed to impose penalty under Sections 112, 114A, and 114AA on the Noticee alleging that their actions have rendered the imported goods liable for confiscation. Thus, no penalty can be imposed under 117. In the case of ***Commissioner of Customs & Central Excise, Ghaziabad v. M/s Ruby Impex, 2017 (1) TMI 869, the Hon'ble CESTAT, Allahabad***, while dealing with a matter wherein penalty had been imposed under both Section 112 as well as Section 117, it was held that Section 117 is residuary in nature and cannot be invoked where penalty under Section 112 has already been imposed. The relevant portion of the judgement has been extracted below:

"Having considered the contentions, we have carefully gone through the findings of Original Authority, which is available at Page 66 of impugned Order-in-Original, wherein the Original Authority has held that there is no evidence on record to justifying penalty under Section 112 and that the Officers have neither connived nor indulged in the fraudulent act and that the charges, made out against them, are not explicit and the only ground made out is that they ought to have examined the containers fully and discovered discrepancies. The Original Authority further held that the penal provisions, under Section 117 of Customs Act, 1962, is residuary in nature and can be invoked only in the situation when no express penalty is provided, elsewhere in the Customs Act. He further held that since the show-cause-notice proposed imposition of penalty under Section 112 of Customs Act, 1962 against the two Officers, the provisions of Section 117 of Customs Act, 1962 were not invokable. We find that above findings by Original

Authority are sustainable and, therefore, we reject the appeal filed by the Revenue in respect of prayer to impose penalty on Shri Devesh Pandey, Inspector and Shri S.C. Sahu, Superintendent. In respect of penalty imposed on M/s Ruby Impex, we find that there is no reason to interfere with the same. In view of above, we dismiss the Appeal filed by Revenue."

2.113. In the case of ***Sai Sea Logistics (I) P. Ltd. V. Commissioner of Customs (Import), Nhava Sheva, 2009 (246) ELT 543***, it was held that for a penalty under Section 117, there must be finding of contravention of some legal provision and, further, a finding to the effect that such contravention was not covered by any other penal provisions of the Act. It is submitted that in the instant case, since the Show Cause Notice has proposed to invoke penalty provisions under Sections 112, 114A and 114AA, imposition of penalty under Section 117 is not sustainable and is liable to be dropped. Therefore, the Impugned Show Cause Notice is incorrect in proposing to impose penalty under Section 117 of the Act.

INTEREST CANNOT BE DEMANDED WHERE THE DUTY DEMAND ITSELF IS NOT SUSTAINABLE.

2.114. The Impugned Show Cause Notice also proposes recovery of interest under Section 28AA of the Act. In this regard, it is respectfully submitted that the question of levy of interest arises only if the demand of duty is sustainable. As submitted in the foregoing paragraphs, the demand of duty is not sustainable, therefore, the question of levy of any interest under Section 28AA on such duty would not arise.

2.115. The Noticee M/s Technova Imaging Systems (P) Ltd. has made additional submissions vide letter dated 18.11.2025 wherein following submissions have been made:-

2.116. A legible copy of the CIPET Report is enclosed herewith. It is evident from the CIPET Report (relied upon by Department) that the imported goods do not have modulus of elasticity and tensile strength corresponding to flexible PET films. It appears that the Department has simply relied upon the physical examination of the imported goods to allege that they are flexible.

2.117. It is submitted that the Department has erred in relying upon the physical examination alone and ignoring the material analysis of the imported goods.

2.118. It is submitted that flexible PET film has modulus of elasticity less than 70MPa and

a) tensile strength of 30MPa, as can be seen from

b) Note 12 of Chapter 39 in the Central Excise Tariff, 1985;

c) Notification No. 68/71-C.E. dated 29.05.1971 as amended by Notification No. 198/78-CE dated 25.11.1978;

d) ISO 472-2013, ISO 527-1:2019 and Indian Standards 2828:2019, and

e) Opinion on imported goods by Professor (Dr.) S.T. Mhaske, Institute of Chemical Technology (ICT).

2.119. Whereas, even as per the CIPET Report no. 30381 dated 20.03.2024, the imported goods have a modulus of elasticity of 430.2 MPa and tensile strength of 57.3 MPa (Machine direction) 97,4 MPa (Transverse direction). Therefore, the imported goods cannot be reclassified as flexible PET film falling under Tariff item 3920 62 20.

DECISIONS ON VALIDITY OF CERTIFICATE OF ORIGIN IN CASE OF RECLASSIFICATION OF GOODS

2.120. The Noticee submits that they have classified the imported goods under Tariff Item 3920 62.90 and availed benefit of Sl. No. 4040 of Table-I to Notification No. 22/2022-Cus dated 30.04.2022 (India-UAE CEPA).

2.121. Without prejudice to the submission that the classification adopted by the Noticee is correct, it is submitted that even if the imported goods are classified as rigid PET film falling under Tariff Item 3920 62 10 considering their modulus of elasticity and tensile strength, they will be entitled to the benefit of Nil basic customs duty as per Sl. No. 4039 of Table-1 to Notification No. 22/2022-Cus dated 30.04.2022.

2.122. The Noticee submits that the change in classification of the imported goods will not render the Certificate of Origin invalid for the purposes of claiming the benefit of India-UAE CEPA. Therefore, the imported goods even if reclassified under another Tariff Item, shall be entitled to the benefit of India-UAE CEPA as it is already established that the imported goods comply with the rules of origin and have a valid Certificate of Origin for making such a claim.

a. L.G. Electronics India Private Limited vs. Commr. Of Cus. 2025 (9) TMI 1175 -

Supreme Court-Parus 16, 20 to 28;

b. Bagrecha Enterprises Ltd. vs. Commr. of Cus, Chennai 2024 (5) TMI 943-CESTAT CHENNAI - Para 13;

c. C. Float Glass Centre vs. Commr. of Cus., Chennai II Commissionerate-2024 (7) TMI 1685-CESTAT CHENNAI -Paras 14.1 to 14.3; and

d. Sheel Chand Agrolls Pvt Ltd, Mohan Goel, MD vs. Commr. of Cus. (Preventive), New Delhi-2016 (1) TMI 624-CESTAT NEW DELHI - Paras 5 to 6.

