

**Date of Order** : 19.12.2025  
**आदेश की तिथि :** 19.12.2025

**Date of Issue** : 19.12.2025  
**जारी किए जाने की तिथि:** 19.12.2025

**DIN** 20251278NW0000510735

**F. No. S/10-070/2024-25/Commr/Grll G/NS-1/CAC/JNCH**  
**SCN No. 599/2024-25/Commr./Gr. IIG/NS-I/CAC/JNCH dated 25.06.2024**

**Passed by: Shri Yashodhan Wanage**

पारितकर्ता: श्री यशोधन वनगे

**Principal Commissioner of Customs (NS-I), JNCH, Nava Sheva**  
**प्रधानआयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा**

**Order No.: 303/2025-26 /Pr. Commr./NS-I /CAC /JNCH**  
**आदेशसं. : 303/2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच**

**Name of Party/Noticee: M/s Jindal Poly Films Limited (IEC No. 0588065781)**  
**पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स जिंदल पॉली फिल्म्स 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 निःशुल्क 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 व्यक्ति कोई भी व्यक्ति सीमा शुल्क अधिनियम १९६२ की धारा १२९(ए) के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमी प्रादेशि कन्यायपीठ (वेस्टरीजनलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९ 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. सीए३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए).

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

समयसीमा- 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 58

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

(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 राष्ट्रीय कृत 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 - विधिके उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवाकर 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 उद्गृहीत शास्ति 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 अनुपालनान किये जाने के लिए नामंजूर किये जाने की दायी होगी।

### **Brief Facts of the case**

**1.1** The Premises Based Audit (PBA) in respect of M/s Jindal Poly Films Limited (IEC No. 0588065781) was initiated on 14.03.2023 & concluded on 14.03.2024 at the office premises of Customs Audit Commissionate, New Customs House, New Delhi. During audit it was noticed that the noticee mainly imported Polypropylene Granules, Mono Ethylene Glycol (MEG), PP Base Additive Compound etc. and exported BOPP Films, BOPET Films etc. Accordingly, based on sampling criteria, sample Bills of Entry covering all these products for the audit period were sought from the noticee.

**1.2** The first intimation for conducting Customs On-site Post Clearance Audit (OSPCA) under Section 99A of the Customs Act,1962 was issued on dated 28.04.2022 to which the noticee did not submit the reply even after 20 days, therefore, reminder letters dated 24.05.2022, 15.06.2022 and 15.10.2022 were issued to them. Vide letter dated 16.06.2022 the noticee submitted partial documents and sought 3 weeks additional time to submit the remaining documents. But even after lapse of 5 months, the noticee did not submit the remaining documents. Therefore, another reminder letter dated 10.11.2022 was issued to the Noticee. Thereafter, the Noticee vide emails dated 13.03.2023 & 14.03.2023 provided sample Certificates of Origin for further examination by Delhi Customs Audit. On verification of the records and Bills of Entry submitted by noticee, following observations were communicated to the noticee:

- a.** The noticee had classified the item “*Polypropylene Base Additive Compound*” under the CTH 39029000 & 38119000 @ Nil BCD under Preferential Notification No. 46/2011 whereas the impugned goods appear to be correctly classifiable under CTH 39021000 attracting BCD @ 5%;
- b.** The Item “*Paper Band Heavy Duty Unbleached Brown (Paper Matter)*” appears to be correctly classifiable under CTH 4811 attracting IGST@18%, whereas the noticee classified the same under CTH 48041100 paying IGST@12%; and
- c.** Item “*FILTER SCREEN*” has been imported by the noticee by classifying the same under CTH 84212200 & 84212900. Since the items had been imported as an element of filter system and is made up of steel, the same appears to be classifiable under CTH 73269099.

**1.3.** The noticee vide its letter dated 24.04.2023 provided the following response to the objections raised during the Audit process:

- a. For point no. 1.2 (a) above:**

The noticee disagreed with the observation and clarified that it had not imported the PP base additive compound under CTH 38119000 by availing benefit of Notification No. 46/2011. They have availed benefit of Notification No. 46/2011 only on goods imported under CTH 39029000. Further, it was stated by the noticee in Form-1 that Base Additive compound has been formed by mixing Polypropylene Resin with Anti-block Agent. The supplier, M/s. Ampacet, giving thereunder the details of the aforesaid product as under (in verbatim): -

*“We wish to explain you that Polypropylene Base Additive Compound (HOBLOCK 10) is composed of the excessive chemistry accessory ingredient,*

*Polypropylene as a Carrier Resin and some other additives". Please refer to general composition in below table: -*

<i>Component</i>	<i>% Content</i>
<i>Polypropylene Carrier resin</i>	<i>85-90</i>
<i>Anti-Block additive</i>	<i>10-15</i>

A copy of Safety Data Sheet was enclosed by the Noticee. It had also provided Section 3 of the declaration by their supplier stating therein the Composition of the product. The Components are mentioned as i) Polypropylene/3902.10.90 ii) Anti-Block Agent/2811.22.10. Accordingly, the same is classified under CTH 39029000 correctly (the product being manufactured by process of mixing to disburse additive in polymer matrix). In view of the foregoing, the noticee had claimed that the correct classification is 39029000.

**b. For point no. 1.2 (b) above:**

The noticee informed that they had been importing the said goods by paying IGST @12%. It was further mentioned that as per the communication sent by Delhi Customs Audit, Sl. No. 08 of the Chapter Note to Chapter 48 of the Customs Tariff Act, 1975 stipulates the said goods to be not classified under CTH 4804 for the reason that width of paper roll imported by them was less than 36 cm. That the correct classification will be 4811 attracting IGST rate of 18%. The noticee agreed with the audit objection and stated that it will pay the differential Customs duty along with interest as per section 28(1).

**c. For point no. 1.2 (c) above:**

The relevant paragraph of the CBIC Circular 24/2013 – Customs dated 27.06.2013, states the following:

*"3. Thus, it emerges that elements of Filters are to be classified as per their constituent material. For instance, elements (of Filters) that are made up of paper would be classified in Headings 4812 or 4823; if made up of textile material for technical use then in Heading 59.11; if made up of glass then in Heading 70.19; etc. Filters by themselves would be classified under Heading 84.21."*

The noticee stated that as per the aforesaid Circular, only elements of filter are to be classified in the respective heading; not the filter itself. Filter by themselves would be classified under CTH 8421. In their case, the goods imported by them were filters, therefore the same have been correctly classified under CTH 8421. In this respect, the noticee also provided the end use letter submitted to Customs at the time of importation. It has been specifically written in the said letter that Filter Screen are used for filtering out the material from extruder system in their SSMMS REICFIL Production Line. That the noticee manufacture Non-woven Fabric, for which they regularly import the Filter Screens under CTH 84212900. The Noticee had also enclosed photograph of Filter Screen used for filtering of molten polymer in the process of manufacture of non-woven fabrics.

**1.4. Upon examining the response of the Noticee on the 03 issues, it was observed:**

i. **For point no. 1.3 (a) above:**

a. The Noticee has denied the fact that they have not imported PP base additive compound under CTH by availing benefit of Notification No. 46/2011. It was also noticed that the impugned goods were self-assessed, classified and imported under 03 different CTHs, 38111900, 38119000 and 39029000 during the period 2018-23. During F.Y 2019-20, the Noticee had imported PP base additive compound in 117 BEs and during FY 2020-21, the Noticee had imported PP base additive compound in 33 BEs under the CTH 38119000 by availing benefit of Notification No. 46/2011. Some of the Sample B/Es from the past period as well as the Audit period have been tabulated below:

	B/E Number	BE Date	Eight Digit HS Code	Full Item Description
2019-20	6278594	30-12-2019	38119000	PP BASE ADDITIVE COMPOUND (MATIF 97)
	2745029	08-04-2019	38119000	PP BASE ADDITIVE COMPOUND (COEXAS 2)
	4631322	26-08-2019	38119000	PP BASE ADDITIVE COMPOUND (MATIF 97)
	3026249	29-04-2019	38119000	PP BASE ADDITIVE COMPOUND (JA4044002)
	7336337	23-03-2020	38119000	PP BASE ADDITIVE COMPOUND (ANSLIP 24)
	6252786	27-12-2019	38119000	PP BASE ADDITIVE COMPOUND (ANSLIP 24)
	3681835	17-06-2019	38119000	PP BASE ADDITIVE COMPOUND (MATIF 97)
	3775999	24-06-2019	38119000	PP BASE ADDITIVE COMPOUND (MATIF 97)
	3396350	27-05-2019	38119000	PP BASE ADDITIVE COMPOUND (ASCORE 3 F)
	3681589	17-06-2019	38119000	PP BASE ADDITIVE COMPOUND (MATIF 55)
2020-21	7482263	20-04-2020	38119000	PP BASE ADDITIVE COMPOUND (HOBLOCK 10)
	8569549	24-08-2020	38119000	PP BASE ADDITIVE COMPOUND (ANSLIP 24)
	7436445	13-04-2020	38119000	PP BASE ADDITIVE COMPOUND (MATIF 97)
	8923309	23-09-2020	38119000	PP BASE ADDITIVE COMPOUND (HOBLOCK 10)
	8215961	20-07-2020	38119000	PP BASE ADDITIVE COMPOUND (MATIF 55)
	7436445	13-04-2020	38119000	PP BASE ADDITIVE COMPOUND (MATIF 55)
	8301695	28-07-2020	38119000	PP BASE ADDITIVE COMPOUND (MATIF 97)
	7630851	11-05-2020	38119000	PP BASE ADDITIVE COMPOUND (ASCORE 3 F)
	9000263	30-09-2020	38119000	PP BASE ADDITIVE COMPOUND

				(HOBLOCK 10)
7685965	18-05-2020	38119000	PP BASE ADDITIVE COMPOUND (MATIF 97)	

b. Upon further examining the response of the Noticee, it has been noticed that the impugned goods, "*Poly-Propylene Base Additive Compound*" has been imported under various brand names like HOBLOCK 29, ANSLIP 24, ANSTAT, ANSTAT 2, ASCORE 3F, COEXAS 2, MATIF, SKI BLOCK, etc. In the initial examination, the COO Form – 1, Product Data Sheet, Safety Data Sheet, procedural flowchart of the manufacturing item and chemical formulation of the raw materials and finished goods were sought only for one of the HOBLOCK items. Since there were multiple brands of PP BASE ADDITIVE COMPOUND, the same documents/information were needed for all the brands.

ii. **For point no. 1.3 (b) above:** The Noticee had accepted the audit observations and had agreed to pay the differential duty along with penalty and interest.

iii. **For point no. 1.3 (c) above:** Based on submissions made by the Noticee as stated above in para 3.3 (c), the said submissions appear to be correct and accordingly, this issue had been put to rest.

**1.5** In order to further examine the issue stated above in Para 1.4 (i), Customs (Audit), New Delhi forwarded letter dated 07.08.2023. The noticee was requested to submit additional documents/information on the various brands of PP Based Additive Compound. However, no reply was received. Vide letter dated 06.09.2023, the noticee was given an opportunity of personal hearing (PH) with the ADC, Customs Audit on 15.09.2023. It was conveyed vide the above referred communication that this is an opportunity to discuss and provide the necessary explanation and documentation related to the audit findings. It was requested to depute a person well versed with the issues at hand, someone who could provide complete details, including nature, composition of the goods. The noticee vide email dated 11.09.2023 sought a weeks' time for the meeting. Thereafter, during the meeting held on 20.09.2023, the noticee didn't submit any documents and sought a week's time for submitting the documents. It was also observed that none of the representatives of the noticee had technical know-how of the product and also had any knowledge about Customs Act viz. Classification of Goods, Rules of Origin, etc. During the intervening period, the noticee, vide its email dated 27.09.2023 sought time till 15.10.2023 to submit the documents. The observations had been intimated to the noticee by Customs (Audit), New Delhi, vide e-mail dated 05.10.2023. In response, Noticee vide email dated 06.10.2023 informed that the details shall be submitted by 15.10.2023.

**1.6** The noticee, thereafter, during a meeting with the Auditors on 13.10.2023, submitted partial documents and sought further time to submit the remaining documents. Further, with reference to email dated 27.10.2023 of Customs (Audit), New Delhi, the noticee vide its mail dated 28.10.2023 further sought a week's time to submit the documents. Further, the noticee vide its mail dated 03.11.2023 further sought a week's time to submit the requisite documents/reply.

**1.7** As evident from submissions made in paras supra, there had been significant and inordinate delay in the Audit owing to delay in submission of documents, postponement of scheduled meetings and non-availability of technical/responsible person, due to which audit could not be concluded in time.

**1.8** Therefore, vide letter dated 03.11.2023 the Noticee were informed that the Audit period has now been revised to 2019-20 to 2022-23. No further response was received, it was evident that the Noticee had appropriately displayed resistance by failing to provide the necessary records or information. Customs (Audit), New Delhi was constraint to conclude that the Noticee is wilfully avoiding the Audit proceedings. Therefore, the Noticee was intimated vide e-mail dated 13.12.2023, that Customs (Audit), New Delhi will be constrained to take either or any of the following decisions on the basis of available facts: -

- Decide the case on merits, proposing SCN or any other conclusive steps; or
- Refer the case to concerned Preventive Commissionerate for further scrutiny; or;
- Refer the case to Special Intelligence and Investigation Branch (SIIB) for further investigation

**1.9** Vide the above referred e-mail dated 13.12.2023, M/s. Jindal Polyfilms Private Limited (M/s. JPFL Films Pvt Ltd) was asked to submit the following documents: -

- a. Form 1 for each POLYPROPYLENE BASE ADDITIVE COMPOUND as per annexures attached with the mail.
- b. Cost sheet of suppliers/manufacturers for each POLYPROPYLENE BASE ADDITIVE COMPOUND justifying RVC criteria of COO certificate as per relevant Rules.
- c. Chemical Name and Empirical & Chemical Formula of Input Raw Materials and of finished Goods for each POLYPROPYLENE BASE ADDITIVE COMPOUND. A format is enclosed for such information.
- d. Product Explanation/ Production Process/ Production Process by the Supplier/ Manufacturer for each POLYPROPYLENE BASE ADDITIVE COMPOUND.
- e. Internal Control Mechanism-cum-decision making procedure, regarding classification of Import & Export Goods supported by documentary evidence for each “POLYPROPYLENE BASE ADDITIVE COMPOUND.”