The above decisions are collectively enclosed herewith as Annexure-2.

2.123. The Noticee submits that the classification declared in the Certificate of Origin (Pg. 93 of the Reply to SCN) for the imported goods is Tariff Item 3920 62 00, i.e. the supplier's classification as per the UAE Tariff. The Noticee submits that there is no bifurcation in the UAE Tariff for rigid, flexible or other PET film and all PET films fall under Tariff Item 3920 62 00. Therefore, it is submitted that even if the imported goods are reclassified as rigid PET film falling under Tariff Item 3920 62 10, there will be no mismatch in the classification declared in the Certificate of Origin and such reclassified goods as the UAE Tariff Item 3920 62 00 covers all types of PET films viz. rigid, flexible or other PET film. Relevant portion of the UAE Tariff is enclosed herewith as Annexure-3.

SAMPLES OF FLEXIBLE FILM AND THE IMPORTED GOODS

2.124. Furthermore, the Noticee submits that the imported goods are different than flexible PET film covered under Tariff Item 3920 62 20. In this regard samples of flexible PET film and the imported goods are collectively enclosed herewith as Annexure-4.

2.125. In light of the above as well as the submissions made in the Reply dated 02.04.2025 and Synopsis filed on 12.11.2025 it is submitted that the proposal in the Impugned SCN to reclassify the imported goods as flexible PET films falling under Tariff Item 3920 62 20 is incorrect. In view of the sanse, the Noticee humbly prays that the Impugned SCN be dropped.

3. RECORD OF PERSONAL HEARINGS

3.1. Following the principal of natural justice and in terms of Section 28(8) read with

Section 122A of the Customs Act, 1962, the Noticees were granted opportunity for personal hearing (PH) on 13.11.2025 by the Adjudicating Authority which was attended by the Adv. Anjali Hirawat, Lakshmikumaran Sridharan Attorneys, Adv. Antara Bhide, Lakshmikumaran Sridharan Attorneys, Shri Anand N Mukhtyar, COO, Business operations, M/s Technova Imaging Systems (P) Ltd. and Shri Sanjay Ketkar, COO, DPM M/s Technova Imaging Systems (P) Ltd. During personal hearing following submissions were made:-

3.2. The Noticee has imported PET film and classified the imported goods under Tariff Item 39206290 and availed benefit of Sl. No. 4040 to Notification No. 22/2022-Cus issued under the India-UAE CEPA. The Department is of the view that the imported goods are flexible film falling under Tariff Item 39206220.

3.3. As seen from the definitions of rigid, flexible and semi-rigid plastic in ISO standards, IS Standards, Chapter Note 12 to Chapter 39 in the Central Excise Tariff and the Technical Opinion issued by ICT:

a. flexible plastic has tensile strength of 30MPA and modulus of elasticity of less than 70 MPA;
b. rigid plastic has tensile strength of greater than 70MPA and modulus of elasticity of greater than 700 MP; and
c. other plastic / semi-rigid plastic has tensile strength between 30MPA to 70MPA and modulus of elasticity between 70MPA and 700MPA.

3.4. As per Technical data sheet of the imported goods, Supplier's Certificate of Analysis, CIPET Test report obtained by the Department, BTRA test reports and ICT opinion, the imported goods are not flexible plastic as they do not have values of flexible plastic (they do not have tensile strength of 30MPA and modulus of elasticity of less than 70 MPA).

3.5. Further, similar goods have been imported by the Noticee from Malaysia and Japan under Tariff Item 39206290 without any objection from Customs. The same classification is also being followed by other importers importing identical goods from the very same supplier in the present case.

3.6. The goods manufactured by Dupont, i.e. Mylar film, is described as flexible in the product data sheet however, even as per the technical values, it cannot be considered as flexible film. Thus, this cannot be relied upon for reclassification of the imported goods.

3.7. The Show Cause Notice has relied upon statement of Mr. Sanjay, COO of the Noticee,

to state that the Noticee has admitted that the imported goods are flexible. However, in the statement Mr. Sanjay has clarified that though the imported goods can be bent and can be "flexible" as per definition in Oxford definition, the imported goods cannot be classified as flexible as per the technical properties.

3.8. All documents, including certificate of analysis, were submitted at the time of import and there is no misdeclaration in the Bills of Entry. Further, the Noticee has imported identical goods under the same classification since 2011. Moreover, the present issue relates to classification which is a matter of legal interpretation. Therefore, there is no suppression of facts in the present case and extended period of limitation cannot be invoked under Section 28(4). Similarly, in the absence of misdeclaration, no confiscation of goods is sustainable under Section 111(m).

3.9. Consequently, no redemption fine and penalty is imposable in the present case.

3.10. In view of the above, it is prayed that the Show Cause Notice is dropped.

3. DISCUSSION AND FINDINGS

4.1. I have carefully gone through the Show Cause Notice, material on record and facts of the case, as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

4.2. The adjudicating authority has to take the views/objections of the noticee on board and consider before passing the order. In the instant case, the personal hearing was granted to the noticee's on 13.11.2025 by the Adjudicating Authority which was attended by Adv. Anjali Hirawat, Lakshmikumaran Sridharan Attorneys, Adv. Antara Bhide, Lakshmikumaran Sridharan Attorneys, Shri Anand N Mukhtyar, COO, Business operations, M/s Technova Imaging Systems (P) Ltd. and Shri Sanjay Ketkar, COO, DPM M/s Technova Imaging Systems (P) Ltd. The recordings of the personal hearing are placed in para 3 of this order.

4.3. I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for

Personal Hearing (PH) were granted to the Noticee. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the Show Cause Notice as well as the submissions / contentions made by the Noticee.

4.4. The present proceedings emanate from Show Cause Notice No. 1514/2024-25/Commr./Gr. IIG/NS-I/CAC/JNCH dated 23.12.2024 issued to M/s. Technova Imaging Systems (P) Ltd. alleging wrongful classification of PET films imported by the Noticee M/s Technova Imaging Systems (P) Limited. The impugned Show Cause Notice alleges that the Noticee M/s Technova Imaging Systems (P) Limited inappropriately classified the imported goods viz. PET films under CTH 3920 6290 while importing the goods from M/s. JBF Bahrain WLL / JBF RAK LLC and took undue benefit of Sl. No. 4040 of Notification No. 22/2022 - Customs dated 30.04.2022 by not paying BCD. As per the Show Cause Notice, the correct classification of the impugned goods is 3920 6220 where BCD is liable to be paid @ 10% and accordingly, differential duty amounting to Rs. 1,69,80,775 is recoverable under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. The Show Cause Notice further proposes holding the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and seeks imposition of penalties upon M/s. Technova Imaging Systems (P) Ltd. under Sections 112(a) and/or 114A and/or 114AA and 117 of the Customs Act, 1962.

4.5. I find that the Noticee M/s Technova Imaging Systems (P) Limited , has contended that the imported goods PET film are rightly classified under CTH 39216290 and the availed benefit of Sl. No. 4040 to Notification No. 22/2022-Cus issued under the India-UAE CEPA is also rightful; that as per the definitions of rigid, flexible and semi-rigid plastic in ISO standards, IS Standards, Chapter Note 12 to Chapter 39 in the Central Excise Tariff and the Technical Opinion issued by ICT, the imported goods are not flexible; that as per Technical data sheet of the imported goods, Supplier's Certificate of Analysis, CIPET Test report obtained by the Department, BTRA test reports and ICT opinion, the imported goods are not flexible plastic as they do not have values of flexible plastic (they do not have tensile strength of 30MPA and modulus of elasticity of less than 70 MPA); that similar goods have been imported by them from Malaysia and Japan under Tariff Item 39206290 without any

objection from Customs and the same classification is also being followed by other importers importing identical goods from the very same supplier in the present case; that the Show Cause Notice has relied upon statement of Mr. Sanjay, COO of the Noticee, to state that the Noticee has admitted that the imported goods are flexible. However, in the statement Mr. Sanjay has clarified that though the imported goods can be bent and can be "flexible" as per definition in Oxford definition, the imported goods cannot be classified as flexible as per the technical properties; that all documents, including certificate of analysis, were submitted at the time of import and there is no misdeclaration in the Bills of Entry; that, the Noticee M/s Technova Imaging Systems (P) Limited has imported identical goods under the same classification since 2011; that the present issue relates to classification which is a matter of legal interpretation and therefore, there is no suppression of facts in the present case and extended period of limitation cannot be invoked under Section 28(4); that in the absence of misdeclaration, no confiscation of goods is sustainable under Section 111(m); that consequently, no redemption fine and penalty is imposable in the present case.

4.6. I have carefully gone through the records of the case, the allegations made in the Show Cause Notice, and the written and oral submissions made by the Noticee M/s Technova Imaging Systems (P) Limited. I find that the following main issues arise for determination in this case:

i. Whether or not, the imported goods PET films are classifiable under Customs Tariff Item 3920 6290 as claimed by the Noticee M/s Technova Imaging Systems (P) Limited or Customs Tariff Item 3920 6220 as alleged in the Show Cause Notice.

ii. Whether or not, duty amounting to Rs. 1,69,80,775/- (Rupees One Crore Sixty-Nine Lakhs Eighty Thousand Seven Hundred Seventy-Five only) should be demanded from Noticee M/s Technova Imaging Systems (P) Limited under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Customs Act, 1962

iii. Whether or not, the goods valued at Rs. 13,08,22,618/- (Rupees Thirteen Crores Eight Lakhs Twenty-Two Thousand Six Hundred Eighteen only) imported by Noticee M/s Technova Imaging Systems (P) Limited under CTH 3920 6290 should be held liable

for confiscation under Section 111(m) of the Customs Act, 1962;

iv. Whether or not, penalty should be imposed on Noticee M/s Technova Imaging Systems (P) Limited under Section 112 and /or 114A and/ or 114AA and 117 of the Customs Act, 1962;

4.7. After having framed the substantive issues raised in the Show Cause Notice which are required to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the Show Cause Notice; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticee's oral and written submissions and documents / evidences available on record.

Whether or not, the imported goods PET films are classifiable under Customs Tariff Item 3920 6290 as claimed by the Noticee M/s Technova Imaging Systems (P) Limited or Customs Tariff Item 3920 6220 as alleged in the Show Cause Notice.

4.8. I find that the contending classifications of imported goods in the Show Cause Notice are either under 32906220 or 32906290. Thus, it is clear that at the Chapter, Heading and Sub-heading level i.e. Chapter 39, Heading 3920 and Sub-heading 329062 level, there is no difference of opinion between the Noticee M/s Technova Imaging Systems (P) Limited and the department. The dispute lies in the narrow compass of classification at the 8-digit Tariff Item level. Now, I shall closely examine the scope of the contending 8-digit Tariff Items thereof for determining correct classification of the imported goods. The relevant tariff entries are extracted as below:

3920	OTHER PLATES, SHEETS, FILM, FOIL AND STRIP, OF PLASTICS, NON-CELLULAR AND NOT REINFORCED, LAMINATED, SUPPORTED OR SIMILARLY COMBINED WITH OTHER MATERIALS
3920 62	-- Of poly (ethylene terephthalate):
3920 6210	--- Rigid, plain
3920 6220	**--- Flexible, plain**
3920 6290	**--- Other**

On perusal of the above, I find that that the Noticee M/s Technova Imaging Systems (P) Limited has classified the impugned goods i.e. PET films under CTH 39206290 which is a residual entry whereas the department wants the goods to be classified under CTH 39206220 which is for flexible and plain. From the submission of the Noticee M/s Technova Imaging Systems (P) Limited and the contents of the Show Cause Notice, I find that there is no dispute to the fact that the goods are plain. The only dispute which exists is regarding the flexibility of the impugned goods. The department has categorized the impugned goods as flexible based on the fact that the goods were imported in rolls and the CIPET test reports of the impugned goods. Whereas, the Noticee M/s Technova Imaging Systems (P) Limited have claimed that the goods are other than flexible based on technical parameters mentioned in the Central Excise Tariff and ISO standards for plastics.