**1.10** In response, the Noticee vide letter dated 20.12.2023 submitted the requisite documents and information. The Noticee provided a copy of the COO (Form-AI), corresponding Section III (details as per CAROTAR Rules) and corresponding product literature (Products Explanation Letter) as provided by the product manufacturer, M/s. Ampacet (Thailand) Co. Ltd. Some representative samples of the COOs and the corresponding Section III and the Products Explanation Letter were examined. Based on examination/scrutiny of these documents, the following representative COOs were selected to examine the classification matter of each of the brands of Polypropylene Base Additive Compound:

Sl. No	COO No & date	Description of Goods	Brand	HS Code of Products mentioned in the COO	General Composition as Products Explanation Letter and the corresponding CTH	% Content as per Products Explanation Letter
1	1054672 dated 29.12.2021	Polypropylene Base Additive Compound	MATIF 55	39029000	Polypropylene/390210.90	55-60%
					Polyethylene/3901.20.00	40-45%
			HOBLOCK 29	39029000	Polypropylene/390210.90	90-95%
					Additive Agent-Alumino Silicate/283990.90	5-10%
2	849154 dated 17.02.2020	PP Base Additive Compound	MATIF 97	38119000	Polypropylene/390210.90	55-60%
			MATIF 12		Polyethylene/3901.20.00	40-45%
			SKIBLOCK 5	38119000	Polypropylene/390210.90	55-60%
					Polyethylene/3901.20.00	40-45%
			HOBLOCK 10	38119000	Polypropylene/390210.90	90-95%
					Anti-Block Additive - Silica/283990.90	5-10%
					Polypropylene/390210.90	90-95%
					Anti-Block Additive - Silica/283990.90	5-10%
3	849155 dated 17.02.2020	PP Base Additive Compound	MATIF 55	38119000	Polypropylene/390210.90	55-60%
					Polyethylene/3901.20.00	40-45%
4	797469 dated 03.10.2019	PP Base Additive Compound	HOBLOCK 10	38119000	Polypropylene/390210.90	90-95%
					Anti Block Additive - Silica/283990.90	5-10%
			COEXAS 2	38119000	Polypropylene/390210.90	65-70%
					GMS	10-15%
					Erucamide	10-15%
			ANSTAT 2	38119000	Polyol Amine	5-10%
					Polypropylene/390210.90	75-80%
					GMS	15-20%
					Tallow Amine	5-10%
			COEXAS 2	38119000	Polypropylene/390210.90	65-70%
					GMS	10-15%
					Erucamide	10-15%
					Polyol Amine	5-10%
5	797470 dated 03.10.2019	PP Base Additive Compound	ASCORE 3F	38119000	Polypropylene/390210.90	65-70%
					GMS	20-25%
			ANSLIP 24	38119000	Polyol Amine	10-15%
					Polypropylene/390210.90	65-70%
					GMS	10-15%
					Erucamide	5-10%
6	797179 dated 24.09.2019	PP Base Additive Compound	HOBLOCK 10	38119000	Polypropylene/390210.90	90-95%
					Anti-Block Additive - Silica/283990.90	5-10%
			MATIF 55	38119000	Polypropylene/390210.90	55-60%
					Polyethylene/3901.20.00	40-45%

7	770181 dated 29.05.2019	PP Base Additive Compound	ANSTAT 2	38119000	Polypropylene/390210.90	75-80%
					GMS	15-20%
					Tallow Amine	5-10%
			METBLOCK 2	38119000	Polypropylene/390210.90	85-95%
					Anti-Block Additive - Alumina Silica	1-5%
					Anti-Block Additive - Zeolite	1-5%
					Polypropylene/390210.90	55-60%
8	681121 dated 08.11.2018	PP Base Additive Compound	MATIF 55	38119000	Polyethylene/3901.20.00	40-45%
					Polypropylene/390210.90	55-60%
			MATIF 97	38119000	Polyethylene/3901.20.00	40-45%
					Polypropylene/390210.90	55-60%
					Polyethylene/3901.20.00	40-45%
			HOBLOCK 10	38119000	Polypropylene/390210.90	90-95%
					Anti-Block Additive - Silica/283990.90	5-10%
9	688168 dated 29.09.2018	PP Base Additive Compound	MATIF 130	38119000	Polypropylene/390210.90	55-60%
					Polyethylene/3901.20.00	40-45%
					Polypropylene/390210.90	55-60%
			JP40400002	38119000	Polyethylene/3901.20.00	40-45%
					Polypropylene/390210.90	55-60%
					Polyethylene/3901.20.00	40-45%
					Stabilizer	> 1
9	688168 dated 29.09.2018	PP Base Additive Compound	MATIF 97	38119000	Polypropylene/390210.90	55-60%
					Polyethylene/3901.20.00	40-45%
			SKIBLOCK 10B	38119000	Polypropylene/390210.90	85-95%
					Anti-Block additive- Silica	10-15%
			SEABLOCK 6	38119000	Polypropylene/390210.90	85-95%
					Polymeric PMMA	5-10%
					EMA copolymer	5-10%

**1.11** In this connection, a very pertinent observation from the table was made that the PP Base Additive Compound was classified not only under CTH 39029000 but also CTH 38119000 which was against the claim made by the Noticee in its letter dated 24.04.2023 wherein it was stated that it had not imported the PP base additive compound under CTH 38119000 by availing benefit of Notification No. 46/2011. This is evident from the copies of the COOs wherein the PP Base Additive Compounds under the brand names MATIF, HOBLOCK, etc. have been imported under the CTH 39029000 and 38119000. Further, from perusal of the above, it was also noticed that the CTH of the final goods as mentioned in the COO (Form-AI) in some of the cases is different from the corresponding Section III (details as per CAROTAR Rules). The following table was prepared by comparing the CTH in the COO to the CTH as declared in Section III of the supplier/manufacturer: -

Sl. No.	Poly-propylene Base Additive Compound	CTH mentioned in COO	CTH mentioned in form Section III
1	HO BLOCK10	38119000	39029000
2	HO BLOCK29	39029000	39029000
3	ANSLIP 24	38119000	39029000
4	ANSTAT 2	38119000	39029000

5	ASCORE 3 F	38119000	39029000
6	COEXAS 2	38119000	39029000
7	SKIBLOCK 10B	38119000	39029000
8	SKIBLOCK 5	38119000	39029000
9	ANFOG 17A	38119000	39029000
10	JP4044002	38119000	39029000
11	MATBLOCK 2	38119000	39029000
12	SEA BLOCK 6	38119000	39029000
13	MATIF 55	38119000	39029000
14	MATIF 97	38119000	39029000
15	MATIF 130	38119000	39029000
16	MATIF 12 (primary form)	38119000	39029000

**1.12** The above analysis has led Customs (Audit), New Delhi to believe that the Noticee is inconsistent in arriving at the CTH of the impugned goods and has also declared false and contrary information which has been taken on record. This conclusion has been reached after noting the discrepancies in the submissions made by the noticee.

**1.13** The task at hand was to understand the composition of the materials constituted in each of the Poly-propylene Base Additive Compound with respect to the characteristic/property of the final goods and use the General Interpretation Rules to conclude the CTH of the impugned goods. Each of the brands of the Poly-propylene Base Additive Compound appears to be like a Master Batch which is in pellet form and is to be used in manufacturing plastic articles out of it. The Products Explanation Letter issued by the product manufacturer, M/s. Ampacet (Thailand) Co. Ltd. and submitted by the Noticee has been relied upon in arriving at this conclusion of the impugned goods being a Master Batch.

**1.14** As per the submissions made by the Noticee of various brands of Poly-propylene Base Additive Compound like HO BLOCK10, HO BLOCK29, ANSLIP 24, ANSTAT 2, ASCORE 3F, SKIBLOCK 5, ANFOG 17A, MATIF 55, MATIF 97, MATIF 130, MATIF 12 (primary form)/JP4044002, MATBLOCK 2, SEA BLOCK 6, SKIBLOCK 10B, etc. which are manufactured by mixing of Polypropylene carrier resin (HSN-39021090 & 39023090), various Anti Block additive/agents & Polyethylene falling under different CTHs. The following table has been prepared to broadly capture the contents of the raw material that is used in manufacturing the final goods, Poly-propylene Base Additive Compound: -

Sl. No.	Description of Goods	Description of the constituent material/component and its CTH	% Content
1	HO BLOCK10	Polypropylene/39021090	85-90%
		Antilock Additive -Silica /28112210	10-15%
2	HO BLOCK29	Polypropylene/39021090	90-95%
		Antilock Additive -Alumina Silicate /28399000	5-10%
3	ANSLIP 24	Polypropylene/39021090	75-80%
		Surface active Agent/34049090	10-15%
		Amide-GMS/ 29241990	5-10%
		Antistatic-/34021390	5-10%
4	ANSTAT 2	Polypropylene/39021090	75-80%
		Surface active Agent-GMS/34049090	15-20%

		Antistatic agent-Tallow amine /34021200	5-10%
5	ASCORE 3 F	Polypropylene/39021090	65-70%
		Surface active Agent-GMS/34049090	20 – 25%
		Antistatic agent -Ployol Amine/34021200	10.-15%
6	COEXAS 2	Polypropylene/39021090	65-70%
		Surface active Agent-GMS/34049090	10.-15%
		Amide/ 29241990	5-10%
		Antistatic agent Polyol Amine/34021200	10-15%
7	SKIBLOCK 10B	Polypropylene/39023090	80-95%
		Antilock Agent-Silica/28112210	10-15%
8	SKIBLOCK 5	Polypropylene/39023090	90-95%
		Antilock Agent-Silica/28112210	5-10%
9	ANFOG 17A	Polypropylene/39021040	65-70%
		Surface active Agent/Distilled Monoglyceride	20-25%
		Antistatic agent-Polyol Amine	10-15%
10	JP4044002	Polypropylene/39023090	85-90%
		Polyethylene/39012000	10-15%
		Antilock Agent/39061090	less than 1
11	MATBLOCK 2	Polypropylene/39023090	85-95%
		Anti-Block Additive-Alumino Silicate/28399000	1-5%
		Anti-Block Additive-Zeolite/28421000	1-5%
12	SEA BLOCK 6	Polypropylene/39023090	85-90%
		Anti-Block Additive-Polymeric PMMA/39069090	5-10%
		Anti-Block additive-EMA Copolymer/	5-10%
13	MATIF 55	Polypropylene/39023090	55-60%
		Polyethylene/39012000	40-45%
14	MATIF 97	Polypropylene/39023090	55-60%
		Polyethylene/39012000	40-45%
15	MATIF 130	Polypropylene/39023090 & 39021090	55-60%
		Polyethylene/39012000	40-45%
16	MATIF 12 (primary form)/	Polypropylene/39023090 & 39021090	55-60%
		Polyethylene/39011099 & 39012000	40-45%

**1.15** On going through the above tables & details mentioned in the Form Section III of their supplier M/s. Ampacet, it was noticed the imported goods can be divided in broadly three categories of Poly-propylene Base Additive Compound: -

- Category – 1: Products like HO BLOCK, SKIBLOCK, etc. which have been manufactured by constituting one carrier resin & one additive;
- Category –2: Products like ANSLIP, ANSTAT, ASCORE, COEXAS, ANFOG, MATBLOCK, SEA BLOCK, etc. which have been manufactured by constituting one carrier resin & more than one additive,
- Category – 3: Products like MATIF which have been manufactured by constituting two monomers.

**1.16** Each category of goods has been discussed in the following paragraphs.

**1.16.1 Category – 1:** Products like HO BLOCK, SKIBLOCK, etc. which have been manufactured by constituting one carrier resin & one additives:

Sl. No.	Description of Goods	Carrier Resin & Content %	Additive & Content %	Properties as available in the Products Explanation Letter of M/s Ampacet
1	HOBLOCK 10	Polypropylene-85-90%	Anti-Block Additive-Silica -10-15%	HOBLOCK 10 prevents the blocking of the film onto the roll creating some bumps on the film surface allowing the air to be trapped. The synthetic silica used in HOBLOCK 10 is specially formulated for BOPP plain film. Because of the specific manufacturing process, the dispersion of the silica is well distributed to give the maximum effect with a minimum of additives. HOBLOCK 10 is normally used in the external layer of a plain film. The recommended percentage of HOBLOCK 10 is between 1 and 2%. (For CPP 2 to 3% depending on skin thickness)
2	HOBLOCK 29	Polypropylene-90-95%	Anti Block Additive-Alumina Silicate - 5-10%	HOBLOCK 29 prevents blocking of film onto the roll by creating some asperities on the film surface allowing air to get trapped. The anti-block in HOBLOCK 29 is specially formulated for BOPP plain film. HOBLOCK 29 is giving a lower COF on the treated side of plain film than normal anti block concentrates. It is recommended to add HOBLOCK 29 in the skin layer only at 2 to 3%.
3	SKIBLOCK 10 B	Polypropylene-80-95%	Anti Block Additive-Silica -10-15%	SKIBLOCK 10 contains well selected synthetic silica and is suitable for use in the external layer of BOPP and CPP film, SKIBLOCK 10 gives good anti-blocking property, but do not promote slip property. The recommended dosage for BOPP 1 to 1.5%. The recommended dosage for CPP is 2 to 4%.
4	SKIBLOCK 5	Polypropylene-90-95%	Anti Block Additive-Silica (5-10%)	SKIBLOCK 5 is added on skin layers of heat sealable film to prevent film from blocking. Synthetic Silica particles in SKI BLOCK 5 are well dispersed in resin, resulting in maximum anti blocking effect and minimal impact on optical property of a film. The recommended dosage is between 2 -3%.

In all four goods such as HOBLOCK 10, HOBLOCK 29, SKIBLOCK 10 B, SKIBLOCK 5, the main carrier is resin of Polypropylene with one additive (in the range of 5-15%). So, it appears

that the impugned goods are nothing but additive masterbatch whose end use is to prevent the blocking of the films onto roll creating some bumps on the film surface allowing the air to be trapped and gives anti-blocking property. The additives are specially used for formulation of BOPP/PP films by molding/extrusion process. Because of the specific manufacturing process, the dispersion of the all additives is well distributed to give the maximum effect with a minimum of additives. Further, as per Safety Data Sheet, the Product is in the form of Mixture. In addition, the following 02 case-laws provide an analogy that the impugned goods are akin to a masterbatch which are used in this case to further manufacture BOPP/PP films

- a. In the matter of M/s. Supreme Industries Ltd. Versus Commissioner of Customs, Sheva [held in 2004 (174) E.L.T. 71 (Tri. Mumbai)], it was held by Hon'ble Tribunal that the product i.e., Synthetic Resin made up of polyethylene and coloring masterbatch will be classified as per the CTH of coloring masterbatch and not as per the classification of carrier resin which is polyethylene.
- b. In the case before Hon'ble CEGAT, Special Bench 'C', New Delhi, M/s RAJASTHAN PETRO SYNTHETICS LTD -vs- COLLECTOR OF CUSTOMS, BOMBAY [1994 (72) E.L.T. 603 (Tri. - Del)], it was held that: -

*"Master Batch - Customs - Pigment preparations of organic and inorganic pigments in polypropylene carrier - Classifiable under Chapter 32 of Customs Tariff Act, 1975 and sub-classification to be based on whether pigment content therein organic or inorganic. The goods being essentially concentrated dispersion of colouring matter in the plastic they would be excluded from the purview of Chapter 39 in view of the exclusion clause under General Notes to Chapter 39 of HSN which is accepted as having a persuasive value in classification of goods under the Customs Tariff. The disputed goods being pigment preparations of organic and inorganic pigments in polypropylene carrier are correctly classifiable under Chapter 32 and their sub-classification was determinable on whether the pigments were organic or inorganic in view of Chapter Note 3 of Chapter 32. The disputed goods, namely, pigmented polypropylene chips are used essentially for imparting colour to the polymer melt obtained by melting grey polypropylene chips before extrusion for production of yarn and thus their use is only for imparting colour to the melted polypropylene or plastic material before it is converted into textile material, namely, yarn. Therefore, classification under Chapter 32 is appropriate. [paras 9,10,12]"*

The aforesaid case was affirmed by the Hon'ble Supreme Court in Rajasthan Petrosynthetics Ltd. vs. Collector of Customs, Bombay [2002 (141) E.L.T. 310 (S.C.)].

**1.16.1.1** The Anti-blocking agents provides the essential character to the finished product i.e. "Polypropylene Based Additive Compound", to prevent the blocking of the film onto roll creating some bumps on the film surface allowing the air to be trapped and give anti-blocking property. That finished good is manufactured using a specific process so as to ensure that the dispersion of the additives is well distributed to give the maximum effect with a minimum of additives.

**1.16.1.2** The words, SKIBLOCK and HOBLOCK do not have any reference in the Harmonised System of Nomenclature (HSN). The customs tariff act also does not have the specific description/general description of Anti-block additives present in the above goods. The essential character is also provided by these chemicals to the Master Batch. Therefore, the

classification of these goods cannot be arrived on the basis of Rule 2 of the General Rules. However, the classification of goods consisting of more than one material or substance shall be according to the principles of Rule 2 and 3 of General Rules of Interpretation (GIR). In the above four goods HOBLOCK 10, HOBLOCK 29, SKIBLOCK 10 B, SKIBLOCK 5 the anti-block additive is silica & alumina silicate. Further, Rule 3(a) of GIR, appears not to be applicable in the present case as none of the two headings give a more complete or precise description of the goods. In view of the submissions made above in the preceding paras, the classification will be decided as per the rule 3(b) of the GIR. For classification of mixture, imported good i.e., Polypropylene Base Additive Compound: HOBLOCK 10, HOBLOCK 29, SKIBLOCK 10 B, SKIBLOCK 5, (i.e, a mixture of Polypropylene & Anti Block Additive- Silica/Alumina Silicate) appears merit classification under the CTH of the anti-block additive compound in terms of Rule 3 (b) of the GIR (General Rule of Interpretation), as the additives gives the “essential character” to the goods.