4.9. I find that in cases of classification disputes the relevant chapter notes, explanatory notes, sections notes provide guidance which prove helpful in resolving the disputes. However, I find that in the instant case, no definition of flexibility or rigidity has been provided in the said notes. It is a well settled position in customs cases that if a definition is not provided in the relevant statute then dictionary meanings can be referred to. However, this is not the sole basis for interpretation and must be used in conjunction with common parlance or trade parlance. The Oxford Dictionary defines "flexible" to mean capable of being bent, admitting of change in figure without breaking and yielding to pressure, pliable, pli-ant and "rigid" to mean stiff, unyielding, not pliant or flexible, firm, hard. Applying these definitions, I find that an article which is not capable of being bent is rigid and an article which is capable of being bent is flexible. For example, a pencil is rigid because if it is sought to be bent it breaks. Paper is capable of being bent; it is flexible. A rubber eraser is capable of being bent slightly; it is flexible.

4.10. I find that there is no denying the fact that the goods have been imported in rolls. This means that the imported plastic films do not get damaged and maintain their integrity when curved while forming rolls otherwise the importer would not import the goods in roll form. This proves that the impugned goods have inherent property of flexibility which enables them to form rolls without getting damaged. I find that during his statement recorded under Section 108 of the Customs Act, 1962 on 29.04.2024, Shri Sanjay Bhaskar Ketkar,

COO (Digital Print Media), M/s Technova Imaging Systems (P) Limited has stated that the films were capable of being bent and that they are flexible as per the dictionary meaning of the word flexible. However, Shri Sanjay Bhaskar Ketkar also stated that as per technical parameters which were available in the Product description itself and as per the definition available in Central Excise Tariff they should not be classified as flexible. Therefore, as far as physical characteristics of the goods and dictionary meaning of word *flexible* are concerned, there is no dispute that the goods are flexible.

4.11. I find that during investigation of the instant case, the investigating agency in order to understand commercial parlance i.e. how the PET Films are being regarded by the industry, a sample product information of Mylar polyester films from Dupont Teijin films company (a popular name in PET film industry), which is a similar product to the impugned goods, was found out on internet. The product information mentioned the films as flexible. I find that this fact was put across Shri Sanjay Bhaskar Ketkar, COO (Digital Print Media), M/s Technova Imaging Systems (P) Limited during his statement recorded under Section 108 of the Customs Act, 1962. However, I find that he did not give any satisfactory reply in context of commercial parlance and instead reiterated that the films may be flexible on physical appearance but as per technical parameters which were available in the Product description itself and as per the definition available in Central Excise Tariff they should not be classified as flexible. I find that in their written submissions the Noticee M/s Technova Imaging Systems (P) Limited have stated that 'Mylar polyester film' manufactured by DuPont Tejin Film is not flexible PET film as per its properties and the imported goods cannot be classified under Tariff Item 3920 62 20 only due to the word 'flexible' being used in the product information of the said product. I find that the whole point of referring to 'Mylar polyester film' manufactured by DuPont Tejin Film, was to find that how they view their product. It is an undisputed fact that the word flexible has been used by them to describe their product and if DuPont Tejin Film are themselves terming their product as flexible, then Noticee M/s Technova Imaging Systems (P) Limited should not question the same. Therefore, I do not find merit in the contention of the Noticee M/s Technova Imaging Systems (P) Limited regarding reference to DuPont Tejin Film and I find that in commercial parlance also the impugned goods are considered flexible.

4.12. After having found out the impugned goods viz. plastic films imported by the Noticee are flexible as per dictionary meaning and commercial parlance, I now address the

contention of the Noticee M/s Technova Imaging Systems (P) Limited that the impugned goods are other than flexible based on technical parameters mentioned in the Central Excise Tariff and ISO standards for plastics. I find that the Noticee M/s Technova Imaging Systems (P) Limited has referred to the Notification No. 68/71-C.E. dated 29.05.1971 as amended by Notification No. 198/78-CE dated 25.11.1978 which provided exemption for articles made of plastic falling under Item No. 15A of the Central Excise Tariff of India. Notification No. 68/71-C.E., dated 29.05.1971 as amended by Notification No. 198/78-CE is extracted below for ready reference:

> "*Exemption to articles made of plastic. -- In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts articles made of plastics, all sorts, falling under sub-item (2) of Item 15A of the First Schedule to the Central Excises and Salt Act. 1944 (1 of 1944) except –*
>
> *i. rigi d plastic boards, sheetings, sheets and films, whether or not; and*
>
> *ii. flex ible polyvinyl chloride sheetings, sheets, films and lay-flat tubings not containing and textile material, from the whole of the duty of excise leviable thereon;*
>
> *from the whole of the duty of excise leviable thereon :*
>
> *Provided that –*
>
> *(a)such articles are produced out of the artificial resins and plastic materials or cellulose esters and others in any form falling under sub-item (1) of the said item, on which the duty of excise of the additional duty under Section 2A of the Indian Tariff Act, 1934 (32 of 1934) as the case may be, has already been paid; or*
>
> *(b)such articles are produced out of scrap of plastics.*
>
> *Explanation :-*
>
> *For the purpose of this notification -*
>
> *i. the expression "flexible" in relation to an article made of plastic, means the article which has a modulus of elasticity either in flexure or in tension of not over 700 kilograms per square centimetre at 23 degree centigrade and 50*

percent relative humidity when tested in accordance with the method of test for stiffness of plastics (ASTMO Designation D-474-63), for flexural properties of plastics (ASTM Designation D-790-63), for Tensile properties of plastics (ASTM Designation D-638-63-T) or for Tensile Properties of Thin Plastic Sheeting (ASTM Designation D-882-64-T).

ii. the expression "rigid" in relation to an article made of plastic, means all articles other than "flexible" articles as defined in clause (i).”

4.13. Without going on the merits of the contention of the Noticee M/s Technova Imaging Systems (P) Limited, I find that Hon’ble Bombay High Court in its order dated 21.08.1987 involving M/s Mechanical Packing Industries Pvt. Ltd. Vs Union of India & Other held that the Government's notification defining "rigid" and "flexible" plastics for the purpose of excise exemption was invalid as it exceeded the delegated powers under the Central Excise Rules and usurped legislative classification authority.

4.14. Furthermore, I find that the Noticee M/s Technova Imaging Systems (P) Limited has also referred to Note 12 of Chapter 39 in the Central Excise Tariff, 1985 which also provided for the same definitions of ‘flexible’ and ‘rigid’ as mentioned above. Relevant portion of the Note to Chapter 39 is extracted below for ready reference:

“CHAPTER 39

Plastics and articles thereof

Notes:

*****

12. In headings 3920 and 3921, the expression "flexible" means an article which has a modulus of elasticity either in flexure or in tension of not over 700 kilograms per square centimeter at 23°C and 50 per cent relative humidity when tested in accordance with the method of test for stiffness of plastics (ASTM Designation D-747-63), for flexural properties of plastics (ASTM Designation D-790-63), for tensile properties of plastics (ASTM Designation D-638-64T), or for tensile properties of thin plastic sheeting (ASTM Designation D-882-64T) and "rigid" means all articles other than 'flexible' as

defined above…"

4.15. I find that the Noticee M/s Technova Imaging Systems (P) Limited wants to convey that an article is "flexible" when its modulus of elasticity either in flexure or in tension of not over 700 kilograms per square centimetre at 23°C and 50 per cent relative humidity as per Central Excise Notification and Note 12 of Chapter 39 in the Central Excise Tariff, 1985. I find this contention was raised by the Noticee M/s Technova Imaging Systems (P) Limited before the investigating agency also. However, same was not considered as it was believed that Central Excise Tariff does not hold relevance for the relevant period (2022 to 2024) i.e. during the period Post GST implementation particularly when the similar definition was not provided for in the Customs Tariff. However, even if the definition given in the Central Excise Notification and Note 12 of Chapter 39 in the Central Excise Tariff is relied upon, then also the impugned goods do not pass the test of being rigid. This is because of the fact that **for being flexible, modulus of elasticity either in flexure or in tension must not be over 700 kilograms per square centimetre** at 23°C and 50 per cent relative humidity. Therefore, as a corollary, for an article to be termed as rigid, modulus of elasticity must be more than 700 Kilograms /cm^2 in both flexure and tension. If even one of the measurements is below 700 Kgs/cm^2, then the article will automatically come under the definition of flexible as per Central Excise Notification and Note 12 of Chapter 39 in the Central Excise Tariff, 1985.

4.16. Furthermore, I find that the Noticee has referred to ISO Standards published by International Organization for Standardization wherein criteria have been defined in ISO 472:2013 Plastics — Vocabulary for rigid, semi-rigid and non-rigid plastic:

a. **Rigid plastic** – plastic that has a modulus of elasticity in flexure or if that is not applicable, in tension, greater than 700 MPa.

b. **Semi-rigid plastic** – plastic that has a modulus of elasticity in flexure or if that is not applicable, in tension, between 70 MPa and 700 MPa.

c. **Non-rigid plastic** - plastic that has a modulus of elasticity in flexure or if that is not applicable, in tension, not greater than 70 MPa.

4.17. I find that in both Central Excise Tariff and ISO standard for plastics, two modes have been mentioned i.e. Flexure and tension. In tensile mode, the material is pulled apart by forces acting axially (along its length) and flexure mode, the force is applied perpendicular to the length of the specimen, causing it to bend. The test reports produced by the Noticee M/s Technova Imaging Systems (P) Limited, modulus of elasticity has been provided in one mode only and not in both the modes. And since, import of impugned goods in rolls has been highlighted in the subject Show Cause Notice, therefore, modulus of elasticity in flexure mode. i.e. the force is applied perpendicular to the length of the specimen, becomes more important of the two. Therefore, I find that the argument regarding flexibility without specifically mentioning values of modulus of elasticity in both the flexure and tensile mode, automatically becomes devoid of merit and fit for rejection.

4.18. I find that when the Noticee M/s Technova Imaging Systems (P) Limited imported PET films vide Bill of Entry 2275576 dated 23.02.2024 at INNSA1(Nhava Sheva), the samples were drawn and were sent for testing by the port authorities to the Central Institute of Petrochemicals Engineering & Technology (CIPET), Aurangabad. CIPET, Aurangabad in their test reports Nos. 30380-30385 all dated 01.03.2024 have concluded that the PET films to be flexible and plain.