**1.16.1.3** Therefore, the goods appear to be classifiable as under: -

<b>Sl. No.</b>	<b>Description of Goods</b>	<b>Resin &amp; Content %</b>	<b>Additive &amp; Content %</b>	<b>Goods appears to be classifiable under CTH as per Rule-3 (b) and rate of duty</b>
1	HOBLOCK 10	Polypropylene- 85-90%	Anti-Block Additive- Silica -10-15%	28112200 @7.5%BCD, @10%SWS & 18% IGST
2	HOBLOCK 29	Polypropylene- 90-95%	Anti-Block Additive- Alumina Silicate - 5-10%	28421000 @7.5%BCD, @10%SWS & 18% IGST
3	SKIBLOCK 10 B	Polypropylene- 85-90%	Anti-Block Additive- Silica -10-15%	28112200 @7.5%BCD, @10%SWS & 18% IGST
4	SKIBLOCK 5	Polypropylene- 90-95%	Anti-Block Additive-Silica (5-10%)	28112200 @7.5%BCD, @10%SWS & 18% IGST

**1.16.2 Category -2:** Products like ANSLIP, ANSTAT, ASCORE, COEXAS, ANFOG, MATBLOCK, SEA BLOCK, etc. which have been manufactured by constituting one carrier resin & more than one additive;

<b>Sl. No.</b>	<b>Description of Goods</b>	<b>Carrier resin &amp; Content %</b>	<b>Additive &amp; Content %</b>	<b>Properties</b>
1	SEA BLOCK 6	Polypropylene-90-95%	Anti-Block Additive- Polymeric PMMA- 5-10%	It is composed of the excessive chemistry accessory ingredient, PP as a carrier resin & anti-block and EMA co-polymer additives are added to make product having the desired slip and anti-blocking properties
			Anti-Block Additive-EMA Copolymer-5-10%	

2	ANSTAT 2	Polypropylene-75-80%	Antistatic additives-GMS-15-20%	ANSTAT 2 has a good process heat stability and minimum volatility in the TDO. It is designed for the use in coextruded films. Surface resistivity of 10 Ohm/Sq and half decay time below 4 seconds are achievable with I to 1.5% of ANSTAT 2 in the core without affecting printing properties. It is possible to reach Surface resistivity below 10 ohm/Sq and hall decay time below 1 sec if higher let down ratio is used (between 2.5 and 3.5%)
			Antistatic Additive - Tallow Amine-5-10%	
3	ANSTAT	Polypropylene-75-80%	Antistatic additives-GMS -5-10%	ANSTAT 0 v has a good process heat stability and minimum volatility in the TDO. It is designed for the use in coextruded films. Surface resistivity of 10 Ohm/Sq and half decay time below 4 seconds are achievable with I to 1.5% of ANSTAT 2 in the core without affecting printing properties. It is possible to reach Surface resistivity below 10 ohm/Sq and hall decay time below 1 sec if higher let down ratio is used (between 2.5 and 3.5%)
			Antistatic Additive- Tallow Amine-1-5%	
4	MATBLOCK 2	Polypropylene-85-95%	Anti-Block additive-Alumino Silicate 1-5%	MATBLOCK 2 is an inorganic anti-block suitable for metalisable film. The product provides good anti-blocking property and does not impair metal adhesion. It should be used at a let-down ratio of 1.5 to 2.5% on the outer layers.
			Anti Block additive-Zeolite 1-5%	
5	ASCORE 3F	Polypropylene-65-70%	Anti-static additive-GMS-20-25%	ASCORE 3 F has a balance of antistatic agents giving long as well as short terms properties. ASCORE 3 F has also been designed to minimize volatility and to give blue perception on film. ASCORE 3 is recommended for the core of the film in PP homopolymer. The typical percentage of ASCORE 3 F in the inner layer is 0.5 to 1%. An excessive percentage can create some potential problems in sealing and printing. ASCORE 3 F can be used with HOBLOCK 5 A an the skin. It is not recommended to use ASCORE 3 Ff or films that will be printed with UV curing ink system.
			Antistatic Agent-Ployol Amine-10-15%	
6	ANFOG 17A	Polypropylene-65-70%	Anti-fog additive/	ANFOG 17 A is designed for the

			Distilled Monoglyceride-20- 25%	production of antifog films. When there is condensation under the film, water is forming droplets which can damage the food and impair optical properties. ANFOG 17 is designed to prevent this phenomenon by letting the water to form a small invisible layer on the surface of the film. ANFOG 17 A should be used as a letdown ratio of 1.5- 2.5% in the core and the skin in combination with 2-3% SKIBLOCK 5A in the skins. It is recommended to treat the surface both sides. To extend shelf life of the antifog film, is recommended to store an antifog film in cool place (air-conditioned storage), not expose to sunlight.
7	ANSLIP 24	Polypropylene-75-80%	Antistatic additive- Tallow Amine-10- 15%  Antistatic additives-GMS-5- 10%  Slip Additives- Erucamide-5-10%	ANSLIP 24 gives excellent slip and antistatic properties. Addition levels of 1 to 2% in the core layer give coefficient of friction around 0.3 Haze is around 2. In the core layer the recommended percentage of ANSLIP 347%. However, the correct dosage must be determined when taking into consideration the characteristics and the final use of the film through practical tests and evaluating the input of the climatic and storage conditions. Hot climates should use 1 to 1.5% and cold climate 1 to 2%.
8	COEXAS 2	Polypropylene-65-70%	Anti-static additives-GMS-10- 15%  Anti-static additives –Polyol Amine-5-10%  Slip Additives- Stearyl Erucamide- 5-10%	COEXAS 2 is designed to obtain low COF quite quickly after extrusion with good antistatic properties. COEXAS 2 the member of OPTiCoN product family, offers excellent cost performance optimization as compared to single concentrated master batch due to the lower addition rate. The low usage might generate un-uniform additives distribution in the film process, close attention must be paid during switching from the single concentration. The excess amount of COEXAS 2 in film could impair sealing integrity and printing  The recommended addition rate is 1 to 15% in the core layer.

**1.16.2.1** In all the 08 brands of the Category – 2 goods, i.e., SEA BLOCK 6, ANSTAT 2, ANSTAT, MATBLOCK 2, ASCORE 3F, ANFOG 17A, ANSLIP 24 & COEXAS 2, the main carrier is resin of Polypropylene with two additives (in the range of 5-25%). So, it appears that the impugned goods are nothing but additive Master Batch. The end use of additive SEA BLOCK6 & MATBLOCK 2 is to prevent the blocking of the film surface allowing the air to traps and gives anti blocking property. Further, the end use of other additive masterbatch is to give anti-static properties, anti-fog additives, anti-slip additives. The additives are specially used for formulated of BOPP/PP films by molding /extrusion process. Because of the specific manufacturing process, the dispersion of the all additives is well distributed to give the maximum effect with a minimum of additives. That the good is a Masterbatch with a shelf life of 12 months. Further, as per Safety Data Sheet, Product is in the form of Mixture. In addition, the following 02 case-laws provide an analogy that the impugned goods are akin to a masterbatch which are used in this case to further manufacture BOPP/PP films. The notice further relied upon the judgments of Tribunal in the matter of M/s Supreme Industries Ltd and M/s Rajasthan Petro Synthetics Ltd *supra*.

**1.16.2.2** The Anti-blocking agents/anti-static agents/anti-fog additives etc, provides the essential character to the finished product i.e. “Polypropylene Based Additive Compound”, to prevent the blocking of the film onto roll creating some bumps on the film surface allowing the air to be trapped and give Anti-blocking, Anti-static, Anti-fog, Anti- Slip property. That finished good is manufactured using a specific process so as to ensure that the dispersion of the additives is well distributed to give the maximum effect with a minimum of additives.

**1.16.2.3** The words i.e., SEA BLOCK 6, ANSTAT 2, ANSTAT, MATBLOCK 2, ASCORE 3F, ANFOG 17A, ANSLIP 24 & COEXAS 2 do not have any reference in the Harmonised System of Nomenclature (HSN). The Customs Tariff act also does not have the specific description/general description of Anti-blocking, Anti-static, Anti-fog, Anti- Slip additives present in the above goods. The essential character is also provided by the chemicals to the Master Batch. Therefore, the classification of these goods cannot be arrived on the basis of Rule 2 of the General Rules. However, the classification of goods consisting one or more than one material or substances shall be according to the principles of Rule 2 and Rule 3 of General Rule of Interpretation (GIR). 08 brands of the Category – 2 goods i.e., SEA BLOCK 6, ANSTAT 2, ANSTAT, MATBLOCK 2, ASCORE 3F, ANFOG 17A, ANSLIP 24 & COEXAS 2 the Anti-blocking, Anti-static, Anti-fog, Anti- Slip property additives are Ethylene methyl acrylate copolymers (EMA), Polymethyl Methacrylate (PMMA), Glyceryl Mono Stearate (GMS), Tallow Amine etc. These additives provide the “essential character” of the goods. Further, Rule 3 (a) of GIR, appears not to be applicable in the present case as none of the two headings give a more complete or precise description of the goods. Since, the subject goods having two or more additive and all additives appears to have more or less similar functions, therefore Rule 3(b) also appears not to be applicable in the present case. Therefore, Rule 3(b) also appears to be not applicable in the present case. In view of the submissions made above in the preceding paras, the classification will be decided as per the Rule 3(c) of GIR. As per Rule 3 (c) of GIR, when the goods have two or more additives, they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. For classification of mixture, imported goods i.e., Polypropylene Base Additives: SEA BLOCK 6, ANSTAT 2, ANSTAT, MATBLOCK 2, ASCORE 3F, ANFOG 17A, ANSLIP 24 & COEXAS 2 (a mixture of polypropylene and two or more additives which provides Anti-blocking, Anti-static, Anti-fog, Anti- Slip property) appears merit classification

under HS ITC of Anti-block/Anti-static/Anti-fog/Anti-Slip compound which occurs last in numerical order those which equally merit consideration in terms of Rule 3 (c) of the GIR. Therefore, the goods appear to be classifiable as under: -

Sl. No.	Description of Goods	Carrier resin & Content %	Additive & Content %	Goods appears to be classifiable under CTH as per Rule-3 (c)
1	SEA BLOCK 6	Polypropylene-90-95%	Anti-Block Additive- Polymeric PMMA-5-10% (CTH- 39061090)	CTH- 39069090 @7.5%BCD 18% IGST
			Anti-Block Additive- EMA Copolymer-5-10% (CTH- 39019000)	
2	ANSTAT 2	Polypropylene-75-80%	Antistatic additives- GMS-15-20% (CTH 29157030)	CTH -29211190
			Antistatic Additive - Tallow Amine-5-10% (CTH -29211190)	
3	ANSTAT	Polypropylene-75-80%	Antistatic additives- GMS -5-10% (CTH 29157030)	CTH -29211190
			Antistatic Additive- Tallow Amine-1-5% (CTH -29211190)	
4	MATBLOCK 2	Polypropylene-85-95%	Anti-Block additive- Alumino Silicate 1-5% (CTH-28421000)	CTH-28421000 @7.5%BCD 18% IGST
			Anti Block additive- Zeolite 1-5% (- 28421000)	
5	ASCORE 3F	Polypropylene-65-70%	Anti-static additive- GMS-20-25% (CTH 29157030)	CTH – 29213090 @7.5%BCD 18% IGST
			Antistatic Agent- Ployol Amine-10-15% ( CTH – 29213090 )	
6	ANFOG 17A	Polypropylene-65-70%	Anti-fog additive/ Distilled Monoglyceride-20-25% (CTH- 29157090)	CTH – 29212990 @7.5%BCD 18% IGST
			Antistatic Additive- Ployol Amine-10-15% (CTH – 29213090)	

7	ANSLIP 24	Polypropylene-75-80%	Antistatic additive- Tallow Amine-10-15% (CTH -29211190)	CTH -29242990
			Antistatic additives- GMS-5-10% (CTH 29157030)	
			Slip Additives- Erucamide-5-10% (CTH -29242990)	
8	COEXAS 2	Polypropylene-65-70%	Anti-static additives- GMS-10-15% (CTH 29157030)	CTH – 29242990 @7.5%BCD 18% IGST
			Anti-static additives – Polyol Amine-5-10% (CTH – 29213090)	
			Slip Additives- Stearyl Erucamide-5-10% (CTH -29242990)	

### 1.16.3 Category-3: - The Product having two monomers: -

Sl. No.	Description of Goods	Monomer-1 & Content %	Monomer-2 & Content %	Properties
1	MATIF 55	Polypropylene-55-60%	Polyethylene-40-45%	MATIF 55 is used for food packaging where requires matte effect with low heat seal initiation temperature (SIT). Used as a compound (100%) in one skin layer of BOPP film structure, MATIF-55 allows to achieve very good matte properties with very low gloss (typically below 12) and high haze (above 60%). For optimum performances, a skin of minimum 2Um is recommended.
2	MATIF 97	Polypropylene-55-60%	Polyethylene-40-45%	<p>It is recommended to use MATIF 97 as a compound (100%) in one skin layer of extruded PP film structures: MATIF 97 provides outstanding matt properties. For optimum performances, a skin of minimum 2.5-3 <math>\mu</math>m is recommended. MATIF 97 provides low gloss (typically below 8) and high haze values (above 75%). In case these values are not required, skin thickness may be reduced leading to significant cost savings as well as lower pressure in the extruder.</p> <p>For optimum skin repartition, the use of PP homopolymer with MFI 2 to 3 is desirable in the core layer. In order to limit excessive pressure in the extruder (matt side), a screen-</p>

				pack of maximum 100 mesh is recommended.
3	MATIF 130	Polypropylene-55-60%	Polyethylene-40-45%	It is recommended to use MATIF 130 as a compound (100%) in one skin layer of BOPP film structures, MATIF 130 allows to achieve good matt properties with low gloss and high haze. For optimum performances, a skin of 2 to 3 um is recommended. MATIF 130 is designed for non heat sealable BOPP film. Typically it will not seal below 130°C.
4	JP4044002/ MATIF 67A	Polypropylene-85-90%	Polyethylene-10-15%	It gives a matte surface finish for BOPP film. It is designed for use in the skin of BOPP film and is easily processed. For optimum properties, it is recommended to have a skin 2.5 to 3 microns
5	MATIF 12	Polyethylene-50-55%	Polypropylene-45-50%	It is recommended to use MATIF 12 in one skin layer of extruded PP film structures; MATIF 12 provides outstanding matt properties. For optimum performances, a skin of minimum 2.5- 3 $\mu$ m is recommended. MATIF 12 provides low gloss (typically below 8) and high haze values (above 75%). In case these values are not required, skin thickness may be reduced leading to significant cost savings as well as lower pressure in the extruder. For optimum skin repartition, the use of PP homopolymer with MFI 2 to 3 is desirable in the core layer. In order to limit excessive pressure in the extruder (matt side), a screen-pack of maximum 100 mesh is recommended

**1.16.3.1** In all the 05 brands of the ‘Category – 3’ goods i.e., MATIF 55, MATIF 97, MATIF 130, JP4044002/ MATIF 67A & MATIF 12, there are two Monomer units i.e., Polyethylene (50-90%) and Polypropylene (10-15%) and no single monomer unit contribute 90% or more by weight to the total polymers content. Therefore, all five goods are Co-polymers i.e., polymers in which no single monomer unit contribute 95% or more by weight to the total polymers content. For classification of the subject goods, attention is invited to the Notes 4 of Chapter 39, Section VII which is as under: -

*“4. The expressions “copolymers” covers all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content.*

*For the purposes of this Chapter, except where the context otherwise requires, copolymers (including co-polycondensates, co-polyaddition products, block copolymers and graft copolymers) and polymer blends are to be classified in the heading covering polymers of that comonomer unit which predominates by weight over every other single comonomer*

*unit. For the purposes of this Note, constituent comonomer units of polymers falling in the same heading shall be taken together.*

*If no single comonomer unit predominates, copolymers or polymer blends, as the case may be, are to be classified in the heading which occurs last in numerical order among those which equally merit consideration.”*

**1.16.3.2** In the present case in Sl. No. 1 to 4 of aforesaid table, the monomer unit “polypropylene” outweighs the monomer unit “Polyethylene”, therefore the subject goods are “Propylene Co-polymers” and merit classification under CTH 3902 30 00. For ready reference, the CTH 3902 is reproduced below: -

<b>3902</b>		<b>POLYMERS OF PROPYLENE OR OF OTHER OLEFINS, IN PRIMARY FORMS</b>
3902 10 00		- Polypropylene
3902 20 00		- Poly iso butylene
3902 30 00		- Propylene copolymers
3902 90 00		- Other

**1.16.3.3** In the goods at Sl. No. 5 of above table (MATIF 12), the monomer unit “Polyethylene” outweighs the monomer unit “Polypropylene” (copolymers of ethylene), therefore merit classification under the copolymer CTH of Polypropylene, i.e., under the CTH 39014010.

**1.16.3.4** Therefore, the goods appear to be classifiable as under: -

<b>Sl. No.</b>	<b>Description of Goods</b>	<b>Monomer Unit-I</b>	<b>Monomer Unit-II</b>	<b>Goods appears to be classifiable under CTH as per Notes 4 of Chapter 39, Section VII and rate of duty</b>
1	MATIF 55	Polypropylene- 55-60%	Polyethylene-40-45%	39023000, Duty Structure BCD @ 7.5%, SWS @ 10% of BCD, IGST @ 18%
2	MATIF 97	Polypropylene- 55-60%	Polyethylene-40-45%	39023000, Duty Structure BCD @ 7.5%, SWS @ 10% of BCD, IGST @ 18%
3	MATIF 130	Polypropylene- 55-60%	Polyethylene-40-45%	39023000, Duty Structure BCD @ 7.5%, SWS @ 10% of BCD, IGST @ 18%
4	JP4044002/ MATIF 67A	Polypropylene- 85-90%	Polyethylene-10-15%	39023000, Duty Structure BCD @ 7.5%, SWS @ 10% of BCD, IGST @ 18%
5	MATIF 12	Polyethylene- 50-55%	Polypropylene-45- 50%	39014010, Duty Structure BCD @ 7.5%, SWS @ 10% of BCD, IGST @ 18%

**1.17** On the basis of above observation and documents provided by the noticee, the draft audit observation was conveyed to the noticee vide Draft Audit Report No.110 /B-4/Delhi/23-24 dated 02.05.2024 and the Final observations of the audit were conveyed to the noticee vide Audit Report No. 110/B-4/Delhi/23-24 dated 18.06.2024.

**1.17.1** In the final audit report, other than the above mentioned observations, it was mentioned that Sl. No. 6 of the OVERLEAF NOTES of the Annexure III of the Customs Tariff Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules, 2009 notified vide Notification No. 189/2009-Customs (NT) dated 31<sup>st</sup> December, 2009 as amended states that the Harmonized System Number shall be that of the importing party. The CTHs of the impugned goods have been arrived on the basis of the essential character and is entirely different from that of the CTH quoted in the COO submitted by the noticee at the time of import. Further, it is not possible to examine the originating criteria of the impugned goods as the essential information in the Certificate of Origin and change in CTH up to 4 digits is missing due to the change in the classification. The question to extend the benefit of the Notification No. 46/2011-Cus dated 01.06.2011 to the said all items of impugned B/E does not arise in consonance of Hon'ble Supreme Court Judgement in the matter of Commr. of Customs (Import), vs M/s. Dilip Kumar and Company on 30 July, 2018.

**1.17.1.1** Accordingly, it was found that due to the change in classification of the goods viz. HOBLOBK 10, HOBLOCK 29, SKIBLOCK 10B, SKIBLOCK 5, the COO benefit appears to be not available to the said goods and the Customs duty at applicable rate of 7.5%BCD, 10%SWS & 18% IGST along with interest and penalty is deem to be liable. In view of the above, M/s Jindal Polyfilms Private Limited was found liable to pay the differential BCD of Rs. 70,62,632/- SWS of Rs. 7,06,263/- and differential IGST of Rs. 13,98,401/-along with applicable interest & penalty as detailed in Annexure – A to the notice.

**1.17.1.2** Accordingly, it was found that due to the change in classification of the goods viz. SEA BLOCK 6, ANSTAT 2, ANSTAT, MATBLOCK 2, ASCORE 3F, ANFOG 17A, ANSLIP 24 & COEXAS 2, the COO benefit appears to be not available to the said goods and the Customs duty at applicable rate of 7.5% BCD, 10%SWS & 18% IGST along with interest and penalty is deemed to be liable. In view of the above, M/s Jindal Polyfilms Private Limited was found liable to pay the differential BCD of Rs. 2,12,32,043/- SWS of Rs. 21,23,204/- and differential IGST of Rs. 42,03,944/-along with applicable interest & penalty as detailed in Annexure - B to the notice.

**1.17.1.3** Accordingly, it was found that due to the change in classification of the goods viz. MATIF 55, MATIF 97, MATIF 130, JP4044002/ MATIF 67A & MATIF 12, the COO benefit appears to be not available to the said goods and the Customs duty at applicable rate of 7.5% BCD, 10%SWS & 18% IGST along with interest and penalty is deem to be liable. In view of the above, M/s. Jindal Polyfilms Private Limited was found liable to pay the differential BCD of Rs. 3,57,04,886/- SWS of Rs. 35,70,488/- and differential IGST of Rs. 70,69,567/-along with applicable interest & penaltyas detailed in Annexure-C to the notice.

**1.17.1.4** During the course of Audit, it had been noticed that the noticee had imported “Paper Band Heavy Duty Unbleached Brown (Paper Matter)” and classified the same under CTH 48041100 and paying IGST @ 12%. The noticee had submitted a write up/pictorial catalogue of the subject goods which showed that the width of the imported paper roll was less than 36 cm. In view of above observations, it was found that the subject good i.e., “PAPER BAND HEAVY DUTY UNBLEACHED BROWN (PAPER MATTER)” of width less than 36 cm can't be classified under CTH 48041100 and the subject goods merit classification under CTH 4811 which covers “PAPER BAND HEAVY DUTY UNBLEACHED BROWN (PAPER MATTER)” of any

size, other than goods of the kind described in heading 4803, 4809 or 4810 and more specifically merit classification under CTH 48115990 which attract IGST @ 18%. In view of the above, M/s Jindal Polyfilms Private Limited was found liable to pay the differential duty of Rs. 2,72,634/- (Rupees Two Lakh Seventy-Two Thousand Six Hundred Thirty-Four only) along with applicable interest & penalty as detailed in Annexure-D to the notice. Further, out of Rs. 2,72,634/- (Rupees Two Lakh Seventy-Two Thousand Six Hundred Thirty-Four only), the noticee has paid Rs. 1,41,361/-.

**1.18** The Draft Audit Report (DAR) No. 110 /B-4/Delhi/23-24 dated 02.05.2024 was mailed to the noticee on 06.05.2024 and the hard copy of the same was also dispatched at the registered address of the noticee on the same day. In response to the Draft Audit Report, the noticee vide its email dated 24.05.2023 intimated Customs (Audit), New Delhi that they will revert their submissions in respect of DAR by end of 03 weeks as their Lawyer is travelling to out of India. In response to the mail, the noticee was intimated by Customs (Audit), New Delhi vide letter dated 30.05.2024, that the issue raised through DAR No. 110/B-4/Delhi/23-24 dated 02.05.2024 had already been intimated to the noticee much before issuing the Draft Audit Report. Further, Customs (Audit), New Delhi is in the last stage of finalisation of the Audit Report, if there are any comments/ remarks/ input to be provided by the Noticee, the same may be communicated at the earliest. The noticee was also intimated by the auditor that, if they are not able to provide any comments/remarks/inputs to Customs (Audit), New Delhi, then the same may be communicated to the main port of import, which in this case is Nhava Sheva Customs for further necessary action, as per procedure laid down in the Manual for Customs Post Clearance Audit.

**1.19** In view of the above, M/s. Jindal Poly Films Limited was issued Show Cause Notice, seeking as to why: -

**a)** The classification of the imported goods should not be changed as follows:

S.No.	Descriptions of the goods	Carrier Resin & Content %	Additive & Content %	Classification	
				From	To
Audit Report Para 1.					
1.	HOBLOCK 10	Polypropylene-85-90%	Anti-Block Additive-Silica -10-15%	38111900 38119000 39029000	28112200
2.	HOBLOCK 29	Polypropylene-90-95%	Anti-Block Additive-Alumina Silicate- 5-10%	39029000	28421000
3.	SKIBLOCK 10 B	Polypropylene-80-95%	Anti-Block Additive-Silica 10-15%	38111900 38119000	28112200
4.	SKIBLOCK 5	Polypropylene-90-95%	Anti-Block Additive-Silica (5-10%)	39029000	28112200
Audit Report Para 2					
1.	SEA BLOCK 6	Polypropylene-90-95%	Anti-Block Additive-Polymeric PMMA-5-10% (CTH- 39061090)	39061090	39069090
			Anti-Block Additive-EMA Copolymer-5-10% (CTH- 39019000)	39019000	29211190
2.	ANSTAT 2	Polypropylene-75-80%	Antistatic additives-GMS-15-20% (CTH 29157030)	29157030	29211190
			Antistatic Additive - Tallow Amine-5-10%	29211190	

			(CTH -29211190)		
3.	ANSTAT	Polypropylene-75-80%	Antistatic additives-GMS-5-10% (CTH 29157030)	29157030	29211190
			Antistatic Additive-Tallow Amine-1-5% (CTH -29211190)	28421000	
4.	MATBLOCK 2	Polypropylene-85-95%	Anti-Block additive-Alumino Silicate 1-5% (CTH-28421000)	28421000	28421000
			Anti-Block additive-Zeolite 1-5% (-28421000)	2821000	
5.	ASCORE 3F	Polypropylene-65-70%	Anti-static additive-GMS-20-25% (CTH 29157030)	29157030	29213090
			Antistatic Agent- Ployol Amine-10-15% (CTH - 29213090 )	29213090	
6.	ANFOG 17A	Polypropylene-65-70%	Anti-fog additive/ Distilled Monoglyceride-20-25% (CTH- 29157090)	29157090	29212990
			Antistatic Additive-Ployol Amine-10-15% (CTH - 29213090 )	29213090	
7.	ANSLIP 24	Polypropylene-75-80%	Antistatic additive-Tallow Amine-10-15% (CTH -29211190)	29211190	29242990
			Antistatic additives-GMS-5-10% (CTH 29157030)	29157030	
			Slip Additives-Erucamide-5-10% (CTH -29242990)	29242990	
8.	COEXAS 2	Polypropylene-65-70%	Anti-static additives-GMS-10-15% (CTH 29157030)	29213090	29242990
			Anti-static additives – Poyol Amine-5-10% (CTH – 29213090)	29242990	
			Slip Additives- Stearyl Erucamide-5-10% (CTH - 29242990)	29242990	

## Audit Report Para 3

1.	MATIF 55	Polypropylene-55-60%	Polyethylene-40-45%	38111900 39119000 39029000	39023000
2.	MATIF 97	Polypropylene-55-60%	Polyethylene-40-45%	38111900 39119000 39029000	39023000
3.	MATIF 130	Polypropylene-55-60%	Polyethylene-40-45%	39029000	39023000
4.	JP4044002/ MATIF 67A	Polypropylene-85-90%	Polyethylene-10-15%	39029000	39023000
5.	MATIF 12	Polyethylene-50-55%	Polypropylene-45-50%	38119000	39014010

## Audit Report Para 4

1	Paper Band Heavy Duty Unbleached	Paper Roll of width less than 36 cm	48041100	48115990
---	--	-------------------------------------	----------	----------

	Brown (Paper Matter)			
--	----------------------	--	--	--

for the reasons as discussed in above Paras.

- b)** Benefit of Notification No. 46/2011-Cus dated 01.06.2011 as amended, claimed by the importer/noticee vide the Bills of Entry as mentioned in Annexure-A, B, C and D should not be denied to them;
- c)** Differential BCD of Rs. 6,39,99,561/- (Rupees Six Crore Thirty Nine Lakh Ninety Nine Thousand Five Hundred Sixty One only), SWS of Rs. 63,99,956/- (Rupees Sixty-Three Lakh Ninety Nine Thousand Nine Hundred Fifty Six only) and differential IGST of Rs. 1,26,71,912/- (Rupees One Crore Twenty-Six Lakh Seventy One Thousand Nine Hundred Twelve only) i.e. Rs. 8,30,71,428/- (Rupees Eight Crore Thirty Lakh Seventy One Thousand Four Hundred Twenty only) as mentioned in Annexure-A, B, C and D should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962.
- d)** The interest amount on the aforesaid demand of duty at sub-para (b) above as applicable should not be demanded from them in terms of Section 28AA of Customs Act, 1962.
- e)** Differential IGST amount of Rs. 2,72,634/- (Rupees Two Lakh Seventy-Two Thousand Six Hundred Thirty-Four only) on “*Paper Band Heavy Duty Unbleached Brown (Paper Matter)*” should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962.
- f)** The amount of Rs. 1,41,361/- (Rupees One Lakh Forty-One Thousand Three Hundred Sixty-One only) paid by the importer against the differential IGST amount of Rs. 2,72,634/- above should not be appropriated against the differential IGST duty.
- g)** The interest amount on the aforesaid demand of duty at sub-para (f) above as applicable should not be demanded from them in terms of Section 28AA of Customs Act, 1962.
- h)** The goods imported during the period under consideration valued at Rs. 85,74,21,077/- (Rupees Eighty-Five Crore Seventy-Four Lakh Twenty-One Thousand Seventy-Seven only) should not be held liable for confiscation under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962 for misclassifications of goods and wrongly availing the benefit of Notn. No. 46/2011-Cus. dated 01.06.2011 on the imported goods.
- i)** Penalty should not be imposed under Section 112(a) and/or 114A of the Customs Act, 1962 for mis-statement and suppression of facts.

### **WRITTEN SUBMISSIONS**

**2.** M/s. Jindal Poly films Limited gave written submissions vide their letters dated 10.10.2024 & 09.06.2025 wherein they *inter-alia* submitted as below:

**2.1** Packaging film business of M/s. Jindal Poly Films Limited has been transferred to M/s. JPFL Films Private Limited and the reply was filed by M/s. JPFL Films Private Limited, a subsidiary company of Jindal Poly Films Limited.

**2.2** They have already admitted their liability in respect of IGST of Rs. 2,72,634/- on “Paper Band Heavy Duty Unbleached (Paper Matter)” and have paid the entire duty amounting to Rs. 2,84,561.70 along with interest and penalty.

**2.3** The classification claimed by the noticee in the Bills of Entry are consistent with the Certificate of Origin issued by competent authorities of Thailand and it is not permissible for the India authorities to discredit the certificate unilaterally. A change in the classification would not be relevant as the alternate headings proposed in the notice are also covered by the exemption notification and eligible for exemption. There is no allegation in the notice or the audit reports that the goods have originated in any country other than Thailand. The exemption notification read with Origin rules clearly indicates that the notification and rules aim to ensure that the goods should meet the origin criteria. Overleaf Note 6 of the certificate clearly states that the HSN should be that of the importing party which simply means that CTH in certificate should be based on the tariff schedule of the importing country and not the country issuing the certificate.

**2.4** As per the Origin Rules, where a certificate of Origin is not accepted by the Customs authority of the importing country, the original certificate must be returned to the issuing authority in the exporting country within a reasonable period and not exceeding two months. They also relied upon Rule 15 of Origin rules, which provided that where the origin of goods is not in doubt, the preferential treatment cannot be disallowed. Mismatch in classification would at best be a minor discrepancy or procedural lapse covered under Rule 15 of Origin Rules. They submitted that the supplier M/s. Ampacet had exported the same compounds to other countries also and the classification in those transaction is consistent with those used in the present case and the certificates of Origin had been accepted by jurisdictional customs officials of those countries.

**2.5** It is settled by a number of judgments that the Certificate of Origin issued by the notified agency are to be given full effect to. For this they relied upon the judgment in case of Minakshi Exports Vs CC, Jodhpur {2018 (359) ELT 689 (Tri.-Del)} wherein Hon'ble Tribunal held that the concessional duty available to the goods originating in Thailand, is in terms of agreement, and if there is any dispute with reference to implementation of the said agreement, the same should be solved by the Joint Committee in consultation. The validity of the Country of Origin certificates cannot be rejected by the Customs authorities, when the genuineness of the certificate is not in dispute. They further relied upon the judgment in case of Suguna Foods Ltd. Vs Commissioner of Customs (Import-Sea Port), Chennai {2019 (370) ELT 742 (Tri.-Chennai)}, Aabis International Vs CC, Chennai Customs-II, Commissionerate {2021 (377) ELT 479 (Mad.)}. In the instant case, no enquiry under Section 28DA(4) of the Customs Act, 1962 has been conducted by the Customs authorities, nor the procedure as outlined under Regulation 6 of the CAROTAR Rules, 2020 has been followed. They also placed reliance on the judgment in case of Kiran Kotak and Co. Vs Commissioner of Customs, Mundra {2024 (389) ELT 203 (Tri.-Ahmd.)} etc.

**2.6** The proposed classification of the imported goods in the impugned notice is based solely on Rule 3(b) of the GRI which has been incorrectly applied to the present case. Rule 3 can only be invoked after the preceding GIRs have been ruled out. Additionally, the notice wrongly assumes that the essential character of these chemicals is provided by the additive and that the products are mixtures, justifying application of Rule 3(b) of GIR. According to these rules, the application of GIR (1-4) should always be in sequential order. If classification is not covered by the provisions of Rule 1, only then Rule 2 and so on shall be applicable. GIR 1 states that if the texts of the headings

and of the notes cannot, by themselves, determine the appropriate heading, then classification is to be determined by subsequent GIRs 2 to 6. Most of the goods imported by them are correctly classifiable by reference to Rule 1 only. They relied upon judgment of Hon'ble Supreme Court in case of Commissioner of Central Excise Vs Simplex Mills Co. Ltd. {2005 (181) ELT 345 SC} wherein it was held that goods should be classified basis the section notes and chapter notes as mandated in GIR Rule 1 itself which should be applied first, and the subsequent rules should be referred if no clear picture emerges from the terms of the headings and relevant section and chapter notes.