Since the issue involved is technical in nature, therefore as a precautionary measure, an email was sent to CIPET, Aurangabad to confirm whether the impugned goods viz. PET Films in context of Test Report No. 30385 dated 01.03.2024 issued by them, were flexible in nature in view of the technical points raised by the Noticee M/s Technova Imaging Systems (P) Limited in their written submissions. CIPET, Aurangabad in their reply vide email dated 16.12.2025 have categorically replied **"Yes, goods fall under the flexible category according to the definition provided by Central Excise Tariff Notification No. 198/78 dated 25.11.78."**

4.19. I find that when a Government Testing Agency issues a test report, it should be accepted by all as it is fair and unbiased. However, in the instant case the Noticee M/s Technova Imaging Systems (P) Limited has not accepted the conclusions drawn by the CIPET, Aurangabad based on their own interpretation, which is not correct in my view. I

find that the such instances of putting question mark on Test reports issued by Government Organizations, have been appropriately dealt with by Higher Appellate forums. The Hon'ble Supreme Court in the case of Reliance Cellulose Products Ltd. Vs CCE, Hyderabad reported in 1997 (93) E.L.T. 646 (S.C.) held that

> "*It has not been shown that the Chemical Examiner or the Chief Chemist were in error in their analysis in any way. The views expressed by the Chief Examiner and Chief Chemist of the Government cannot be lightly brushed aside on the basis of opinion of some private individuals".*

In a very recent case also, the Hon'ble CESTAT, Hyderabad in the case of Steer Overseas Pvt. Ltd. Vs. Commissioner of Customs, Vijayawada has held as under:

> *"6. Needless to emphasize the samples drawn by the department had been in accordance with the procedure prescribed under the Customs Act and the Rules made thereunder; also in the presence of both the parties i.e., department as well as the representative of the appellant, whereas the samples drawn by the appellant and tested in private laboratory was without the knowledge or presence of the departmental officer. Hence, test report of the said samples in our opinion cannot be relied upon against the test report of the Government laboratories. In the result, the impugned order is upheld and the appeal being devoid of merits, accordingly, dismissed."*

4.20. Furthermore, I find that Hon'ble Bombay High Court's in the case of Mechanical Packing Industries Pvt. Limited V/s C.L. Nangia and Others (Case No: Miscellaneous Petition No. 1005 of 1974) (1979) 02 BOM CK 0005, has dealt with a similar issue. In the said case, the Petitioners Mechanical Packing Industries Pvt. Limited were asked to show cause why they should not be charged to excise under the provisions of Item No. 15-A(2) on the basis that the articles they manufactured were rigid plastic sheets which were excepted from exemption by the Exemption Notification. The Petitioner Mechanical Packing Industries Pvt. Limited contended that their goods were flexible and not rigid**. Hon'ble Bombay High Court found the goods to be flexible on the basis of dictionary meaning of the word flexible and rigid and on the basis of the fact that goods were able to bend**. Even though a trade Notice defining rigid and flexible having identical specifications do existed at the relevant time which

stated "*plastic boards, sheeting, sheets, films which have an elasticity of not over 700 kilograms per square centimeter at 233 Centigrade and 50% relative humidity when tested in accordance with the method of test for stiffness of plastics as laid down in A.S.T.M. (D-47) should be treated as "non-rigid or flexible". All other plastic boards, sheetings, sheets and films which have an elasticity of over 700 kilograms per square centimeter at 23 Centigrade and 50% relative humidity should be treated as "rigid".*"

Relevant portion of Hon'ble Bombay High Court Order is reproduced below:-

> *7. Mr. Dalal fairly agreed that, as the law stands, the Exemption Notification must be construed liberally but without doing violence to the language thereof. He contended that the word "rigid" in the Exemption Notification should be construed in the same manner as the word "rigid" in Entry No. 15-A(2), that is, meaning "not flexible". For the purposes of this judgment, I shall assume that the ASTM classification should not be applied and that plastic sheets should only be classified as "rigid" or "flexible". In the absence of statutory definitions, the authorities were obliged to ascertain whether the petitioners' articles were "rigid" or "flexible" according to the ordinary or dictionary meanings of these words. The Oxford Dictionary (Compact Edition) 1971 defines "rigid" to mean stiff, unyielding, not pliant or flexible, firm, hard. It defines "flexible" to mean capable of being bent, admitting of change in figure without breaking and yielding to pressure, pliable, pliant. Applying these definitions, as article which is not capable of being bent is rigid; an article which is capable of being bent is flexible. The concept of the word "flexible" does. A pencil is rigid because if it is sought to be bent it breaks. Paper is capable of being bent; it is flexible. A rubber eraser is capable of being bent slightly; it is flexible.*
>
> 7. *It is admitted position that the Petitioners' articles are capable of being bent. That being so, they are flexible not rigid. The 1st Respondent must, therefore, be held to have been in error when he held that, because the petitioners admitted that their articles were "semi-rigid", the articles had to be classified as "rigid" and falling outside the purview of the Exemption Notification.*

4.21. Therefore, taking guidance from the Hon'ble Bombay High Court order discussed above, I find that based on dictionary meaning of words flexible & rigid, commercial parlance, and CIPET test report, the impugned goods i.e. Polyethylene Terephthalate (PET) films imported by the Noticee M/s Technova Imaging Systems (P) Limited from the foreign supplier M/s. JBF Bahrain WLL / JBF RAK LLC are flexible in nature and therefore, merit classification under CTH 3920 6220.

Whether or not, duty amounting to Rs. 1,69,80,775/- (Rupees One Crore Sixty-Nine Lakhs Eighty Thousand Seven Hundred Seventy-Five only) under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 should be demanded from Noticee M/s Technova Imaging Systems (P) Limited;

4.22. Now that, it has been established that the imported goods Polyethylene Terephthalate (PET) films have been mis-classified under CTI 3920 6290 instead of correct CTI 3920 6220. This mis-classification has resulted in short-payment of duty amounting to Rs. 1,69,80,775 /-. I find that, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (Issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre), a Bill of Entry number was generated by the Indian Customs Electronic Data Interchange System for the said declaration. Despite the added responsibility entrusted on the Noticee M/s Technova Imaging Systems (P) Limited by virtue of the self-assessment, they still resorted to mis-classification deliberately with the intention to evade payment of Customs duty. I also find that even though the Noticee M/s Technova Imaging Systems (P) Limited had subscribed to a declaration as to the truthfulness of the contents of

the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962, in all their import declarations, still they failed to make true declaration in respect of the classification of the impugned goods in the Bills of Entry and associated documents.