**2.7** Impugned Notice incorrectly seeks to classify the imported goods of Category 1 under Chapters 28 and 29 of the Tariff:

**2.7.1** The impugned notice proposes to classify the Category 1 products under various headings within Chapters 28 and 29 of the Tariff. It asserts that because the additives provide the essential character to the imported goods in Category 1, the imported products should be classified under Chapters 28 and 29 of the Tariff, by application of Rule 3(b) and 3(c) of GIR. Note 1 to Chapter 28 and Note 1 to Chapter 29 indicate that these chapters apply solely to separate chemical elements and separate chemically defined compounds. They reproduced relevant chapter notes. A perusal of the chapter notes makes it clear that Chapters 28 and 29 exclusively cover separate chemically defined compounds, regardless of whether they contain impurities. The HSN Explanatory Notes define a "separate chemically defined compound" as a product that can be described by a ratio or chemical formula. However, since the additives and polypropylene are combined through extrusion rather than polymerization, they cannot be defined by a scientific formula. As a result, the goods do not qualify as separate chemically defined compounds and, therefore, cannot be classified under Chapters 28 or 29. Additionally, the imported product is an organic compound, specifically a hydrocarbon, and thus cannot be classified under Chapter 28, which deals with inorganic chemicals. Organic chemicals, including hydrocarbons and their derivatives, are distinctly different from inorganic chemicals, which consist of non-carbon compounds and other elements. Propylene, or propene, is an unsaturated organic compound and a hydrocarbon, not an inorganic chemical under Chapter 28. Accordingly, they submitted that the imported goods would be classifiable under Chapter 39 of the Tariff, even when additives are included to impart specific properties.

**2.7.2** Polypropylene is an essential component for film production, without which film cannot be made. As such, the imported goods in Category 1 cannot be classified under Chapter 28, since this chapter pertains to inorganic chemicals, while the Polypropylene-based additive compound remains an organic chemical. This is also evident on a plain reading of the relevant headings:

Tariff Item	Description of the goods
3902	Polymers of propylene or other olefins, in primary forms
39021000	- Polypropylene
39022000	- Poly iso butylenes
39023000	- Polypropylene copolymers
39029000	- other

**2.7.3** Notwithstanding the addition of additives, Polypropylene remains the predominant constituent in these products. It is however, less than 95% by weight in the product. It is pertinent to note that the expression "primary forms" is defined in Note 6 to Chapter 39. Primary forms have been defined to include liquids and pastes, including dispersions and solutions. As per HSN Explanatory note, primary forms may contain other materials such as plasticizers, stabilizers, fillers, and colouring matter, chiefly intended to give the finished products special physical properties or other desirable characteristics. They reproduced relevant part of the HSN explanatory notes. In the present case, the disputed products are in granule solid form and primarily composed of Polypropylene to which additives provide special physical properties or other desirable characteristics, and hence, these products qualify to be classified under CTH 3902 as "polymers of propylene or of other olefins, in primary forms". Accordingly, the products covered under Category-1 merits classification under HSN code 39029000.

**2.8** Proposal for Classification of SEABLOCK 6 as Acrylic Polymers in the impugned notice is unjustified. Regarding SEABLOCK 6, the impugned notice proposes classification under CTH 39069090. The heading reads as under:

3906		Acrylic Polymers in primary forms
	-	Poly(methyl methacrylate):
39061010	---	Binders for pigments or inks
39061090	---	Others
390690	-	Other
39069040	---	Poly(acrylic acid)
39065090	---	Polyacrylonitrile (PAN)
39069060	---	Copolymers of acrylonitrile
39069070	---	Sodium polyacrylate
39069090	---	other

The proposed CTH refers to acrylic polymers in primary forms. The term "acrylic polymers" as per HSN Notes includes polymers of acrylic or methacrylic acid, their salts or esters, or the corresponding aldehydes, amides, or nitriles. In this regard they submitted that the imported goods do not consist of monomers or esters of acrylic or methacrylic acid. Further, the additives do not take part in the polymerisation and, therefore, the monomers in the imported products are not polymers of acrylic but mere blends of polymers with additives and hence, proposal to classify SEABLOCK 6 under CTH 39069090 is incorrect and the same is correctly classifiable under CTH 39029000 for the reasons cited for Category 1 products above.

**2.9** Products MATIFF 55, MATIF 97, MATIF 130, JP4044002/MATIF 67A are polymer blends of polypropylene and polyethylene and rightly classifiable under CTH 3902.90. Category-2 products i.e., MATIFF 55, MATIF 97, MATIF 130, JP4044002/MATIF 67A are blends of polymers rather than copolymers and therefore, the classification suggested by the Department is incorrect. Polypropylene (PP), classified under HSN code 3902.10, and Polyethylene (PE), classified under HSN code 3901.20, are both types of polymers. In the impugned notice, the aforesaid goods (MATIFF 55, MATIF 97, MATIF 130, JP4044002/MATIF 67A) are proposed to be classified under CTH 3902.30 as copolymer. The headings read as under: -

Tariff Item	Description of the goods
3902	Polymers of propylene or other olefins, in primary forms
39021000	- Polypropylene
39022000	- Poly iso butylenes
39023000	- Polypropylene copolymers
39029000	- other

**2.9.1** The classification of polymer blends is governed by Chapter Note 4 to Chapter 39, which is outlined as:

- These products should be classified under the heading covering the polymer of the comonomer unit that predominates by weight over every other single comonomer unit.
- If no single comonomer unit predominates, polymer blends should be classified under the heading that comes last in numerical order among those that equally merit consideration.

**2.9.2** Accordingly, the above mentioned MATIF group products should be classified under CTH 3902 90 00 appropriate to compounds of polypropylene, both by the predominance test and the sequence test. This note determines the classification of the polymer blend at the heading level. The Note makes it abundantly clear that the products fall in heading 3902. It does not in any way support the classification under 3902.30 as proposed in the notice.

**2.10** Product MATIF 12 is correctly classifiable under CTH 3901.90. Regarding MATIF 12, the impugned notice proposes classification under CTH 39014010. The heading reads as under:

<b>POLYMERS OF ETHYLENE, IN PRIMARY FORMS</b>		
<b>3901</b>		
3901 10	-	Polyethylene having a specific gravity of less than 0.94 :
39011010	---	Linear low-density polyethylene (LLDPE), in which ethylene monomer unit contributes 95 % or more by weight of the total polymer content
39011020	---	Low density polyethylene (LDPE)
3901 10 90	---	Other
3901 20 00	-	Polyethylene having a specific gravity of 0.94 or more
3901 30 00	-	Ethylene-vinyl acetate copolymers
<b>390140</b>	-	<b>Ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94:</b>
39014010	---	Linear low-density polyethylene (LLDPE), in which ethylene monomer unit contributes less than 95 % by weight of the total polymer content
39014090	---	Other
<b>39019000</b>	-	<b>Other</b>

**2.10.1** The proposed CTH falls under heading 3901 40 that covers 'ethylene-alpha-olefin copolymers', however, as discussed above the products falling under Category-2 are not copolymers but polymer blends of polypropylene and polyethylene. They submitted the exact composition of the product as below-

Component	% Content
Polyethylene	50-55
Polypropylene	45-50
Antioxidant additive	1
Other additives	<0.5

**2.10.2** On the perusal of the above composition, it is evident that the product MATIF 12 is also a polymer blend of polyethylene and polypropylene with polyethylene slightly predominating the composition. Hence, by applying the reasoning as explained above, MATIF 12 should be classified under Chapter Heading 3901 appropriate to compounds of polyethylene by the predominance test. Further, while coming to the sub-heading level, they submitted that since no component in the product exceeds 95%, therefore, it will fall under the residuary entry i.e. 3901 90 as 'Others'.

**2.11** Category 3 goods cannot be considered as copolymers. As regards MATIF compounds, classification is proposed in the impugned notice under 39023000 and 39014010. The CTH 39023000 covers polypropylene copolymers. Copolymer is a polymer, made up of 2 or more monomers species. Polymerisation of monomers results in copolymers. This process is known as co-polymerization. It may be noted that this process has not been undertaken in relation to the imported compounds. The imported product is in fact a blend derived by mixing 2 polymers, and not a copolymer. The CTH 39023000 and 39014010 are totally inapplicable to MATIF compounds.

**2.12.1** Fundamentally, there are two methods to combine polymers with one another:

- 1) Making a polymer blend without polymerization involves physically blending different pre-formed polymers, often by melting or solvent mixing, to achieve a material with combined properties from each polymer. Extrusion technology for manufacturing polymer blends is commonly referred as polymer or plastics compounding. Mixtures of polymers), additives, fillers, and other ingredients are put through several elementary steps to produce the molten polymer blends that are being pelletized in normal operations.
- 2) Copolymerization is the process in which two or more different types of monomers are chemically reacted to form a copolymer. This involves initiating a polymerization reaction where the monomers are alternately or randomly integrated into a single polymer chain. The resulting copolymer exhibits properties derived from each of the individual monomers, which can be tailored to achieve specific characteristics such as improved strength, flexibility, or resistance to chemicals, making them suitable for diverse applications in various industries.

**2.12.2** The key difference between polymer blends and co-polymers lies in the nature of the interactions between the polymer components. Polymer blends involve physical blending of polymers without chemical bonding, while polymer alloys involve chemical reactions leading to covalent bonds between the different polymer components. Since the imported compounds arises not through chemical bonding of two polymers but by extrusion process which results in blends and not copolymers. Therefore, CTH 39023000 and 39014010 have no relevance, as the products are not copolymers.

**2.13** As per the Chapter Notes to Chapter 39 read with GIR 1, makes it abundantly clear that the subsequent Rules are not applicable in the present case, therefore, rendering the applicability of Rule 3 by the Department as doubtful. Therefore, the aforesaid point is liable to be dropped.

**2.14.1** Rule 3 of the GIR has been incorrectly applied without ruling out applicability of preceding rules, and as imported goods are not mixtures. As per the Chapter Notes to Chapter 28, 29 and Chapter 39 read with GIR 1, it is abundantly clear that the Rules 2, 3 onwards are not applicable in the present case. The impugned notice has failed to proceed sequentially in the application of the Rules for Interpretation. The Department has erred by directly relying upon Rule 3 of GIR while proposing the re-classification of the disputed products without considering or even discussing Rule 1 in the sequential order.

**2.14.2** Further in the impugned notice, it is assumed that the imported goods are mixtures for invoking Rule 3(b) of GIR. In this regard, it is submitted that Rule 3(b) covers mixtures, composite goods etc. Polymer blends made by extrusion are not considered mere mixtures because extrusion involves the physical and thermal processing that causes the polymers to interact at a molecular level, resulting in a material with new, combined properties. During extrusion, polymers are melted and forced through a die, creating significant shear and thermal energy that facilitates the mixing and potential compatibility of different polymer chains. This process often leads to enhanced mechanical, thermal, and chemical properties that are not present in simple physical mixtures. The resulting blend exhibits a more uniform and consistent behaviour, functioning as a single, otherwise material rather than a mere combination of individual polymers.

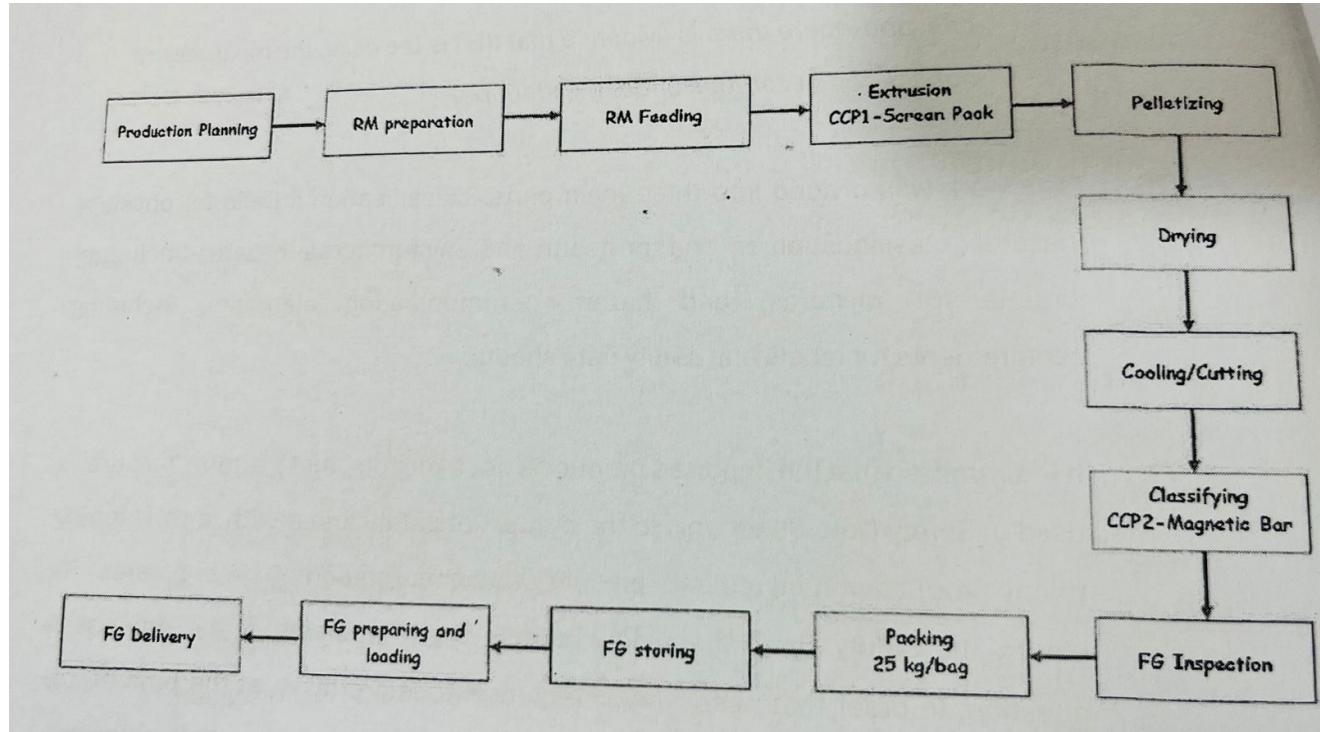
**2.14.3** Further, the impugned notice references the Safety Data Sheet, asserting that the imported goods are a mixture and should be classified using Rule 3(b) of the GIR. The Safety Data Sheet was issued in compliance with safety regulations published in the Federal Register / Vol. 77, No. 58 / Monday, March 26, 2012. These regulations align with the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals (GHS). According to the Regulation:

*"Most chemicals in commerce are not present in the pure state (i.e., as individual elements or compounds), but are ingredients in mixtures of chemicals. Evaluation of the health hazards of mixtures is based on data for the mixture as a whole when such data are available. When data on the mixture as a whole are not available, the mixture is considered to present the same health hazards as any ingredients present at a concentration of 1% or greater, or, in the case of carcinogens, concentrations of 0.1% or greater. The current HCS also recognizes that risk may remain at concentrations below these cut-offs, and where there is evidence that that is the case, the mixtures are considered hazardous under the standard."*

**2.14.4** The work was divided into three main parts; classification criteria for physical hazards; classification criteria for health and environmental hazards [including criteria for mixtures) and hazard communication elements, including requirements for labels and safety data sheets. They submitted that the imported product is not a mixture, and the term 'mixture' is used in Safety Data Sheet only in the context of safety and health laws, referring to any product with ingredients present at a concentration of 1% or greater. To clarify, the Safety Data Sheet only reflects the ingredients of the product in question, in order that necessary safety measures are taken at the time of any mishappening or accident. Also, that the environmental and health hazards can be averted if

the persons handling and storing the products know about the ingredients of which the same are made.

**2.14.5** The Rules of Interpretation refer to 'mixtures' as products created by a mixing process. The imported products are polymers with special properties, not resulting from a simple mixing process. The manufacturing process is as follows:



Hence, Rule 3(b) has no relevance to the present dispute.

**2.15** Essential character is given by the Polypropylene in respect of Category 1 products, even, if Rule 3(b) is applied in the instant case. Without admitting applicability of Rule 3(b), the essential character as the determining factor will differ between various types of goods. Therefore, even by the application of Rule 3(b) of GIR, the essential character for purpose of classification would arise from the polypropylene in the present case, and the goods would be classifiable under Chapter 39 and not any other chapter of the Schedule. Regarding the role of constituent materials in the use of goods, polypropylene is essential to produce film. The addition of additives only imparts special properties to the polypropylene without altering its nature and polypropylene remains the main ingredient used for manufacturing the film. They submitted that polypropylene is not an inert substance; it significantly contributes to the finished product, i.e., the film, rather than just acting as a carrier for the additives. Polypropylene is the main and primary ingredient in the manufacture of polyester film. The addition of additives to enhance certain properties does not change the nature or character of the finished product, which continues to be polypropylene. It is this material that imparts the essential character. Therefore, even by applying Rule 3(b), the classification of the imported products merits to be classified under 3902.90.

**2.16** Reliance on the case law cited in the impugned notice is misplaced. With respect to the decision in the case of Supreme Industries, the dispute pertained to the classification of synthetic resin, where the competing tariff headings under consideration were 3204.90 and 3402.90. The former pertains to colouring matter, while the latter relates to surface-active agents. However,

neither the product nor the headings in that case are relevant to the present dispute, as the applicable Section and Chapter Notes differ entirely. The case involved products under Section VI, whereas plastics fall under Section VII in the present matter. Therefore, no parallel can be drawn, and the aforementioned judgment is inapplicable to the current case. As for the judgment in Rajasthan Petro Synthetics Ltd., it was based on a mis-declaration of facts, where masterbatch was imported under the guise of polypropylene dyed chips. The product involved was a pigment preparation of organic and inorganic pigments, with the colorant content ranging from 30% to 70%. Further, there was a specific tariff heading for the colouring material in that case in Chapter-32 of the Customs Tariff. In the present case, there is no separate heading for the goods being imported and the Customs department has proposed to change the heading based on their interpretation as per GIR Rules and the issue relates to interpretation of tariff.

**2.17** They submitted that the onus to prove that a product falls under a particular HSN code rests with the Department. The burden of proof cannot be shifted to the taxpayer or business entity; rather, it is the responsibility of the Department to demonstrate that the product in question unequivocally matches the characteristics and specifications outlined in the HSN code being contested. The legal framework governing HSN classification underscores that the Department must provide clear, specific, and objective evidence to justify the classification under the designated code. This requirement ensures that any reassignment of a product to a different HS code is not arbitrary but is supported by factual accuracy and legal validity. They placed reliance upon the judgment of the Apex Court in the case of Commissioner v. Hindustan Lever Ltd. reported in 2015 (323) E.L.T. 209 (S.C.). Further, the classification should be based on detailed analysis and not merely on conjecture or assumptions. It is, therefore, crucial for the Department to produce detailed reports, technical assessments, and other relevant documentation that establish the alignment of the product with the criteria specified for the HSN code in question. In this regard, reliance is placed upon the judgment of the Hon'ble CESTAT Ahmedabad in the case of Vishal G. Trivedi v. C.C., Ahmedabad reported in 2019 (367) E.L.T. 660 (Tri. - Ahmd.).

**2.18** They submitted that any change in the classification would not be material or relevant, as the alternate headings proposed in the notice are also covered by the Exemption Notification, and eligible for exemption, making the situation completely revenue neutral. Further, they would be eligible for ITC of CVD sought to be demanded in the Show Cause Notice, after re-calculating the same on heading alleged Custom Duty demand in the assessable value, as the goods in question have been used by them are used for the manufacture of their dutiable final product. The amount involved in this respect is Rs. 1,26,71,912/. It has been consistently held by the Courts that in case of revenue neutral situations, there cannot be a demand. They relied upon the Supreme Court judgment in case of C. C. Ex. Pune vs Coca Cola India Pvt. Ltd. reported in [2007 (213) ELT 490 (SC)].

**2.19** The goods MATIF GRADES (MATIFF 55, MATIF 97, MATIF 130, JP4044002/MATIF 67A) are covered under CTH 3902.90 and eligible for zero rate of Custom Duty. They submitted that the said goods are proposed to be classified by the department under CTH 3902.30. The said CTH is also covered at Sl. No. 456 of Notification No. 46/2011-Cus dated 01.06.2011, which attracts 5% of Custom Duty. The department has demanded 7.5% duty on the said goods, which is incorrect even as per the understanding or the department. The duty difference in this respect is Rs.1,54,49,232/-.

**2.20** They submitted that the charges of collusion / wilful misstatement / suppression of facts with the intention to evade tax have not been established against the Company. It is a settled position of law that the onus lies on the tax authorities to prove that the Company has acted with a mala fide intent to evade payment of tax. Rather, the Department has carried out an investigation based on the documents and information submitted by the Company during the course of the audit. Further, there has been no change in the facts as the Company has been importing the said goods under the same CTH for a long time and after proper verification by the officers. As the Department has been aware of the facts, the allegation of suppression cannot be sustained. In any case, the recovery of alleged differential duty is incorrect as extended period of limitation is not invocable in the absence of any evidence to prove the existence of collusion. They relied upon the judgment in case of Continental Foundation Jt. Venture Vs Commissioner of Central Excise {2007 (10) SCC 337}, Neotric Informatique Ltd. Vs Commissioner of Customs (Import), Nhava Sheva {2015 (318) ELT 701 (Tri-Bom)} etc.

**2.21** The HSN mentioned by the supplier in the COO certificate is for the purpose of identifying the goods in the context of the supplier's country. The certificate of origin provided by the supplier does not dictate the HSN code to be used for customs purposes in India. Accordingly, the company has correctly classified the goods under HSN 39029000. Further, mere mismatch in classification shown in the COO and the Bills of Entry would at best be treated as a minor discrepancy which is covered under Rule 15 of the origin rules. Procedural lapse cannot take away the substantive right. For this they relied upon the judgment in case of Mangalore Chemicals and Fertilizers Ltd. Vs UOI {2015 (318) ELT 701 (Tri-Bom)}.

**2.22** They submitted that claiming an exemption by itself is not a mis-declaration. It can not be said that they had suppressed any facts from the department and thus the impugned goods are not liable for confiscation. Further, the goods in question are not available and hence no order for confiscation can be passed. They relied upon the judgment in case of Commissioner of Customs Vs Finesse Creation Inc {2010 (255) ELT A120 SC}, Bussa Overseas & Proprties T. Ltd Vs C.L. Mahar, Asst. C.C., Bombay {2004 (163) ELT 304 (Bom)} etc.

**2.23** In the cases wherein the issue relates to interpretation of legal provisions and there was bonafide litigation difference of opinion on classification of goods, penal provisions under Section 112(a) and Section 114A of the Customs Act, 1962 are not attracted. In absence of mens rea no penalty is imposable. They relied upon judgments in case of Commr. Of C.Ex. Chandigarh Vs Pepsi Foods Ltd. {2010 (260) ELT 481 SC}, Tamil Nadu Housing Board Vs Collector {1994 (74) ELT 9 SC}.

### **PERSONAL HEARING**

**3.** In the matter, opportunity for personal hearing was granted to the noticee on 06.05.2025, however, the noticee sought adjournment and requested to re-schedule the date. Accordingly, another opportunity was granted to the noticee for personal hearing on 10.06.2025. In response to the same, Smt. Reena Khair, Advocate and authorized representative of the noticee appeared for hearing along with Kamal Kishore and K.K. Gupta, both consultants. They reiterated their written submissions dated 10.10.2024 and also submitted compilation of case laws.

## **DISCUSSIONS 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 the same before passing the order. In the instant case, the personal hearing was granted to the noticee which was attended by the Authorised representative of M/s. Jindal Poly films Limited. During the hearing, the noticees gave their submissions which have been duly taken on record as detailed in preceding paras. In the instant case, as per Section 28(9) of the Customs Act, 1962 the last date to adjudicate the matter was 24.06.2025 which was extended by the Chief Commissioner of Customs in terms of first proviso to Section 28(9) of the Act *ibid* up to 24.12.2025 vide his order dated 17.06.2025 & 17.09.2025. Therefore, the case has been taken up by me for adjudication proceedings within the time limit.

**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 duly 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 SCN as well as the submissions / contentions made by the Noticee.

**4.4** The present proceedings emanate from Show Cause Notice No. 599/2024-25/COMM.R./Gr.IIG/NS-I/CAC/JNCH dated 25.06.2024 issued to M/s. Jindal Poly Films Limited. I find that on the basis of the Post Clearance Audit, it was noticed that the noticee has cleared four category of products by wrongly classifying the same to pay lower rate of duty. Scrutiny of Bills of Entry, Certificates of Origin, technical literature and product composition revealed that the noticee had misclassified various brands of Polypropylene Base Additive Compounds (PP BAC), imported under CTH 39029000/38119000 with benefit of Notification. Audit concluded that these products were, in fact, additive masterbatches or copolymers whose classification ought to be determined based on their essential character as per General Rules for Interpretation (GIR). Accordingly, additive masterbatches under Category-1 (HOBLOCK, SKIBLOCK, etc.) were found classifiable under headings pertaining to anti-block additives (CTH 2811/2842). Masterbatches under Category-2 (ANSLIP, ANSTAT, ASCORE, ANFOG, SEA BLOCK, COEXAS, etc.) containing multiple additives were held classifiable under the heading of the additive occurring last in numerical order, in terms of GIR 3(c). Compounds under Category-3 (MATIF series, JP4044002) containing polypropylene and polyethylene monomers were held to be copolymers meriting classification under CTH 39023000 / 39014010, based on predominance of monomer units. Further, the product "Paper Band Heavy Duty Unbleached Brown", imported under CTH 48041100, was found misclassified since the width of the roll was less than 36 cm. The correct classification was determined as CTH 48115990, attracting a higher IGST rate. Therefore, demand of differential duty to the tune of Rs. 8,33,44,062/- was raised on the importer in respect of the imported goods along with interest & consequential penalties. In response to the notice the importer submitted the proposed re-classification under Chapters 28, 29 or as copolymers is incorrect, as the goods are polymer blends or polypropylene-based compounds, not chemically defined compounds or copolymers, and are correctly classifiable under CTH 3902 or

3901 based on Chapter Notes, HSN Explanatory Notes and GIR 1. They further submitted that Rule 3 of GIR has been wrongly invoked without ruling out earlier GIRs. In respect of item *paper band heavy duty unbleached brown (paper matter)*, the noticee submitted that they have paid the differential duty along with interest and penalty.

**4.5** On careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided:

**4.5.1 Whether the four category of goods as tabulated in para 1.19 above, should be re-classified to the new headings as proposed in the last column of the table or otherwise;**

**4.5.2 Whether the demand of differential duty amounting to Rs. 8,33,44,062/- is recoverable under Section 28(4) of the Customs Act, 1962 along with applicable interest or otherwise;**

**4.5.3 Whether the goods valued Rs. 85,74,21,077/- should be confiscated under Section 111(m) and 111(o) of the Customs Act, 1962 or otherwise;**

**4.5.4 Whether the penalty should be imposed on the noticee under Section 112(a)/114A of the Customs Act, 1962 or otherwise?**

**4.5.5 Whether amount totalling to Rs. 3,16,977/- paid towards the duty amounting to Rs. 2,84,561/- along with interest of Rs. 25,416/- and penalty of Rs. 7,000/- only should be appropriate towards the confirmed duty demand or otherwise.**

**5.** After having framed the substantive issues raised in the SCN 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 SCN, 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.

**(A) Whether the four category of goods as tabulated in para 1.19 above, should be re-classified to the new headings as proposed in the last column of the table or otherwise;**

**6.** I find that during the period of audit, significant variations in the HS codes used for the polypropylene-based additive compounds were observed by the Customs authorities. While the noticee had earlier claimed that none of the products were ever imported by them under CTH 38119000, the COOs submitted by them showed multiple items classified under both headings 39029000 and 38119000. It was also noticed that the CTH of final goods as mentioned in the COO is different from the corresponding Section III, which showed that the noticee was inconsistent in arriving at the CTH of the impugned goods. Accordingly, the investigation was initiated against the noticee in respect of different categories of products imported by them.

**Category – 1: Products which have been manufactured by constituting one carrier resin & one additives, viz. HOBLOCK 10, HOBLOCK 29, SKIBLOCK 10B, SKIBLOCK 5 (PP Based Additive Compound).**

**6.1.1** I find that on examination of the documents submitted by the noticee during audit period, it was observed that the products falling under Category-1, namely HOBLOCK 10, HOBLOCK 29,

SKIBLOCK 10B and SKIBLOCK 5, are composed of polypropylene resin in the range of 80–95% and anti-block additives, principally synthetic silica or alumina silicate, in the range of 5–15%. The technical literature provided by the manufacturer i.e. M/s. Ampacet clearly establishes that the functional utility and commercial identity of these goods arises not from the polypropylene carrier resin, but from the anti-block additives which impart the essential property of preventing film blocking in BOPP/CPP film manufacturing. I find that the additives helped in creating bumps on the surface of the film allowing the air to be trapped, giving anti-blocking property to the product. I find that the anti-blocking agents provide the essential character to the finished product i.e. Polypropylene based additive compound to prevent blocking of the film. Further, the Safety Data Sheets provided by the supplier also classified these products as “mixtures,” reaffirming the composite nature of the goods.

**6.1.2** I find that the HSN do not have any reference of the trade names “HOBLOCK” and “SKIBLOCK” and tariff also does not have specific tariff entry describing “anti-block masterbatch,” therefore, the classification of these goods cannot be determined under GIR 1. Similarly, I find that Rule 2 of GIR does not assist in classification, since the products are not incomplete or unfinished forms of a single material or substance, but composite preparations consisting of more than one constituent. Therefore, the impugned goods have to be classified in terms of Rule 3 of the General Rules for Interpretation of the Tariff. I find that the classification of the impugned products of Category I cannot be done under Rule 3(a) of GIR as in the instant case, neither of the two possible headings i.e. those relating to polymers under Chapter 39 or those relating to silica/alumina silicate under Chapters 28 provides a more specific description of the composite goods. Accordingly, as mentioned in Rule 3(b) of GIR that when the goods cannot be classified by reference to Rule 3(a), the same shall be classified in terms of Rule 3(b) of GIR. I find that Rule 3(b) stipulates that in case of composite goods consisting of different materials or substances the same shall be classified according to the material or component which imparts the essential character to such goods. As discussed in aforementioned paras, the essential character of the impugned goods is imparted by the anti-block additive i.e. silica or alumina silicate, whereas the polypropylene merely serves as a carrier medium. In view of the above, I am of the considered opinion that the impugned goods merit classification under the tariff headings corresponding to the respective anti-block additives, viz., silica under CTH 28112200 and alumina silicate under CTH 28421000.

**6.1.3** I find that the noticee has submitted that most of the goods imported by them are correctly classifiable by reference to Rule 1 of GIR. However, I find that the goods are not mentioned by name in any of the headings of HSN. I find that the noticee seeks to exclude classification of the impugned goods of category I from Chapter 28 on the grounds that these chapters apply only to separate chemically defined compounds. I find that the noticee’s argument is misplaced as the notice has not proposed classification of the impugned masterbatches as separate chemically defined compounds per se. Instead, the proposal is based on the application of Rule 3(b) of the GIR, which expressly allow classification of composite goods according to the component that imparts the essential character. I find that the noticee has overlooked the principles of classification of goods specifically applicable to composite goods and preparations consisting of multiple substances as in the instant case. I find that the noticee seeks to treat the impugned products as polymers in primary forms under CTH 3902 solely because polypropylene is the major component by weight. However, I find that the tariff classification does not depend merely on weight percentage but also on the essential character of the goods, which is determined by their

function, commercial identity, and intended use. It is an admitted fact that the imported products—HOBLOCK, SKIBLOCK are not conventional polypropylene granules used for film extrusion. Rather, they are specialty masterbatch preparations designed to impart anti-blocking characteristics, and it is the anti-block additive (silica or alumina silicate), not the polypropylene, that confers the defining commercial functionality and marketability of the imported goods. The polypropylene in these products serves merely as a carrier. Therefore, the noticee's contention that the products necessarily fall under CTH 39029000 is untenable. I find that the imported goods do not exhibit the essential character of polymers of propylene in primary forms and rather they exhibit the essential character of anti-block additives. Accordingly, I am of the view that the goods of Category-I shall be classified under heading 28112200/28421000 as proposed in the SCN.

**Category II: Products like SEA BLOCK 6, ANSTAT 2, ANSTAT, MATBLOCK 2, ASCORE 3F, ANFOG 17A, ANSLIP 24, COEXAS 2 which have been manufactured by constituting one carrier resin & more than one additive.**

**6.2.1** I find that on examination of the documents submitted by the noticee during audit period, it was observed that the products falling under Category-2, namely SEA BLOCK 6, ANSTAT 2, ANSTAT, MATBLOCK 2, ASCORE 3F, ANFOG 17A, ANSLIP 24, COEXAS 2, are composed of polypropylene resin in the range of 65-95% and with two or more additives such as anti-block, antistatic, antifog and slip additives including PMMA, EMA, GMS, tallow amine, polyol amine, erucamide, alumino-silicate, zeolite, etc. I find that these are proprietary additive masterbatches used in the manufacture of BOPP/PP films by extrusion or moulding. Further, the technical literature provided by the manufacturer i.e. M/s. Ampacet clearly establishes that the functional utility and commercial identity of these goods arises not from the polypropylene carrier resin, but from the anti-block, anti-static, antifog additives which impart the essential property of preventing film blocking in BOPP/CPP film manufacturing. I find that the anti-blocking agents provide the essential character to the finished product i.e. Polypropylene based additive compound. Further, the Safety Data Sheets provided by the supplier also classified these products as "mixtures," reaffirming the composite nature of the goods.