4.23. I find that impugned goods i.e. PET films were largely imported in the form of rolls which indicates the flexible nature of the goods. Furthermore, the test certificate submitted at the time of imports does not certify the flexibility or rigidity of the goods which is a very important parameter which qualifies the product for availing exemption under Sl. No. 4040 of Notification No. 22/2022 - Customs dated 30.04.2022. I also find that even though the Noticee M/s Technova Imaging Systems (P) Limited argued the goods to be rigid and plain but however still classified them under "others" category. I find this to be a deliberate act on part of the Noticee in order to avail undue benefit of duty exemption. The true nature of the impugned goods was revealed only after the testing of the impugned goods by CIPET. Therefore, I find that that the Noticee M/s Technova Imaging Systems (P) Limited intentionally suppressed the facts of exact nature of goods and disguised the flexible PET films as others. Therefore, in view of the foregoing, I find that, due to deliberate misclassification of the goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

(a) 2013(294) E.L.T.222 (Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635-636/2008]

In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified

(b) 2013(290) E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, wilful misstatement, etc., rejected as it would lead to strange and anomalous results;

(c) 2005 (191) E.L.T. 1051 (Tri. - Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

Demand - Limitation - Blind belief cannot be a substitute for bona fide belief - Section 11A of Central Excise Act, 1944. [para 5]

(d) 2006 (198) E.L.T. 275 - Interscape v. CCE, Mumbai-I.

It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;

4.24. Further, the noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. In this regard, the ratio laid down by Hon'ble Supreme Court in the case of CCE, Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)] wherein the Apex Court has upheld the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that

"....It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilfull mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty", under the scheme of the four Sections

(11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons."

4.25. Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case. In view of the facts and findings in above paras, I hold that total differential duty of Rs. 1,69,80,775 /- should be demanded under Section 28 (4) of the Customs Act, 1962 and the same should be recovered from the Noticee M/s Technova Imaging Systems (P) Limited along with applicable interest in terms of section 28AA of the Customs Act, 1962 as proposed in the Show Cause Notice.

Whether or not, the goods valued at Rs. 13,08,22,618/- (Rupees Thirteen Crores Eight Lakhs Twenty-Two Thousand Six Hundred Eighteen only) imported by Noticee M/s Technova Imaging Systems (P) Limited under CTH 3920 6290 should be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

4.26. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the classification of the goods while being presented before the Customs. I find that the Show Cause Notice proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of this Section of the Act, are re-produced herein below:

"*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 or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

I find that the Noticee M/s Technova Imaging Systems (P) Limited imported the goods by misclassifying them with intent to avail the benefit of Sl. No. 4040 of Notification No. 22/2022 - Customs dated 30.04.2022 for which they were not entitled. I find that the instant case, the actual Classification of the goods was CTI 3920 6220, whereas the classification

declared in Bills of Entry filed for the import of the impugned goods was CTI 3920 6290. Therefore, the impugned goods did not correspond to the classification made in the Bill of Entry filed for importing the impugned goods. Therefore, I find that the provisions of Section 111(m) of the Customs Act, 1962 have been rightly invoked.

4.27. In view of the intentional misclassification of the imported goods, I find that the goods as detailed in Annexure-B to the Show Cause Notice, having assessable value of Rs. 13,08,22,618/- (Rupees Thirteen Crores Eight Lakhs Twenty-Two Thousand Six Hundred Eighteen only) are liable for confiscation under Section 111(m) of the Customs Act, 1962, as goods have been mis-classified in these Bills of Entry. Further the goods imported vide Bills of Entry are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment :

> *"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their*

physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

I further find that the above view of Hon’ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon’ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.). I also find that the decision of Hon’ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon’ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

In view of the above, I find that the decision of Hon’ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon’ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits imposition of Redemption Fine, regardless of physical availability, once the goods are held liable for confiscation.

4.28. I find the Noticee has contended that mere classification of the imported goods, which is not acceptable to the Department does not render them liable for confiscation under Section 111(m) in light of the Apex Court judgment in the case of Northern Plastic Ltd. vs. Collector of Customs & Central Excise, 1998 (101) E.L.T. 549 (S.C.). I find that in the instant case, the Noticee M/s Technova Imaging Systems (P) Limited has not only engaged itself in mis-declaration but also hid the crucial parameter regarding flexibility/ rigidity in the test certificate submitted at the time of imports which was a crucial parameter for determining eligibility for availing benefit of Sl. No. 4040 of Notification No. 22/2022 - Customs dated 30.04.2022. This amounts to supression of fact with the ill intention to evade payment of customs duty. Therefore, this case is not about mere classification of the impugned goods based on bonafide belief but rather a deliberate attempt to evade customs duty be employing mis-classification and suppression of crucial facts. Therefore, I find that

the contention of the Noticee does not stand on its legs and liable to be rejected.

Whether or not, penalty should be imposed on Noticee M/s Technova Imaging Systems (P) Limited under Section 112 and /or 114A and/ or 114AA and 117 of the Customs Act, 1962;

4.29. It is a settled law that fraud and justice never dwell together (Frauset Jus nunquam cohabitant). Lord Denning had observed that "no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything". There are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon'ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

> *"31. ''Fraud'' as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors. [2003 (8) SCC 319].*
>
> *32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi*

extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi reported in 2014(307) ELT 160(Tri. Del). In Samsung case, Hon'ble Tribunal held as under.

"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: S.P. Changalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh

Vanaspati Ltd. - 1996 (86)E.L.T. 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC I : AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."