**6.2.2** As discussed in preceding paragraphs in relation to Category-I products, I find that the products mentioned in Category-II also does not reflect in the HSN by name as the products namely SEA BLOCK 6, ANSTAT 2, ANSTAT, MATBLOCK 2, ASCORE 3F, ANFOG 17A, ANSLIP 24 and COEXAS 2, are proprietary formulations and these trade names does not find any reference in the Harmonised System of Nomenclature (HSN). I find that the tariff also does not have specific tariff entry describing "anti-block masterbatch," therefore, the classification of these goods cannot be determined under GIR 1. Similarly, I find that Rule 2 of GIR does not assist in classification, since the products are not incomplete or unfinished forms of a single material or substance, but composite preparations consisting of more than one constituent. Therefore, the impugned goods have to be classified in terms of Rule 3 of the General Rules for Interpretation of the Tariff. I find that the classification of the impugned products of Category I cannot be done under Rule 3(a) of GIR as in the instant case, neither of the two possible headings i.e. those relating to polymers under Chapter 39 or those relating to silica/alumina silicate under Chapters 28 provides a more specific description of the composite goods. Accordingly, as mentioned in Rule 3(b) of GIR that when the goods cannot be classified by reference to Rule 3(a), the same shall be classified in terms of Rule 3(b) of GIR. I find that in the instant case, Rule 3(b) is also inapplicable, as the impugned goods of category-II are manufactured by using two or more

additives and no single additive or ingredient imparts the essential character. I find that the additives are present in more or less equal functional proportions contributing jointly to the properties of the product and can be classified under different headings of the additives providing essential character. I find that as per Rule 3(c) when goods cannot be classified by reference to rule 3(a) & 3(b), they shall be classified under the heading which occurs last in the numerical order among those which equally merits consideration. I find that in the instant case, the products merits classification on the basis of the additives as the same provides the essential character to the impugned products, however, as two or more additives are imparting equally functional & essential character. Therefore, the impugned goods of Category-II shall be classified under the headings which occurs last in numerical order. Accordingly, these goods are appropriately classifiable under headings as detailed in 1.16.2.3 above.

**6.2.3** I find that the noticee vide its aforementioned written submissions have given common submissions for Category-I & Category-II products that the same have to classified by reference to Rule I of GIR. However, as discussed in reference to Category-I products in paras supra, I find that the goods of Category-II are also not mentioned by name in any of the headings of HSN. I find that the proposal in the Show Cause Notice to classify the impugned goods in terms of Rule 3(c) of the GIR is appropriate as the said products are manufactured by two or more additives and all the additives are imparting equal functional & essential character to the product thereby liable to be classified under both headings. However, as per Rule 3(c) of GIR, if the any goods merits classification under two different headings, then the same have to be classified under the heading which occurs last in numerical order. I find that the noticee seeks to treat the impugned products as polymers in primary forms under CTH 3902 solely because polypropylene is the major component by weight. However, I find that the tariff classification does not depend merely on weight percentage but also on the essential character of the goods, which is determined by their function, commercial identity, and intended use. It is an admitted fact that the imported products of category II are not conventional polypropylene granules used for film extrusion. Rather, they are specialty masterbatch preparations designed to impart anti-blocking characteristics, and it is the anti-block additive confers the defining commercial functionality and marketability of the imported goods and not the polypropylene. The polypropylene in these products serves merely as a carrier. Therefore, the noticee's contention that the products necessarily fall under CTH 39029000 is untenable. I find that the imported goods do not exhibit the essential character of polymers of propylene in primary forms and rather they exhibit the essential character of anti-block additives. Accordingly, I am of the view that the goods of Category-II shall be classified in terms of Rule 3(c) of GIR under headings as proposed in the SCN.

**6.2.4** I find that the in relation to the product SEABLOCK 6, the noticee has mentioned in its written submissions that the said product merits classification under heading 39029000 and not under heading 39069090 as proposed in the notice as the goods imported by them are not acrylic polymers. I find that the noticee seeks to treat the impugned products as polymers in primary forms under CTH 3902 solely because polypropylene is the major component by weight. However, I find that the impugned product SEABLOCK 6 is not containing polypropylene as 100%, rather it is manufactured by mixing two additives i.e. Polymeric PMMA & EMA Co-polymer. As discussed in detail in paras supra, the impugned goods are classifiable according to the additives added to them as the same provides the essential characters to the products. It is an admitted fact that the imported product SEABLOCK 6 is not conventional polypropylene granules used for film extrusion. Rather, they are specialty masterbatch preparations designed to impart anti-blocking characteristics, and it is the anti-block additive (Polymeric PMMA & EMA CO polymer), not the polypropylene, that confers the defining commercial functionality and

marketability of the imported goods. The polypropylene in these products serves merely as a carrier. Therefore, the noticee's contention that the products necessarily fall under CTH 39029000 is untenable. I find that the imported goods do not exhibit the essential character of polymers of propylene in primary forms and rather they exhibit the essential character of anti-block additives. However, in the instant case, both the additives provide the essential functional characters to the product, therefore, the item equally merits classification under both the headings of the respective additives. Therefore, in terms of Rule 3(c) of GIR, the product has been appropriately classifiable under Heading 39069090 as proposed in the SCN.

**Category III: MATIF 55, MATIF 97, MATIF 130, JP4044002/ MATIF 67A & MATIF 12 (products having two monomers).**

**6.3.1** I find that the above mentioned products of Category-III have been proposed to classify in the Show Cause Notice under their respective headings in terms of Note 4 of Chapter 39. Note 4 to Chapter 39 is as below:

*"4. The expressions "copolymers" covers all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content.*

*For the purposes of this Chapter, except where the context otherwise requires, copolymers (including co-polycondensates, co-polyaddition products, block copolymers and graft copolymers) and polymer blends are to be classified in the heading covering polymers of that comonomer unit which predominates by weight over every other single comonomer unit. For the purposes of this Note, constituent comonomer units of polymers falling in the same heading shall be taken together.*

*If no single comonomer unit predominates, copolymers or polymer blends, as the case may be, are to be classified in the heading which occurs last in numerical order among those which equally merit consideration."*

I find that during the audit investigations, it was observed that in all the five products of Category-III i.e. MATIF 55, MATIF 97, MATIF 130, JP4044002/ MATIF 67A & MATIF 12, there are two monomer units i.e. Polyethylene and Polypropylene and none of the monomer unit contribute more than 90% by weight to the polymer content. Accordingly, in terms of Note 4 to Chapter 39 as detailed above, the said goods shall be classified in the heading covering polymers of that comonomer unit which predominates by weight over every other single comonomer unit. I find that in the products mentioned at Serial no 1 to 4 of Category III (as tabulated in para 1.16.3 above) Polypropylene outweighs Polyethylene by weight, accordingly, the said goods have to be classified as propylene Co-Polymers under heading 39023000. However, I find that for the product mentioned at Serial no. 5 of category-III i.e. MAIF 12, Polyethylene outweighs Polypropylene and therefore, the said product merits classification under 390104010 as proposed in the Show Cause Notice.

**6.3.2** I find that the noticee has submitted that the products of Category-III are blends of Polymers and not Co-Polymers and therefore, the classification proposed in the notice does not sustain. I find that the noticee's argument is based on the manufacturing process and not on the Tariff definitions. The Noticee's contention is that the products MATIF 55, MATIF 97, MATIF 130, JP4044002/MATIF 67A and MATIF 12 are not copolymers because the polymerisation process has not occurred and that the goods are "polymer blends" obtained through physical mixing of PP and PE. I differ from the submissions made by the noticee as the arguments of the

noticee completely overlooks that classification under the Customs Tariff is not based on the chemical process used during manufacture, but strictly on the statutory definitions contained in the HSN/Chapter Notes. I find that Note 4 to Chapter 39 defines copolymers solely by compositional criteria. In Note 4 of Chapter 39, the expression 'copolymers' covers all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content." And it expressly includes polymer blends also. I find that Note 4 itself states that "...copolymers and polymer blends are to be classified in the heading covering polymers of that comonomer which predominates by weight...". Thus, polymer blends are expressly included within the same classification principle as copolymers. Therefore, even if the MATIF products were accepted as "polymer blends, Note 4 to Chapter 39 has made it mandatory that the said goods have to be classified as per the conditions mentioned therein. Therefore, I agree with the classification of the goods of Category-III as mentioned in the Show Cause Notice.

**6.4** I find that in relation to the classification of the goods as mentioned in Category-I and Category-II, the matter has already been settled by various judicial forums and the matter is not *Res Integra*. It has been decided by the Apex Court that the goods have to be classified in terms of the products which provide them essential character. I rely upon the judgment in case of M/s. Supreme Industries Ltd. Versus Commissioner of Customs, Sheva [held in 2004 (174) E.L.T. 71 (Tri. Mumbai)] wherein it was held by Hon'ble Tribunal that the product i.e., Synthetic Resin made up of polyethylene and coloring masterbatch will be classified as per the CTH of coloring masterbatch and not as per the classification of carrier resin which is polyethylene. I further rely upon the judgment of Hon'ble CEGAT in case of M/s RAJASTHAN PETRO SYNTHETICS LTD -vs- COLLECTOR OF CUSTOMS, BOMBAY [1994 (72) E.L.T. 603 (Tri. - Del)], wherein Hon'ble tribunal held that: -

*"Master Batch - Customs - Pigment preparations of organic and inorganic pigments in polypropylene carrier - Classifiable under Chapter 32 of Customs Tariff Act, 1975 and sub-classification to be based on whether pigment content therein organic or inorganic. The goods being essentially concentrated dispersion of colouring matter in the plastic they would be excluded from the purview of Chapter 39 in view of the exclusion clause under General Notes to Chapter 39 of HSN which is accepted as having a persuasive value in classification of goods under the Customs Tariff. The disputed goods being pigment preparations of organic and inorganic pigments in polypropylene carrier are correctly classifiable under Chapter 32 and their sub-classification was determinable on whether the pigments were organic or inorganic in view of Chapter Note 3 of Chapter 32. The disputed goods, namely, pigmented polypropylene chips are used essentially for imparting colour to the polymer melt obtained by melting grey polypropylene chips before extrusion for production of yarn and thus their use is only for imparting colour to the melted polypropylene or plastic material before it is converted into textile material, namely, yarn. Therefore, classification under Chapter 32 is appropriate. [paras 9,10,12]"*

The aforesaid case was affirmed by the Hon'ble Supreme Court in Rajasthan Petrosynthetics Ltd. vs. Collector of Customs, Bombay [2002 (141) E.L.T. 310 (S.C.)]. In view of the above discussions and findings, I am in agreement with the classification proposed in the Show Cause Notice in relation to the products mentioned in Category-I, II & III.

**6.5** I find that in relation to the imported products, the noticee has submitted that the goods were imported by them by availing exemption notification applicable to the said goods. They further submitted that they are also eligible for exemption benefit under new tariff headings proposed in the Show Cause Notice in terms of Exemption Notification no. 46/2011-Customs. In this regard, I find that the noticee had imported the goods at concessional rate of duty on the basis of Certificate of Origin issued in terms of Notification No. 189/2009-Customs (NT) dated 31<sup>st</sup> December, 2009 as amended. Rule 13 of the Notification No. 189/2009-Customs (NT) dated 31<sup>st</sup> December, 2009 stipulates that any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin. The COO submitted by the importer appears to be not eligible due to the misclassification of the impugned goods. Due to re-classification of the impugned goods for the reasons mentioned hereinabove, it appears that the benefit of notification 046/2011 dated 01.06.2011 does not exist. In addition, Serial No. 6 of the OVERLEAF NOTES of the Annexure III of the Customs Tariff Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules, 2009 notified vide Notification No. 189/2009-Customs (NT) dated 31st December, 2009 as amended states that the Harmonized System Number shall be that of the importing party. The CTHs of the impugned goods have been arrived on the basis of the essential character and is entirely different from that of the CTH quoted in the COO submitted by the noticee at the time of import. Therefore, the question to extend the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011 does not arise.

**Category-IV: "PAPER BAND HEAVY DUTY UNBLEACHED BROWN (PAPER MATTER)"**

**6.6.1** During the course of Audit, it was noticed that the noticee had imported "Paper Band Heavy Duty Unbleached Brown (Paper Matter)" and classified the same under CTH 48041100 by paying IGST @ 12%. The noticee submitted a write up/pictorial catalogue of the subject goods which showed that the width of the imported paper roll was less than 36 cm. As per Note to Chapter 48, headings 4804 to 4809 apply to size exceeding 36 cm. Note 8 of the Chapter 48, is as follows

"Headings 4803 to 4809, apply only to paper, paperboard, cellulose wadding and webs of cellulose fibres:

a. in strips or rolls of a width exceeding 36 cm; "

**6.6.2** Thus, in view of above observations, it was found that the subject good i.e., "PAPER BAND HEAVY DUTY UNBLEACHED BROWN (PAPER MATTER)" of width less than 36 cm can't be classified under CTH 48041100 and the subject good merit classification under CTH 4811 which covers "PAPER BAND HEAVY DUTY UNBLEACHED BROWN (PAPER MATTER)" of any size, other than goods of the kind described in heading 4803, 4809 or 4810 and more specifically merit classification under CTH 48115990 which attract IGST @ 18%. In view of the above, the noticee was found liable to pay the differential duty of Rs. 2,72,634/- (Rupees Two Lakh Seventy-Two Thousand Six Hundred Thirty-Four only) along with applicable interest & penalty. I find that admitting its liability, the noticee had paid Rs. 1,41,361/- during the course of audit only. I find that in the aforementioned submissions, the noticee has submitted that they have paid the differential duty amount along with interest and

penalty. The noticee submitted that they had paid the amount totalling Rs. 3,16,977/- towards the duty amounting to Rs. 2,84,561/- along with interest of Rs. 25,416/- and penalty of Rs. 7,000/- only. However, from the submissions made by the noticee, I find that they have not paid appropriate interest and penalty on the confirmed differential duty demand.

**(B) Whether the demand of differential duty amounting to Rs. 8,33,44,062/- is recoverable under Section 28(4) of the Customs Act, 1962 along with applicable interest or otherwise;**

**7.1** After having determined the classification of the subject goods, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

***SECTION 28(4) of the Customs Act, 1962.***

*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.*

**7.2** I find that the Noticee had evaded correct Customs duty by intentionally suppressing the correct classification of the imported product by not declaring the same at the time of filing of the Bills of Entry. Further, the noticee did not cooperate with the audit authorities and kept on delaying the submission of requisite documents and clarifications in respect of the impugned goods which shows their malified intentions. The noticee kept on seeking adjournments by giving one reason or other, just to delay the audit proceedings. As detailed above and in the Show Cause Notice, the noticee intentionally did not provide complete information as sought by the investigating authorities which clearly establishes the fact that their intent to supress the facts. Their intent to supress the facts about the impugned goods imported by them, clearly established that they were aware of the correct classification. Despite knowing that the imported goods of Category-I to Category-IV were rightly classifiable under headings as mentioned hereinabove, they wilfully mis-classified the goods claimed unavailable notification benefits and paid lower rate of duty. By resorting to this deliberate suppression of facts and wilful mis-classification, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. ***Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible lower rate of duty and notification benefit.***

**7.3** Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, ‘Self-assessment’ has been introduced in Customs clearance. Under self-assessment, it is the importer who has to ensure that he declares the correct 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. I find that the importer kept on availing wrong notification even though they were completely aware that the impugned goods were not eligible for the exemption benefits as the same were liable for classification under different headings. The noticee intentionally misguided the authorities and did not come clean and did not inform the authorities with clear intention to hoodwink the Customs authorities by wrongly availing the benefits of ineligible notification. Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the importer has wilfully suppressed the facts in the import of impugned goods and claimed wrong tariff headings along with ineligible notification benefit, thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the importer has wilfully suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

**7.4** In view of the foregoing, I find that, due to deliberate / wilful mis-classification of 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)** 013(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;*

**7.5** I find that the noticee has paid the differential duty to the tune of Rs. 2,84,561/- towards the products mentioned above under Category-IV i.e. 'Paper Band Heavy Duty Unbleached

(*Paper Matter*)', however, in respect of the said goods differential duty of Rs. 2,72,634/- has been demanded in the Show Cause Notice. I find that the noticee has submitted the details of the differential duty in relation to the said goods (Category-IV) and I agree with the same. In view of the above discussions and findings, I am of the considered opinion that the noticee is liable to pay the differential duty amounting to Rs. 8,33,55,989/- {8,30,71,428 (category-I,II,III) + 2,84,561/- (Category-IV)} under Section 28(4) of the Customs Act, 1962. However, as mentioned in paras *supra*, the noticee has already paid the differential duty amounting to Rs. 2,84,561/- in relation to the products mentioned under Category-IV and the said paid amount shall be appropriate towards the confirmed duty demand.

**7.6** Under Section 28AA of the Customs Act, the person who is liable to pay duty in accordance with the provisions of the Section 28, shall in addition to such duty, be liable to pay interest. In case M/s Kamat Printers Pvt. Ltd. the Court observed that once duty is ascertained then by operation of law, such person in addition shall be liable to pay interest at such rate as fixed by the Board. The proper officer, therefore, in ordinary course would be bound once the duty is held to be liable to call on the party to pay interest as fixed by the Board.

**7.7** I find that the Courts in various judgments pronounced that Interest payable is compensatory for failure to pay the duty. It is not penal in character in that context. The Supreme Court under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 in Collector of C. Ex., Ahmedabad vs. Orient Fabrics Pvt. Ltd 2003 (158) E.L.T. 545 (S.C.) was pleased to observe that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. The Court observed that, the law on the issue of charge of interest, stands concluded and is no longer *res integra*. We may only gainfully refer to the judgment in India Carbon Ltd. Vs State of Assam, (1997) 6 S.C.C. 497. The Court there observed as under:-

*"This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf".*

Therefore, once it is held that duty is due, interest on the unpaid amount of duty becomes payable by operation of law under section 28AA.

**7.8** In case of Directorate of Revenue Intelligence, Mumbai vs Valecha Engineering Limited, Hon'ble Bombay High Court observed that, in view of section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

**7.9** In view of the above, I am of the considered opinion that imposition of interest on the duty not paid, short paid is the natural consequence of the law and the importers are liable to pay the duty in respect of the said imported goods along with applicable interest. I find that the noticee has paid Rs. 25,416/- towards interest on the duty against Category-IV products. However, the noticee has not paid the complete and appropriate interest against the demanded duty. Accordingly, the noticee is liable to pay interest under Section 28AA of the Customs Act, 1962 on the differential duty of Rs. 8,33,55,989/- as detailed in para 7.5 above and the amount of Rs. 25,416/- shall be appropriated towards such demand.

**(C) Whether the goods valued Rs. 85,74,21,077/- should be confiscated under Section 111(m) and 111(o) of the Customs Act, 1962 or otherwise;**

**8.1** I find that the Noticee, M/s Jindal Poly Films 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 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Section 46 of the Act 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 Act), 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 is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) 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 is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to doubly ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the applicable duty in respect of the imported goods.

**8.2** Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

*(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;*

Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 ibid read as under:

*Section 2 - Definitions, Sub-section (2) – assessment:*

*(2) "assessment" includes provisional assessment, **self-assessment**, re-assessment and any assessment in which the duty assessed is nil;*

With effect from 29.03.2018, the term 'assessment' in sub-section (2) of Section 2 ibid means as follows:

*(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975)(hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-*

- a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
- b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*

- c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,
- f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;

**8.3** From a plain reading of the above provisions related to assessment, it is very clear that w.e.f 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the Noticee to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that M/s Jindal Poly Films Limited has deliberately failed to discharge this statutory responsibility cast upon them.

**8.4** Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the bills of entry has resorted to deliberate suppression of facts and wilful mis-classification of goods as detailed in paras *supra*. Further, the above said mis-classification was done with the sole intention to fraudulently avail/claim the concessional rate of duty through ineligible serial numbers of exemption notifications. Thus, the Noticee has failed to correctly classify, assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

**8.5** I find that the Noticee had mis-classified the imported goods under various headings as already elucidated in the foregoing paragraphs. Therefore, it is apparent that the Noticee has not made the true and correct disclosure with regard to the actual classification of goods in respective Bills of Entry leading to suppression of facts. From the above discussions and findings, I find that the Noticee has done deliberate suppression of facts and wilful mis-classification of the goods and has submitted misleading declaration under Section 46(4) of the Customs Act, 1962 with an intent to mis-classify them knowing fairly well the correct classification of the goods. Due to this deliberate suppression of facts and wilful mis-classification, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer.

**8.6** Provisions of Section 111(m) and Section 111(o) of the Customs Act, 1962, is 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 [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]*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.*

**8.7** In the instant case the importer has deliberately mis-classified the goods and also failed to comply with the conditions mentioned against the notifications claimed by them; therefore, the imported goods valued at Rs. 85,74,21,077/- are liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

**8.8** As the Noticee, through wilful mis-classification and suppression of facts, had wrongly classified the goods while filing Bill of Entry with an intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) and Section 111(o) of the Customs Act, 1962 is justified & sustainable in law. However, I find that the goods imported vide Bills of Entry as detailed in the Show Cause Notice, are not available for confiscation. In this regard, I find that the confiscability of goods and imposition of redemption fine are governed by the provisions of law i.e. Section 111 and 125 of the Customs Act, 1962, respectively, regardless of the availability of goods at the time of the detection of the offence. 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 as below:

*“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). ”*

**8.9** 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.).

**8.10** 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.

**8.11** I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

- a. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- b. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- c. M/s Saccha Saudha Pedhi Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

*“if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine.”*

- f. Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. as reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

*“We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon'ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon'ble Supreme Court in the case of Weston Components.”*

**8.12** In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the goods become liable for confiscation. Hon'ble Bombay High Court in case of M/s Unimark reported in 2017(335) ELT (193) (Bom) held Redemption Fine (RF) imposable in case of liability of confiscation of goods under provisions of Section 111. Thus, I also find that the goods are liable for confiscation under other sub-sections of Section 111 too, as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can't be given different treatment.

**8.13** 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 having held that the impugned goods are liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

**8.14** Once the imported goods are held liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962, they cannot have differential treatment in regard to imposition of redemption fine, merely because they are not available, as the fraud could not be detected at the time of clearance. In view of the above, I hold that the present case also merits the imposition of a Redemption Fine, having held that the impugned goods are liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

**(D) Whether the penalty should be imposed on the noticee under Section 112(a)/114A of the Customs Act, 1962 or otherwise.**

**9.1** The Show Cause Notice has proposed imposition of penalty on M/s Jindal Poly Films Limited under the provisions of Section 112(a) and/or Section 114A of the Customs Act, 1962. The said sections are reproduced as under: -

***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, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater:*

***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 sub-section (2) of [section 28](#) shall also be liable to pay a penalty equal to the duty or interest so determined:*

***Provided*** that where such duty or interest, as the case may be, as determined under sub-section (8) of [section 28](#), and the interest payable thereon under section [28AA](#), is paid within thirty days from the date of the communication of the orders 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 duty or interest, as the case may be, so determined:

***Provided further*** that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

***Provided also that where any penalty has been levied under this section, no penalty shall be levied under [section 112](#) or [section 114](#).***

**9.2** In the instant case I find that the Noticee had mis-classified the imported goods with malafide intent, despite being fully aware of its correct classification. I have already elaborated in the foregoing paras that the Noticee has wilfully suppressed the facts with regard to correct classification of the goods and deliberately mis-classified the goods, with an intent to evade the applicable higher duties of Customs. I find that in the self-assessment regime, it is the bounden duty of the importer to correctly assess the duty on the imported goods. In the instant case, the wilful mis-classification and suppression of correct CTH of the imported goods by the Noticee tantamount to suppression of material facts and wilful mis-statement. Thus, wilfully mis-classifying the goods amply points towards the “mens rea” of the Noticee to evade the payment of legitimate duty. The wilful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their ‘mens rea’ in this case. Once the ‘mens rea’ is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted.

**9.3** 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.”*

**9.4** I find that the instant case is not a simple case of wrong classification on bona fide belief, as claimed by the Noticee. From the facts of the case, it is very much evident that the Noticee was well aware of the correct CTH of the goods. Despite the above factual position, they deliberately suppressed the correct classification and wilfully chose to mis-classify the impugned imported goods and pay lower rate of duty. This wilful and deliberate suppression of facts and misclassification clearly establishes their ‘mens rea’ in this case. Due to establishment of ‘mens rea’ on the part of Noticee, the case merits demand of short levied duty invoking extended period of limitation as well as confiscation of offending goods.

**9.5** Thus, I find that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on M/s Jindal Poly Films Limited. in the impugned SCN. Accordingly, the importer is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-statement and suppression of facts, with an intent to evade duty.

**9.6** As I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962, making them liable for a penalty under Section 112(a) ibid. However, in view of fifth proviso to Section 114A, no penalty is imposed on the importer under Section 112(a) ibid.

**E Whether amount totalling to Rs. 3,16,977/- paid towards the duty amounting to Rs. 2,84,561/- along with interest of Rs. 25,416/- and penalty of Rs. 7,000/- only should be appropriate towards the confirmed duty demand or otherwise.**

**10.1** I find that the subject good (Category-IV products) i.e., "PAPER BAND HEAVY DUTY UNBLEACHED BROWN (PAPER MATTER)" of width less than 36 cm can't be classified under CTH 48041100 and the subject good merit classification under CTH 4811 which covers "PAPER BAND HEAVY DUTY UNBLEACHED BROWN (PAPER MATTER)" of any size, other than goods of the kind described in heading 4803, 4809 or 4810 and more specifically merit classification under CTH 48115990 which attract IGST @ 18%. Accordingly, the noticee was found liable to pay the differential duty of Rs. 2,72,634/- (Rupees Two Lakh Seventy-Two Thousand Six Hundred Thirty-Four only) along with applicable interest & penalty, as proposed in the Show Cause Notice.

**10.2** I find that the notice has paid the differential duty to the tune of Rs. 2,84,561/- towards the products mentioned above under Category-IV i.e. 'Paper Band Heavy Duty Unbleached (Paper Matter)', however, in respect of the said goods differential duty of Rs. 2,72,634/- has been demanded in the Show Cause Notice. The notice has submitted the details of the differential duty to the tune of Rs. 2,84,561/- in relation to the said goods (Category-IV) and I agree with the same. In view of the above discussions and findings, I am of the considered opinion that the noticee is liable to pay the differential duty amounting to Rs. 2,84,561/- on (Category-IV) products under Section 28(4) of the Customs Act, 1962 along-with applicable interest and penalty thereon.

**10.3** I find that admitting its liability, the noticee had paid Rs. 1,41,361/- during the course of audit only. Subsequently, the noticee has submitted that they have paid a total amount of Rs. 3,16,977/-, comprising duty of Rs. 2,84,561/-, interest of Rs. 25,416/- and penalty of Rs. 7,000/-, in respect of the differential duty on Category-IV goods, and the same shall be appropriated towards the confirmed demand. However, I find that they have not paid appropriate interest and penalty on the confirmed differential duty demand. Accordingly, while the differential duty of Rs. 2,84,561/- is liable to be appropriated, the noticee is further liable to pay applicable interest under Section 28AA of the Customs Act, 1962, along with appropriate penalty on the confirmed differential duty amount of Rs. 2,84,561/- in respect of Category-IV products.

**11.** In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

**ORDER**

**11.1** I order that the goods as tabulated below, imported by the noticee vide Bills of Entry mentioned in Annexures-A, B, C and D to the Show Cause Notice, shall be re-classified and reassessed under headings mentioned herein:

S.No.	Descriptions of the goods	Carrier Resin & Content %	Additive & Content %	Classification	
				From	To
Audit Report Para 1.					
1.	HOBLOCK 10	Polypropylene-85-90%	Anti-Block Additive-Silica -10-15%	38111900 38119000 39029000	28112200
2.	HOBLOCK 29	Polypropylene-90-95%	Anti-Block Additive-Alumina Silicate- 5-10%	39029000	28421000
3.	SKIBLOCK 10 B	Polypropylene-80-95%	Anti-Block Additive-Silica 10-15%	38111900 38119000	28112200
4.	SKIBLOCK 5	Polypropylene-90-95%	Anti-Block Additive-Silica (5-10%)	39029000	28112200
Audit Report Para 2					
1.	SEA BLOCK 6	Polypropylene-90-95%	Anti-Block Additive-Polymeric PMMA-5-10% (CTH- 39061090)	39061090	39069090
			Anti-Block Additive-EMA Copolymer-5-10% (CTH- 39019000)	39019000	29211190
2.	ANSTAT 2	Polypropylene-75-80%	Antistatic additives-GMS-15-20% (CTH 29157030)	29157030	29211190
			Antistatic Additive - Tallow Amine-5-10% (CTH -29211190)	29211190	
3.	ANSTAT	Polypropylene-75-80%	Antistatic additives-GMS -5-10% (CTH 29157030)	29157030	29211190
			Antistatic Additive- Tallow Amine-1-5% (CTH -29211190)	28421000	
4.	MATBLOCK 2	Polypropylene-85-95%	Anti-Block additive-Alumino Silicate 1-5% (CTH-28421000)	28421000	28421000
			Anti-Block additive-Zeolite 1-5% (-28421000)	2821000	
5.	ASCORE 3F	Polypropylene-65-70%	Anti-static additive-GMS-20-25% (CTH 29157030)	29157030	29213090
			Antistatic Agent- Ployol Amine-10-15% (CTH - 29213090 )	29213090	
6.	ANFOG 17A	Polypropylene-65-70%	Anti-fog additive/ Distilled Monoglyceride-20-25% (CTH- 29157090)	29157090	29212990
			Antistatic Additive- Ployol Amine-10-15% (CTH - 29213090 )	29213090	
7.	ANSLIP 24	Polypropylene-75-	Antistatic additive- Tallow Amine-10-15%	29211190	29242990

			(CTH -29211190)		
		80%	Antistatic additives-GMS-5-10% (CTH 29157030)	29157030	
			Slip Additives-Erucamide-5-10% (CTH -29242990)	29242990	
8.	COEXAS 2	Polypropylene-65-70%	Anti-static additives-GMS-10-15% (CTH 29157030)	29213090	29242990
			Anti-static additives – Polyol Amine-5-10% (CTH – 29213090)	29242990	
			Slip Additives- Stearyl Erucamide-5-10% (CTH - 29242990)	29242990	
Audit Report Para 3					
1.	MATIF 55	Polypropylene-55-60%	Polyethylene-40-45%	38111900 39119000 39029000	39023000
2.	MATIF 97	Polypropylene-55-60%	Polyethylene-40-45%	38111900 39119000 39029000	39023000
3.	MATIF 130	Polypropylene-55-60%	Polyethylene-40-45%	39029000	39023000
4.	JP4044002/ MATIF 67A	Polypropylene-85-90%	Polyethylene-10-15%	39029000	39023000
5.	MATIF 12	Polyethylene-50-55%	Polypropylene-45-50%	38119000	39014010
Audit Report Para 4					
1	Paper Band Heavy Duty Unbleached Brown (Paper Matter)	Paper Roll of width less than 36 cm		48041100	48115990

**11.2** I deny the benefit of Notification no. 46/2011-Customs dated 01.06.2011 as amended, claimed by the noticee vide the Bills of Entry as detailed in Annexure-A, B, C and D to the Show Cause Notice.

**11.3** I confirm the demand of differential duty amounting to. Rs. 8,30,71,428/- in respect of the Bills of Entry as detailed in Annexure-A, B, C and D to the notice, from M/s. Jindal Poly Films Limited under Section 28(4) of the Customs Act, 1962 and order that the same shall be recovered from the importer along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

**11.4** I confirm the demand of IGST amounting to Rs. 2,84,561/- on '*Paper Band Heavy Duty Unbleached Brown (Paper Matter)*' under Section 28(4) of the Customs Act, 1962 and order that the same shall be recovered from the importer along with applicable interest thereon under Section 28AA of the Customs Act, 1962. I appropriate the amount of Rs. 2,84,561/- paid by the noticee towards such differential duty. I also order to appropriate the amount of Rs. 25,416/- paid towards interest and Rs. 7,000/- paid towards penalty against the respective liabilities.

**11.5** I hold the goods valued at Rs. 85,74,21,077/- in respect of the Bills of Entry mentioned in Annexure-A, B, C, D to the Notice liable for confiscation. I order that such goods shall be confiscated under Section 111(m) and Section 111(o) of the Customs Act, 1962, even though the same are not physically available for confiscation. However, I give an option to M/s. Jindal Poly Films Limited to redeem such goods under Section 125 of the Customs Act, 1962 on payment of fine of Rs. 4,25,00,000/-

**11.6** I impose penalty equal to Rs. 8,33,55,989/- along with applicable interest thereon on M/s. Jindal Poly Films Limited under Section 114A of the Customs Act, 1962.

**11.7** I refrain from imposing penalty under Section 112 of the Customs Act, 1962.

**12.** 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.

(यशोधन अ. वनगे / Yashodhan A. Wanage)  
**प्रधान आयुक्त, सीमा शुल्क** / Pr. Commissioner of Customs  
**एनएस-आई, जेएनसीएच** / NS-I, JNCH

To,  
Jindal Poly Films Limited (IEC No. 0588065781)  
Plot No.-12, Local Shopping Complex,  
Sector-B1, Vasant Kunj, South-West, Delhi,  
Delhi- 110070.

Copy to:

1. Asst./Dy. Commissioner of Customs, Audit, JNCH.
2. The Commissioner of Customs (Audit), New Customs House, Near IGI Airport, New Delhi-110037
3. The Additional Commissioner of Customs, Group II(G), JNCH.
4. DC, Chief Commissioner's Office, JNCH
5. AC/DC, Centralized Revenue Recovery Cell, JNCH

6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
7. EDI Section for displaying on website
8. Office Copy.