4.30. I find that in the instant case, the impugned imports under the ambit of the

subject Show Cause Notice were affected in the name of M/s Technova Imaging Systems (P) Limited. I note that the importer had mis-classified the goods in the Bills of Entry as listed in Annexure B to the Show Cause Notice with intention to evade the Customs Duty for the imported goods. In view of the provisions discussed above, I find that the correct applicable duty had not been levied by reasons of collusion, willful mis-statement and suppression of facts. Accordingly, I hold that M/s Technova Imaging Systems (P) Limited is liable to penalty under Section 114A of the Customs Act, 1962 in respect of Bills of Entry as mentioned in Annexure-B. However, in view of fifth proviso to Section 114A, no penalty is liable to be imposed on M/s Technova Imaging Systems (P) Limited under Section 112 ibid, of the Customs Act, 1962.

4.31. With regard to Section 114 AA of the Customs Act, I observe that, The Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

> *28. As far as the penalty under Section 114AA is concerned, it is imposable 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. We find that the appellant has mis declared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.*

4.32. There are several judicial decisions in which penalty on Companies under section 114AA of the Customs Act, 1962 has been upheld. Following decisions are relied upon on the issue, -

i. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
ii. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)
iii. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

4.33. I find that it has already been established that M/s Technova Imaging Systems (P) Limited has willfully engaged themselves in misclassification in order to evade higher rate of duty. They have knowingly and willfully made a false declaration regarding the classification of the imported goods in the Bills of Entry with an intent to evade customs duty. Such conduct amounts to knowingly or intentionally making, signing, or using, or causing to be used, a false declaration, statement, or document in the transaction of any business relating to the Customs. Therefore, the provisions of Section 114AA of the Customs Act, 1962 squarely apply to the importer, warranting imposition of penalty commensurate with the gravity of the offence.

4.34. I find that penalty under Section 117 of the Customs Act, 1962 has also been proposed on the Noticee M/s Technova Imaging Systems (P) Limited. Section 117 of the Act has been extracted below for ready reference:

> *"**SECTION 117. Penalties for contravention, etc., not expressly mentioned.** Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees]."*

4.35. I find that Section 117 of the Customs Act, 1962 applies where the penalties have not been mentioned expressly under the Act. It can be invoked where any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure.

4.36. I find that in para 19 of the Show Cause Notice, reasons for invoking Section 117 of the Customs Act, 1962 against the Noticee M/s Technova Imaging Systems (P) Limited have been spelt out which include mis-classification, contravention of Section 17, Section 46(4) and Section 46(4A) of the Customs Act, 1962 by not furnishing true and correct particulars of the imported goods during assessment. I find that these facts have already been exhausted for establishing wilful mis-statement and supression of facts in order to impose penalty under Section 114A of the Customs Act, 1962. Therefore, the same cannot be utilized again for

invoking Section 117 since for those actions penalty already imposed under Section 114A. No other argument/evidence has been provided in the Show Cause Notice for invoking Section 117 of the Customs Act, 1962. Therefore, for this reason, I agree with the contention of the Noticee M/s Technova Imaging Systems (P) Limited that penalty under Section 117 of the Customs Act, 1962 cannot be invoked in the instant case. I also find that the case laws of ***Commissioner of Customs & Central Excise, Ghaziabad v. M/s Ruby Impex, 2017 (1) TMI 869, the Hon'ble CESTAT, Allahabad***, and ***Sai Sea Logistics (I) P. Ltd. V. Commissioner of Customs (Import), Nhava Sheva, 2009 (246) ELT 543***, have been rightly cited by the Noticee M/s Technova Imaging Systems (P) Limited. Therefore, I refrain from imposing separate penalty under Section 117 of the Customs Act, 1962.

5. In view of the above, I pass the following order: -

ORDER

i. I order reclassification of the subject imported goods from Customs Tariff Item 3920 6290 to Customs Tariff Item 3920 6220;

ii. I order demand and recovery of duty amounting to Rs. 1,69,80,775/- (Rupees One Crore Sixty-Nine Lakh Eighty Thousand Seven Hundred Seventy-Five only) as detailed in Annexure-B to the Show Cause Notice, from M/s Technova Imaging Systems (P) Limited under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

iii. I order confiscation of the goods valued at Rs. 13,08,22,618/- (Rupees Thirteen Crore Eight Lakh Twenty-Two Thousand Six Hundred Eighteen only) as detailed in Annexure-B to the Show Cause Notice, under Section 111(m) of the Customs Act, 1962 even though the goods are not physically available. However, in lieu of confiscation, I impose a redemption fine of Rs. 65,00,000/- (Rupees Sixty-Five Lakh only) on M/s. Technova Imaging Systems (P) Limited under Section 125(1) of the Customs Act, 1962.

iv. I order imposition of penalty of Rs. 1,69,80,775/- (Rupees One Crore Sixty-Nine Lakh Eighty Thousand Seven Hundred Seventy-Five only) on M/s Technova Imaging Systems (P) Limited under Section 114A of the Customs Act, 1962;

v. I order imposition of penalty of Rs. 17,00,000/- (Rupees Seventeen Lakh only) on M/s Technova Imaging Systems (P) Limited under Section 114AA of the Customs Act, 1962;

vi. I refrain from imposing any penalty under Section 117 of the Customs Act, 1962 on M/s Technova Imaging Systems (P) Limited.

This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/ firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

Digitally signed by
Yashodhan Arvind Wanage
Date: 19-12-2025
12:23:12

(यशोधन अरविंद वनगे **/Yashodhan Arvind Wanage)**

प्रधान आयुक्त**,** सीमाशुल्क**/ Pr. Commissioner of Customs**

एनएस**-I,** जेएनसीएच **/ NS-I, JNCH**

To,

M/s Technova Imaging Systems (P) Limited (IEC No. 0388090774),

Plot No, C2, MIDC,

Taloja, Raigad District,

Maharashtra- 410208.

Copy to:

(1) The Addl. Commissioner of Customs, Group II G, JNCH

(2) AC/DC, Chief Commissioner's Office, JNCH

(3) AC/DC, Centralized Revenue Recovery Cell, JNCH

(4) Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.

(5) Additional Director General, DRI, Hyderabad Zonal Unit

(6) Deputy Director, DRI, Vijaywada Regional Unit

(7) Office Copy.